EMPLOYMENT TRIBUNALS

LONDON CENTRAL

Claimant: **Mr A. Uddin**

Respondent: **NSL Limited**

Heard : CVP **On:** 18-20 and 23 October 2023

Before: Employment Judge Sutton KC
Ms H. Craik
Dr V. Weerasinghe

Appearances

For the claimant: In person
For the respondent: Mr J.Cainer, counsel

REASONS

1. By a judgment sent to the parties on 24 October 2023, the Claimant's complaint of unfair dismissal was not upheld (by a majority) and his complaints of unlawful discrimination and breach of contract were not upheld (unanimously). The claim was accordingly dismissed.

2. Written reasons are provided following the Claimant's request, submitted to the Tribunal by email dated 24 October 2023.

Introduction

3. By a Claim presented on 3 March 2023, the Claimant complains of unfair dismissal, direct discrimination on grounds of sex, race and religious belief and breach of contract

Case Management and List of Issues

4. A case management hearing was conducted by Employment Judge Klimov on 12 June 2023, at which prehearing directions were given and the issues in dispute were identified following discussion with the parties.

5. The following issues of liability were agreed and recorded in Employment Judge Klimov's Order:-

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 28 September 2022 may not have been brought in time.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Unfair dismissal

2.1 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy.

2.2 If the reason was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The Tribunal will usually decide, in particular, whether:

2.2.1 The Respondent adequately warned and consulted the Claimant;

2.2.2 The Respondent adopted a reasonable selection decision, including its approach to a selection pool;

2.2.3 The Respondent took reasonable steps to find the Claimant suitable alternative employment;

2.2.4 Dismissal was within the range of reasonable responses.

3. Direct religion or belief/race/sex discrimination

(Equality Act 2010 section 13)

3.1 Did the Respondent do the following things:

3.1.1 In September 2020, not offer the Claimant a contract to manage on his own after the Claimant had completed the capability procedure (sex discrimination only, comparator– Ms Kim-Bajko).

3.1.2 In January 2022, told the Claimant that he would not be the Client Account Manager for Camden contract (sex, race or religion discrimination, comparator – Ms Kim-Bajko).

3.1.3 In June 2022, selected the Claimant for redundancy over Mr Martin Dadswell (race or religion discrimination, comparator Mr Dadswell).

3.2 Was that less favourable treatment?

The Tribunal will decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

The Claimant relies on his sex: male, race: British-born Asian, and religion: Muslim.

The Claimant says he was treated worse than Ms Kim-Bajko because of sex (allegation 3.1.1), because of sex, race or religion (allegation 3.1.2), and was treated worse than Mr Martin Dadswell because of race or religion (allegation 3.1.3).

3.3 If so, was it because of sex (allegations 3.1.1 and 3.1.2), religion or race (allegations 3.1.2 and 3.1.3)?

4. Breach of Contract

4.1 Did this claim arise or was it outstanding when the Claimant's employment ended?

4.2 Did the Respondent do the following:

4.2.1 Failed to pay to the Claimant car allowance for the period of his notice?

Witnesses

6. The Tribunal heard evidence from the Claimant and, on behalf of the Respondent, from Philip Pughe, Operations Director; Daniel Garcia, Account Director, and David Evans, National Enforcement Director. Each witness produced a statement on which they were cross-examined.

Documentary Evidence

7. The Tribunal was provided with an agreed bundle of documents; a written opening submission produced by the Respondent's counsel, together with cast list and chronology and a bundle of authorities

Findings of Fact

8. The Respondent is a business employing approximately 4,000 members of staff in 250 locations across the UK. This case concerns its parking services division which undertakes the management of contracts for clients to provide on-street services of traffic and parking enforcement. The Respondent has contracts to provide parking services to multiple local authority clients.

9. On 20 April 2018 the Clamant signed a contract of employment with Respondent for the position of Client Account Manager [CAM]. He began his employment working on the Respondent's contract with the London Borough of Lewisham with a start date of 23 July 2018. The CAM is required to undertake a range of functions including contract management and operational delivery, client liaison and support, finance and personnel.

10. The Claimant was initially assigned to the Respondent's contract in Lewisham Borough Council in the role of CAM. At that point he was acting as the sole CAM on that particular contract. His line manager was one Jeremy Landey. At one point the Claimant expressed frustration to Mr Landey at being overworked.

11. Having reviewed his performance at Lewisham, the Respondent decided that the Claimant required support in his role and that he would benefit from working under an experienced manager. It therefore decided, in 2019, to transfer the Claimant to work as CAM on its contract with Camden Borough Council to be managed by Paolo Orezzi, who held the position of Senior Account Manager.

12. Following his transfer to the Camden contract there were continuing concerns about the Claimant's performance and the decision was taken, in June 2019, to place him on the Respondent's capability procedure. The specific areas of concern focused upon were client relationships and financial management. He was issued with a Final Improvement Notice by Mr Orezzi on 15 October 2019.

13. The Claimant successfully appealed against the imposition of this notice on procedural grounds. He contended that the process should have entailed a formal meeting at the end of stage 2 and that other meetings should have been conducted formally rather than informally. In the light of his representations, the notice was revised on appeal from a Final Improvement Notice to a Written Improvement Notice.

14. In his appeal determination dated 20 November 2019, Mr Pughe recorded his confidence that the Claimant was able to perform the CAM role with continued support. He noted Mr Orezzi's observation that the Claimant had made significant improvements in his performance since the final notice had been issued. For his part, the Claimant commented that he had found Mr Orezzi '*very supportive*'.

15. The improvement in the Claimant's performance continued and he successfully completed his performance improvement plan.

16. Mr Orezzi was promoted to the role of Service Director in September 2020. Instead of leaving the Claimant in post as the sole CAM, which is the Respondent's usual arrangement with other London local authority clients, Camden specifically requested that a second person be assigned to the account to work alongside the Claimant.

17. Ms Kyki Kim-Bajko was appointed to this role. She had been performing the role of CAM at Lewisham and requested a transfer to Camden, where she had previously worked in a more junior role. Camden had formed a good impression of Ms Kim-Bajko from her earlier work with that client and they specifically asked for her to be appointed. She had performed strongly in the CAM role at Lewisham.

18. The new arrangement at Camden entailed Ms Kim-Bajko becoming Camden's designated contract manager and the primary point of contact for that client. She was responsible for the monthly financial dealings, which remained an area of acknowledged weakness for the Claimant. The Respondent sought to develop the Claimant's performance in this area by asking him to undertake financial elements of the Royal Parks contract, but again with Ms Kim-Bajko's supervision.

19. The Tribunal found no evidence that the decision to appoint Ms Kim-Bajko to the joint role of CAM on the Camden contract with primary client facing responsibilities, or the decision that the Claimant should work alongside her rather than be appointed as a sole CAM on that contract were in either case were influenced to any degree by Ms Kim-Bajko's difference of sex.

20. On 28 January 2022, Ms Kim-Bajko submitted her resignation in order to move to a position outside the Respondent, working as a direct employee of Lewisham Borough Council. The Claimant had unsuccessfully applied for the same role.

21. The Claimant was informed by Mr Pughe that he would not be the sole CAM on the Camden contract following Ms Kim-Bajko's departure. Camden had informed Mr Pughe that it still required the existing arrangement to be maintained, with the Claimant working alongside another CAM, who had primary client-facing responsibility.

22. While the decision that the shared CAM arrangement should continue was client driven, it was also supported by the Claimant himself. At a performance review in January 2022, the Claimant had commented that he would benefit from working under an experienced manager, to 'build his confidence' and 'provide a safe place for him to grow'.

23. The Tribunal found no evidence capable of supporting an inference that the continuation of the existing managerial arrangement on the Camden contract, whereby the Claimant would not be offered the role of sole CAM at that point was affected to any extent by sex, religion or race.

24. In place of Ms Kim-Bajko, the Respondent decided to appoint Mr Martin Dadswell, who was a highly experienced CAM. He had been working on another local authority contract but had expressed an interest in working on the Camden contract. He formally commenced on 17 March 2022.

25. In May 2022, Camden approached Mr Pughe and asked him to identify means by which costs savings could be achieved on the contract from non-revenue generating management posts. The client explained that there had been a downturn in penalty charge notices issued to vehicles during the Covid period. A further pressure arose from expected pay negotiations with council staff which would create a financial burden.

26. Although the discussions were unminuted, the Tribunal was satisfied as to the accuracy of Mr Pughe's account of what was said during his interactions with his client contacts at Camden. His evidence was supported by his contemporaneous relaying of the substance of those discussions and the steps he took to implement what Camden were calling for. Mr Evans explained in evidence that informal discussions of this character were not unusual.

27. Following discussion with Camden, Mr Pughe formulated proposals for a restructure of the CAM function as a means by which the demanded costs savings could be achieved. The restructure would entail reducing from two to one the number of CAMs assigned to the Camden contract.

28. A further aspect of the restructure would entail the deletion of the Operation Support Manager [OSM] role assigned to the contract. This was a more junior position to the CAM role, which had remained vacant in consequence of the two CAM structure which had been in place for some time.

29. On 28 June 2022, Mr Pughe arranged a meeting, attended by the Claimant and his fellow CAM, Mr Dadswell, at which he read out the proposed business rationale for the restructure. Ms Anna McEvitt of HR was also in attendance.

30. The first consultation meeting Mr Pughe conducted with the Claimant took place on 7 July 2022, again with Ms McEvitt in attendance. Although offered the opportunity to do so, the Claimant attended without a representative. Mr Pughe explained the redundancy proposal in fuller detail and outlined what the selection process would entail.

31. In particular, the Claimant was informed that the interview panel was intended to comprise two Service Directors, one of whom would be Mr Orezzi, along with a member of HR. The format of the interview would include a case study and presentation. At that juncture, the Claimant raised no objection to Mr Orezzi's proposed inclusion as one of the members of the selection panel.

32. The Claimant was afforded the opportunity to suggest alternative vacancies within the Respondent that he felt might be suitable for him. Since the initial briefing on 28 June 2022, the Claimant had been provided with a list of vacancies within the Respondent and had identified 3 posts which he felt might be suitable. Ms McEvitt had subsequently provided updates on these positions and identified a further role which she felt might be of interest. For his part, on the day prior to the meeting, the Claimant identified the CAM role at Videalert, another contract operated by the Respondent, as a possible role he might be interested in applying for.

33. The Claimant commented at the meeting that he felt it was unlikely he would secure the CAM position, stating that, in Mr Dadswell, he was competing with a 'tough cookie' with 13 years experience: 'he is far more senior to me in more ways than one'. Mr Pughe sought to reassure the Claimant that the selection process would be based on defined criteria on which the candidates would be individually scored and that there would be no prejudgement. The Claimant was subsequently supplied with notes of the first consultation meeting and invited to make changes.

34. By letter of 13 July 2022, Mr Pughe wrote to the Claimant. He noted that a person specification for the Videalert vacancy had been sent to the Claimant the previous day. He encouraged the Claimant to review current live vacancies as they are posted on the Respondent's website. In the same letter, Mr Pughe sought to reassure the Claimant over the impact that his earlier capability process might have on his prospects of selection for the Camden role, stating that that there were no concerns with his current performance. The Tribunal accepted that issues in connection with the Claimant's past performance were not relevant to the inception of the redundancy process nor the way that process was conducted.

35. Mr Pughe underlined in his letter that the consultation process entailed looking at any alternative approaches that might prevent a redundancy situation. He noted that the Claimant had undertaken to look at an alternative plan to achieve the cost savings demanded by the client. Mr Pughe encouraged him to do so and to provide his thoughts in a timely manner so that these could be considered.

36. Mr Pughe noted that the Claimant had earlier stated a preference for a quick process and that he had canvassed the possibility of a without prejudice conversation and the discussion of an exit plan, agreed on an amicable basis. The Claimant confirmed that he was envisaging a 'separate discussion' rather than termination by way of voluntary redundancy. Mr Pughe observed that he had already explained the Respondent's policy of following a statutory redundancy process including statutory payments.

37. Mr Pughe also emphasised that the company was committed to the consultation process, including means by which a redundancy situation could be averted, and was unwilling to engage in without prejudice discussions.

38. In response to the Claimant's request for further details of the rationale for the redundancy situation, Mr Pughe attached to his letter a copy of the business case, which included the proposed structure and the salary and benefits of the

sole CAM role. Certain information pertaining to the Camden contract was not included for reasons of commercial sensitivity.

39. Mr Pughe responded to two observations which the Claimant had made in an earlier email of 11 July 2022. The first related to the performance review which had been undertaken in January of that year, to which reference has already been made. The Claimant asserted in this email that Mr Pughe had told him that he would not be the CAM for Camden, at the point in time when Ms Kim-Bajka was vacating her CAM role to move to Lewisham.

40. As Mr Pughe explained in his letter, the discussion at that point in time was concerned with whether the Claimant would become the sole CAM, or whether, as turned out to the case, a two CAM arrangement would be maintained in line with Camden's request. The Tribunal accepts the accuracy of Mr Pughe's account and recollection.

41. The second observation concerned Mr Orezzi's participation on the selection panel. Although not a concern he initially raised, the Claimant had subsequently flagged a concern that Mr Orezzi was unsuitable because he had a social relationship with Mr Dadswell and that Mr Orezzi had made an error in the conduct of the capability process that was corrected on appeal. The Claimant professed a loss of confidence in Mr Orezzi as a potential panel member.

42. Mr Pughe sought in his letter to reassure the Claimant that Mr Orezzi was to be one of a three-person panel, each of whom would be assessing him and his fellow candidate. Mr Pughe considered that the interview process was sufficiently robust and structured in terms of questions and scoring criteria to mitigate any perceived bias.

43. As he explained in evidence to the Tribunal, Mr Pughe also considered that Mr Orezzi's particular familiarity with the Camden contract and its operational demands was an important justification for his inclusion on the panel.

44. On 18 July 2022, the Claimant submitted a grievance. He emailed Mr Pughe to explain that he would not be attending the interview with the selection panel which had been scheduled to take place the following day. Mr Pughe responded on the same afternoon, urging the Claimant to reconsider. He pointed out that the grievance would be dealt with as a separate matter, but that it was important for the Claimant to remain engaged in the redundancy process. A rescheduled interview for later in the week was suggested.

45. Notwithstanding Mr Pughe's attempts to persuade him to remain engaged, the Claimant declined to attend the interview. He contended that his grievance 'took priority' and asked the Respondent, in a further email of 18 July 2022, to consider suspending the redundancy selection process. For his part, Mr Dadswell attended an interview before the selection panel on 19 July 2022.

46. The Claimant contacted Mr James Parry, the Respondent's Head of Employee Relations, on 20 July 2022 in connection with his grievance. Mr Parry confirmed that the grievance would be handled separately from the redundancy process

and that it would be helpful for the Claimant to remain engaged in that process and to discuss his concerns with Mr Pughe.

47. The Claimant attended a meeting with Daniel Garcia, Account Director, on 26 July 2022, to discuss his grievance. He had previously submitted a document to David Sinclair headed 'Grievance Letter – Sham Redundancy' under cover of an email of 18 July 2022. The meeting was conducted by Mr Garcia and attended by the Claimant and Mr Parry, who was present to take notes and advise on matters of process. The Claimant was subsequently provided with notes of the hearing and agreed their content, with minor corrections. The Claimant was accompanied by a colleague from the City of London contract, who attended in the role of companion.

48. Mr Garcia noted that the Claimant had raised 31 questions, some of which appeared to be statements rather than points to be responded to. Others were unrelated to the restructure which was said to be the focus of the Claimant's grievance. Mr Garcia distilled what he regarded as the essential points bearing on the redundancy process and agreed to undertake an investigation. This involved contacting Mr Pughe to understand the background circumstances and reviewing the interview selection process. He also consulted with HR to examine the concerns that had been raised about bias. Mr Garcia's findings were recorded in his decision letter of 30 July 2022, the content of which is explained below.

49. Pending the outcome of his grievance, the Claimant agreed to attend a further consultation meeting with Mr Pughe. This was held on 28 July 2022. In advance of that meeting, the Claimant was encouraged to think about any alternative suggestions he might have in relation to the redundancy proposal and these could be discussed, after which the issue of the Claimant's willingness to attend an interview could be revisited. Mr Pughe explained to the Claimant that he could attend the meeting with a workplace colleague or Trade Union representative.

50. Minutes of the meeting of 28 July 2022 were produced in evidence. The meeting was conducted by Mr Pughe, supported as before by Ms McEvitt of HR. The Claimant elected to attend the meeting unaccompanied. The Tribunal accepted the Respondent's stated willingness to consider proposals aimed at averting a redundancy situation was genuine and the consultation took place at a point in time when the development of the restructuring proposal was not yet set in stone.

51. By letter of 28 July 2022, Mr Pughe addressed the proposals which the Claimant had come forward with at the meeting earlier that day as a suggested alternative to the proposed restructure. The Claimant's proposal entailed an alternative management restructure which would involve the establishment of a more senior role, described as a Service Director, under whom there would be a CAM and three Operational Support Manager roles. The cost savings would be achieved by reducing the current complement of Supervisors assigned to the Camden contract from 23 to 17, making six redundant. Each of the remaining supervisors would have responsibility for around 10 colleagues.

52. Mr Pughe noted that the Claimant's proposal would involve placing all 23 Supervisors at risk of redundancy and pointed out that this could place the

contract with this client at serious risk both financially and operationally, given that client's trade union relations. He also commented that the current restructuring proposal was based on achieving savings at senior manager level. A reduction in Supervisors would significantly impact upon potential revenue generation to the Camden contract, undermining to the core objectives of the restructure.

53. Separately, he observed that the Service Director role within the Respondent's organisation encompassed a far wider reach in terms of scope and duties.

54. The discussion also addressed other negative impacts which would arise if the Claimant's proposal were adopted, including the undermining of staff morale and productivity, service delivery and the reluctance of the reduced cohort of staff, both at Base manager and supervisor levels, to take on extra responsibilities without enhanced remuneration.

55. Having talked through the Claimant's proposal, and thanking him for developing his ideas, Mr Pughe considered that it did not present a practicable or viable alternative to the CAM restructure and brought with it significant risks to the operation of the Camden contract without achieving the objectives in terms of costs saving that client had demanded. The Tribunal considered that Mr Pughe had given genuine consideration to the Claimant's proposals and that he had provided a convincing rationale as to why they were not considered practicable or viable.

56. In his letter of 28 July 2022, Mr Pughe noted that the CAM vacancy at Videalert had been discussed and that the Claimant was given the relevant contact details of the individuals associated with that client if he was interested in pursuing the vacancy.

57. By letter of 30 July 2022, Mr Garcia wrote to the Claimant setting out his findings on the grievance. His conclusions can be summarised as follows: -

    (i) Mr Pughe had decided to remove the senior CAM role due to it being outdated and out of kilter with current structures within the Respondent where there is currently only one other Senior CAM who has been in the role for a long time. The Respondent's current structures do not involve a Senior CAM managing a Civil Parking Enforcement (CPE) contract.

    (ii) The reason the Claimant had been moved to Camden as part of a two CAM arrangement was because it was considered that the Claimant would benefit from working alongside a more experienced CAM and Camden offered that due to the size and complexities of the contract, and due to the vacant role of OSM which funded his move since 2019.

    (iii) Once Ms Kim-Bajka had resigned, Mr Pughe had explained to the Claimant that there was a need for an experienced replacement for her. This was particularly relevant considering the Claimant's own comments on his need for further development and the need for him to work under an experienced manager in the management of a complex and unionised

contract. It was believed that the Claimant would benefit from a continuation of the structure that had been in place, with the Claimant working alongside a CAM with greater experience, and this was what Mr Pughe had been referring to regarding the Claimant not being the only CAM for Camden.

(iv) Mr Garcia had reviewed the CAM selection process. He found that the process of pooling both at risk CAMs and carrying out interviews to select who would remain as the fairest approach to the restructure. He had reviewed a copy of the interview scoring criteria found that the interview selection process with the panel of three interviewers, and consistency in scoring by a set criterion, was a process for which there could be no improvements.

(v) The structured scoring process, separate from interview questions, was designed to avoid any bias.

(vi) The intention at Camden was to replicate a structure which worked under other contracts, namely one CAM role without the support of either another OSM or CAM. Consideration had been given to putting other roles at risk, but those roles were deemed essential to the operation going forwards and the focus was to reduce roles not linked to revenue generation.

(vii) The version of the business case requested by the Claimant was sent to him following removal of sensitive data from the original document.

(viii) The client had flagged the need to look for efficiencies in the contract due to their cost saving drive.

(ix) It was confirmed that there was a typographical error in the business case and that there would be 5 CCTV supervisors. Mr Garcia further confirmed that the responsibility of the Resourcing and Planning Manager was not correctly set out in the business case. The Resource and Planning Manager managed the Housing and C&R Supervisor and would continue to do so in the new structure.

(x) The restructure change was agreed with the client and once finalised, the changes to the contract would be made, including the change notification process.

58. In his evidence to the Tribunal, Mr Garcia confirmed that the Claimant had made no suggestion that the comments he alleged Mr Pughe had made about his appointment to the CAM role at Camden were influenced by race, religion or sex discrimination. Nor, as he explained in his evidence to the Tribunal, did Mr Garcia find any basis for so concluding. Having reviewed the Claimant's grievance, Mr Garcia considered that he was unable to uphold the same.

59. The Claimant submitted an appeal against Mr Garcia's decision by letter dated 2 August 2022.

60. The Claimant was given with a further opportunity to attend an interview for the Camden CAM role on 3 August 2022 but again declined. He stated that he was appealing the outcome of his grievance and wanted to await the outcome of that process before attending an interview. He also noted that he had recently attended an initial interview for an alternative role within the Respondent.

61. The Claimant had submitted an alternative proposal to the proposed restructure and this was addressed in Mr Pughe's letter of 9 August 2022. Mr Pughe noted that the Claimant's revised proposals gave rise to the same objections as had previously been identified and explained in his earlier response dated 28 July 2022.

62. It was noted that the client, Camden, had already agreed to the current proposals to achieve a reduction in management headcount. It was further noted that the Claimant's revised proposal failed to consider the impact on performance arising from placing a large number of staff at risk of redundancy.

63. The proposal being pursued by the company entailed placing two roles at risk of redundancy and offered a saving to the client without placing the contract at significant financial and operational risk to the Respondent. Mr Pughe observed that the Claimant's proposal would also require a significant amount of time to put in place at a time when the client and the business had agreed and committed to the current process.

64. In the same letter, Mr Pughe noted that a role had become available at Barnet for an Operations Performance Manager. While the total remuneration was lower than the Claimant's current package because there was no car allowance or annual bonus, the role was nevertheless a viable option to consider.

65. Mr Pughe also agreed to obtain feedback from Videalert following the interview which the Claimant had attended the previous week. Mr Pughe encouraged the Claimant to keep an eye on the website to review any internal vacancies.

66. On 12 August 2022, the Claimant attended a third consultation meeting with Mr Pughe. Ms McEvitt was also present. The Claimant elected to attend on his own, without a colleague or representative. Mr Pughe explained that the decision had been taken to move forward with the new structure. It was noted that the Claimant had been given three opportunities to attend a selection interview for the role and that the other candidate had accordingly been appointed. In consequence, the Claimant was informed that he had been selected for redundancy.

67. The Tribunal found no evidence capable to supporting an inference that the selection process which identified Mr Dadswell as the successful candidate was affected to any degree by considerations of race or religion, whether that of the Claimant or Mr Dadswell. The outcome of the selection process was rendered a foregone conclusion by the Claimant's refusal to participate in the interview process, despite repeated encouragement to do so.

68. It was explained that the Respondent remained keen to explore alternative vacancies with the Claimant. The option of applying for the Barnet role was revisited, and an OSM vacancy at the North London Pound was discussed.

69. On 15 August 2022, Mr Pughe emailed the Claimant confirming that the consultation process in connection with the Camden CAM role had been exhausted, but that the exercise of seeking alternatives to termination for redundancy was continuing with a pending interview for the role of Operations Performance Manager at Barnet. It was noted that Barnet had expressed a preference for appointment via competitive process rather than solely by redeployment.

70. On 23 August 2022, following the Claimant's attendance for an interview at Barnet, Mr Pughe wrote to him by email explaining that he had been unsuccessful in securing that role. The Claimant had also been interviewed for the vacancy at the North London Pound. Mr Pughe also informed him of a new Base Manager vacancy which had arisen in Westminster. He told the Claimant that he wished to convene a further and final consultation meeting and at which the Claimant needed to give an answer on how he wished to move forward.

71. This final redundancy consultation meeting took place on 25 August 2022 conducted by Mr Pughe. Having been informed of the opportunity to attend with a representative, the Clamant elected to attend unaccompanied. Alternative vacancies were discussed with the Claimant. He decided not to pursue the Base Manager vacancy at Westminster. Instead, he had decided to accept the OSM position at the North London Pound at a salary of £35,000, subject to a four week trial period.

72. By letter of 1 September 2022, Mr Pughe wrote to the Claimant confirming the outcome of the consultation process. The letter summarised what had been discussed at the consultation meetings and the consideration that had been given to the Claimant's proposals. It also recorded the fact that the Clamant had been afforded three opportunities to attend a selection interview for the Camden post.

73. Mr Pughe noted the discussions which had taken place surrounding the identification of alternative posts within the Respondent. He reported the feedback he had received about the Videalert vacancy for which the Claimant had applied, explaining that although the Claimant had performed very well in interview, due to the technical nature of the role, the post required someone with specific knowledge of certain software applications and relevant experience.

74. On 7 September 2022, the Claimant attended via video link an appeal conducted by David Evans, Senior Account Director. Mr Aron Prowse, Senior HR Business Partner attended to take notes. The Clamant was supported by Mr Mohammed Hussain, Operations Supervisor, who attended as the Claimant's representative. The outcome of that appeal meeting is addressed below.

75. On 29 September 2022, the Claimant notified HR that he had decided, at the conclusion of the four week trial period, not to accept the OSM role at the North London Pound, saying that it was not right for him. Instead, he wished to take redundancy. Mr Pughe proposed a meeting to confirm his dismissal from the company by reason of redundancy, effective as of 30 September 2022.

76. Mr Pughe's letter set out the redundancy payment calculation and the sum owing by way of payment in lieu of notice. The Claimant asserts in these proceedings that the final payment failed to reflect the loss of car allowance during the period of his contractual notice. The terms of the Respondent's handbook, which were contractually incorporated, stipulate that PILON is paid in respect of basic pay only and the car allowance was therefore properly excluded from the Claimant's final pay.

77. On 13 October 2022, Mr Evans wrote to the Claimant recording his decision in relation to the Claimant's Grievance Appeal and his Redundancy Appeal. It was noted that the Claimant had lodged an appeal against his redundancy on 5 September 2022 (although letter was in fact dated 15 August 2022) despite the fact that the process had not been concluded at that point and no outcome issued.

78. As part of the claimant's grievance appeal, the Claimant asserted that the redundancy process had been brought because of his protected characteristics. Mr Evans explained in his decision letter that, despite 'multiple lines of question', the Claimant had been unable to provide any details or evidence as to why he had made this assertion. Mr Evans observed in evidence that there was nothing inherently surprising in the fact that Ms Kim-Bajko was specifically requested by Camden to be appointed to the CAM role. The length of time an individual has been in post is not a determining factor. Appointments are made on ability and performance and Ms Kim-Bajko had demonstrated strong ability with the requisite skill set. The allegation of discrimination was accordingly rejected.

79. Mr Evans explained in his letter that, although the grievance and redundancy processes were distinct, they had been aligned for the purposes of the appeal against each, as the procedures were one and the same, no matter the cause of the appeal.

80. Having considered the determination reached by Mr Garcia at the first stage of the grievance procedure and having reviewed the manner in which the redundancy process had been conducted, the Claimant's appeals were rejected.

81. After a period of a little over five weeks, the Claimant was able to secure alternative employment with another employer in the parking services sector at a comparable salary.

Legal Guidance

Reason for Dismissal

82. Under s.98(1) of the Employment Rights Act 1996 [ERA], the Respondent has the burden of proving on the balance of probabilities.

(i) the reason (or, if more than one, the principal reason) for the dismissal;

and

(ii) that it is was one of the potentially fair reasons for dismissal listed in s**.**98(2)-(3).

83. The Respondent contends that the Claimant was dismissed by reason of redundancy which is a potentially fair reason under s.98(2)(c) ERA.

84. Redundancy is defined by s.139(1) ERA 1996:

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to— …

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,

have ceased or diminished or are expected to cease or diminish".

85. In his submissions, counsel for the Respondent cited the House of Lords guidance in *Murray v Foyle Meats Ltd* [2000] 1 AC 51 at 56E-F, where Lord Irvine held that the Tribunal must consider:

(1) whether there was in fact a state of economic affairs amounting to a redundancy situation – i.e. "whether the requirements of the business for employees to carry out work of a particular kind have diminished"; and

(2) whether the dismissal is attributable, wholly or mainly, to that state of affairs".

86. Where an employer reorganises and redistributes work so that it can be done by fewer employees, for example where one employee is now doing the work formerly done by two, the statutory test of redundancy will be satisfied (*Safeway Stores v Burrell* [1997] IRLR 200

87. The Tribunal is not concerned with second guessing the economic or commercial reason for the redundancy situation and "*will not go behind the facts and investigate how the redundancy situation arose and whether it could have been avoided and whether there are any viable alternatives; the tribunal will not go into the rights or wrongs of a declaration of redundancy*" (*TNS UK Ltd v Swainston* (2014) UKEAT/0603/12/BA).

88. Such considerations can however be relevant to the assessment of whether the genuine reason for the dismissal was redundancy and the reasonableness of the dismissal: (*Berkeley Catering Limited v Jackson* (2020) UKEAT/0074/20/LA(V**)**

Unfair Dismissal: Assessing fairness under s.98(4) ERA

89. If the Respondent has established that the Claimant's dismissal was by reason of redundancy, the Tribunal must go on to consider whether the dismissal was fair having regard to s.98(4) ERA:

> "whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case".

90. In determining the dismissal's fairness, the burden of proof is neutral and the Tribunal must ask whether the employer's actions fell within the range of reasonable responses open to an employer both as a matter of substance and procedure. The Tribunal cannot substitute their own view as to the right course for that employer to adopt.

91. In *Williams v Compair Maxam Ltd* [1982] IRLR 83 at [19], the EAT laid down general guidelines that reasonable employers would usually be expected to follow in a redundancy context:

(1) the employer should warn and consult with individual employees;

(2) the employer should consult with the union where applicable;

(3) the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service";

(4) The employer will seek to ensure that the selection is made fairly in accordance with these criteria";

(5) The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment".

92. The above considerations, as emphasised by the EAT, are not to be regarded as principles of law. Instead they are standards that should be taken into account as part of the Tribunal's assessment. It was recognised that each case will turn on its own facts. The overriding test remains in each case whether dismissal lay within the range of reasonable responses.

Pool for selection

93. The range of reasonable responses test applies to the devising of the redundancy selection pool. Provided the Respondent has genuinely applied its mind to who should be in the pool for selection, the question of how the pool should be defined is primarily a matter for it to determine.

Discrimination – Time limits

94. Discrimination claims must be brought within 3 months of the date of the act complained of (s.123(1)(a) EqA 2010). For this purpose, "*conduct extending over a period is to be treated as done at the end of the period*" (s.123(3)(a) EqA 2010).

95. Where there are multiple allegations of discrimination, the later of which are in time and the earlier of which are not, the Tribunal should focus on the substance of the complaints and ask whether that is an act extending over a period as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed (*Hendricks v Commissioner of Police for the Metropolis* [[2003] IRLR 96 at [52]).

96. The Tribunal can extend the time limit if it considers the claim was presented within "*such other period as the employment tribunal thinks just and equitable*" (s.123(1)(b)). It is for the claimant to persuade the Tribunal it is just and equitable to extend time (*Adedeji v University Hospitals Birmingham NHS Foundation Trust* [2021] EWCA Civ 23 at [17]).

97. Factors which should be weighed in the exercise of the Tribunal's discretion include the prejudice which each party would suffer as the result of the decision to be made and all the circumstances of the case. Relevant circumstances are likely to include:

    (a) the length of and reasons for the delay;

    (b) the extent to which the cogency of the evidence is likely to be affected by the delay;

    (c) the extent to which the respondent had cooperated with any requests for information;

    (d) the promptness with which the claimant acted once he knew of the facts giving rise to the cause of action; and

    (e) the steps taken by the claimant to obtain appropriate professional advice once he knew of the possibility of taking action.

98. Whilst these factors are potentially relevant and helpful, the Court of Appeal cautioned in *Adedeji* (referred to above) against rigid adherence to the checklist or using it as the framework for any decision. Such factors should be used as a cross-check only, albeit the length of, and reasons for the delay and the balance of prejudice will almost always be relevant considerations.

Discrimination – Burden of Proof

99. Section 136 of the Equality Act 2010 [EqA] provides for the burden of proof in discrimination claims as follows:

> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

100. Where the facts are capable, absent any other explanation, of supporting an inference of unlawful discrimination, the onus shifts to the employer to disprove discrimination. The bare facts of a difference in treatment are not, without more, enough to shift the burden of proof: *Hammonds LLP v Mwitta* (2010) UKEAT/0026/10/ZT

101. The Tribunal was reminded of the guidance in *Igen Ltd v Wong* [2005] IRLR 258, *Laing v Manchester City Council* [2006] IRLR 748, *Madarassy v Nomura International plc* [2007] IRLR 246; *Hewage v Grampian Health Board* [2012] IRLR 870 and *Royal Mail Group v Efobi* [2021 IRLR 811.

Direct Discrimination – s.13 EqA 2010

102. Direct discrimination is defined by s.13(1) EqA 2010:

"*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*".

103. This requires a two-stage analysis: (1) whether the Respondent treated the Claimant less favourably than a comparator; and (2) whether the less favourable treatment was "*because of*" a protected characteristic.

104. Whether an allegation amounts to less favourable treatment is an objective question. It is not enough simply to show that the Claimant has been treated differently. There must also be a quality in the treatment that enables the claimant reasonably to complain about it (*Chief Constable of West Yorkshire Police v Khan* [2001] IRLR 830 at [52] and [76]).

105. Discrimination is prohibited in the employment field by s.39 EqA, which provides that

> "*An employer (A) must not discriminate against an employee of A's (B)—*
>
> *(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;*
>
> *(c) by dismissing B;*

(d) by subjecting B to any other detriment".

106. The claimant must identify an actual or hypothetical comparator from whom they are treated "*less favourably*". There must be no material difference between the circumstances of the comparator and the claimant, except that the comparator must lack the protected characteristic (s.23(1) EqA 2010). Claims must be analysed separately for each protected characteristic.

107. In determining whether treatment is "*because of*" a protected characteristic the Tribunal is concerned with the "*grounds*" or "*reason*" for it. In cases where it is alleged that the protected characteristic has operated on the discriminator's mind or "*mental processes*" so as to lead him to act in the way complained of, the protected characteristic does not have to be the only factor: it is enough if it has had "*a significant influence*". Nor need it be conscious: a subconscious motivation is sufficient (*Onu v Akwiwu* [2014] EWCA Civ 279, [2014] IRLR 448 at [42]-[43]).

Conclusions

Unfair Dismissal: Reason for Dismissal

108. The majority of the Tribunal finds that the Respondent has discharged the burden of establishing the existence of a redundancy situation and that the Claimant's dismissal was by reason of redundancy.

109. In May 2022 the Camden client approached Mr Pughe and required the Respondent to identify cost savings from non-revenue generating management posts. This requirement was due to a downturn in revenue derived from penalty charge notices, and to meet the anticipated burden of pay negotiations.

110. The Respondent met this requirement by restructuring the team assigned to Camden contract team, entailing the deletion the OSM role and one CAM role; and placing both CAMs, the Claimant and Mr Dadswell, at risk of redundancy Both were considered for selection as the sole CAM responsible for the Camden contract via a selection process consisting of an interview and presentation.

111. The savings achieved by this restructure were sufficient to achieve Camden's requirement. The majority of the Tribunal was satisfied that these circumstances entailed a reorganisation whereby work could be undertaken by fewer employees and that the statutory definition of a redundancy situation was met. In its view, the Claimant has pointed to no convincing evidence to suggest otherwise.

Unfair Dismissal - fairness

112. The majority of the Tribunal finds that the process leading to the Claimant's dismissal and the decision to dismiss the Claimant by reason of redundancy were fair, falling within the range of reasonable responses.

113. The process leading to dismissal, in the view of the majority, amply satisfied the standards of procedural fairness in a redundancy context which Tribunals are encouraged to have regard to. The consultation process was meaningful: while the proposals were still fluid, the claimant was given the opportunity to suggest alternative approaches which would have secured the savings demanded by Camden and availed himself of that opportunity. His proposals were given full and proper consideration by his manager, and the reason for their rejection was clearly explained on grounds that appeared to the majority of the Tribunal to be not only plausible but persuasive.

114. The pool for selection, comprising the two CAMs assigned to the Camden contract was objectively logical. It was clear that the Respondent had considered permutations, including the radically different proposal advanced by the Claimant in the course of the consultation meetings but regarded this as the appropriate approach. This could not be criticised as falling outwith the range of reasonable approaches.

Fairness: Selection process

115. The Claimant's challenge to the composition of the selection panel is inevitably weakened by his refusal, despite repeated encouragement from Mr Pughe, to agree to attend the interview. The Tribunal reviewed the way in which the interview process was structured noting its use of objective criteria and scoring matrix. It found the process to be robust and that steps had been taken to limit so far as practicable the scope for subjective assessment.

116. The inclusion of Mr Orezzi on the panel, although perhaps not ideal, did not, in the view of the Tribunal, give rise to unfairness. There were convincing reasons why he was regarded as an appropriate person to participate: in particular his familiarity with the Camden contract and the particular challenges which it posed.

117. His earlier participation in the Claimant's capability process where procedural errors were made, and his suggested social contact with Mr Dadswell were, in the Tribunal's view, sufficiently mitigated by the way in which the selection process was structured, and the involvement of two other decision makers. It is notable that, in the course of the grievance hearing, the Clamant himself observed: 'I am not questioning Paolo's integrity. I am not saying Paolo will be bias, but it made me disengage in the process'.

Fairness: Alternative employment

118. There were four consultation meetings, the first and second of which were each nearly an hour long. The majority of the Tribunal was satisfied that Mr Pughe was genuinely committed to engaging with the Claimant and trying to secure an alternative position for him within the organisation and did what was possible to facilitate this. The Claimant was directed towards several internal vacancies, and succeeded in securing one of them. He subsequently elected to decline it at the end of the end of the trial period.

Unfair Dismissal: Conclusions

119. In the view of the majority of the Tribunal, the Claimant was fairly dismissed and his complaint under this heading fails.

Unlawful discrimination

120. The unanimous conclusion reached by the Tribunal is that it lacks jurisdiction to entertain the complaints of discrimination. The Tribunal accepts the accuracy of the chronology set out in the Respondent's written submissions at paragraph 30. Each of the complaints has been brought outside the applicable time limit and no sufficient grounds have, in the Tribunal's view, been put forward to justify an extension of time on 'just and equitable grounds'.

121. But had it concluded that it had jurisdiction in respect of such complaints, addressing the substance of the three allegations advanced under this heading, the Tribunal would have concluded there was no evidence capable of supporting an inference of unlawful discrimination, giving distinct consideration to the particular protected characteristics relied upon. We have addressed the substance of those complaints and their lack of evidential support in our findings of fact. The first stage of the burden of proof provisions set out in s.136 EqA would not have been surmounted in this case.

122. This heading of complaint therefore fails.

Breach of Contract

123. The claim for unpaid car allowance also fails. For reasons already given, the Claimant had no contractual entitlement to the benefit in question.

Dissenting Views of Dr Weerasinghe

124. The following paragraphs record Dr Weerasinghe's dissenting views. The majority of the Tribunal does not agree in all respects with Dr Weerasinghe's account of the evidence or the inferences he is willing to draw. Further the majority does not accept the materiality of certain of the matters set out below to the issues which the Tribunal was asked by the parties to determine.

125 *Dr Weerasinghe, in the minority, would have found that there was no genuine redundancy situation. He first lists the following background chronological matters leading to the redundancy in order to give context and support his reasoning:*

(i) *The Claimant joined the Respondent in July 2018. He was the CAM for the London Borough of Lewisham contract. His line manager was one Jeremy Landey. At one point the Claimant expressed "frustrations" of being overworked to Mr Landey.*

(ii) *"I was advised by my line manager Jeremy Landey to focus on Operations whilst he focussed on Finance", ref. Claimant's grievance;*

(iii) *The Respondents felt that the Claimant required improvement in certain areas which were not specified;*

(iv) *"In order to assist him with his development, in 2019 the Claimant was then moved to the Respondent's contract with the London Borough of Camden where it was intended that he would be able to learn and grow under an established manager, Mr Paolo Orezzi", ref. Mr. Pughe's witness statement. Mr Orezzi was the Senior Account Manager. The Claimant retained his title as a CAM. It is this move that later created the unique 2-CAM situation at Camden after the promotion of Mr Orezzi and the abolition of the senior CAM role.*

(v) *"I felt they did this because I expressed my frustrations to Mr Jeremy Landey on how overworked I was. They did this under the guise that I needed further development under a senior manager", [ref. Claimant's witness statement]*

(vi) *"I was unhappy the way this came to me as a shock as my performance/capability was not addressed informally or formally", [ref. Claimant's grievance]. There was no evidence of a performance review or any other review prior to the move to Camden.*

(vii) *In June 2019, Mr Orezzi initiated Respondent's capability procedure for the Claimant resulting in a Final Written Notice being issued in October. It is not clear what training was offered to the Claimant. "Within a few months, I was put through a capability process by Paolo Orezzi as he identified gaps in my financial knowledge", [ref. Claimant's grievance]. As mentioned above, the Claimant's previous line manager asked him to focus on operations, not finance. As a result, the Claimant would not have had experience in finance.*

(viii) *The Claimant appealed the decision successfully pointing out that Mr Orezzi had made a procedural error. It is to be noted that had the decision been left unchallenged, it would likely to have hastened the dismissal of the Claimant.*

(ix) *In December, the Claimant successfully completed the capability procedure and was expecting to be offered a CAM contract of his own; "…… as this was part of the agreement from moving over from Lewisham", [ref. Claimant's grievance].*

(x) *The next significant event was the beginning of the redundancy process in June 2022.*

(xi) The Respondents proposition: "the work done by the two Client Account Managers (CAMs) on its parking services contract with Camden could be done by one CAM", although per se, it does comply with a legitimate redundancy, it is one which resulted from the Respondent's own questionable actions/inactions. The genesis for the creation of the unique 2-CAM structure at Camden was the Claimant's move from Lewisham which at best can be described as a temporary secondment because the Claimant's clear expectation was to be offered a CAM role of his own elsewhere, particularly after successful completion of the capability process and after he had 'learned and grown'. The Claimant states that after he had completed the capability procedure, a number of CAM roles became available but none was offered to him. He was particularly disappointed not to be appointed as CAM for the City of London where he had worked previously with another company. He also points to a CAM vacancy at Islington where the respondent chose to appoint an external candidate at additional cost instead of offering it to the Claimant. Furthermore, the Respondent told the Tribunal that the Claimant's shared CAM role at Camden was not formalised with Camden Council and a variation of the contract was not made. Moreover, the Claimant did say the redundancy was a "sham" in his grievance and in his witness statement he said: "I believe that the redundancy process was a sham to get rid of me".

126. *Dr Weerasinghe concludes that there was no genuine redundancy situation at Camden because the unique (i.e. not in any other London borough) 2-CAM structure was artificially created to accommodate the Claimant's temporary move from Lewisham which itself has not been fully explained. It is to be noted that it was only after Camden requested cost savings that Mr Pughe suddenly realised that there was no need to have two CAMs and that the work can be done by one.*

127. *In the alternative, Dr Weerasinghe would have found the dismissal was outwith the range of reasonable responses.*

128. *He reasons as follows:*

(i) The redundancy of the Claimant's role has been predicated by a purported need to reduce costs at the behest of the client. If that is the case, then it is particularly pertinent to indicate the extent of the savings sought and the communications the Respondent had with the client. This would enable the Claimant to engage in the consultation process in a meaningful manner in formulating an alternative plan.

(ii) The Respondent's efforts to find alternative employment appears to be woefully inadequate. The two roles which were offered, one at Barnet and the other at the North London Pound did not match the Claimant's expertise which the Claimant had nurtured over many years.

(iii) The Government advice to employers is, as a first step look at ways to avoid redundancy, for example early retirement, voluntary redundancy. No such steps were taken.

129. *In conclusion, Dr Weerasinghe would have found that the claim for unfair dismissal was well founded.*

EJ Sutton

18 December 2023

Sent to the parties on:

18/12/2023

For the Tribunal Office:

……..……..