EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mr S Beaulah **v** **LSJ The Car Body Repair Specialist Limited**

Heard at: Watford
On: 13 November 2023
Before: Employment Judge R Lewis

Appearances
For the Claimant: In person
For the Respondent: Ms S Neyland, HR consultant

JUDGMENT

1. The respondent is correctly named above.

2. The claimant was not unfairly dismissed by the respondent.

REASONS

1. The claimant asked for written reasons after judgment had been given.

2. This was the hearing of a claim presented on 14 April 2023. Day A was 13 March and Day B was 14 April. Notice of today's hearing, and a case management timetable, were sent on 12 July.

3. There were bundles of 40 pages from the respondent and 10 pages from the claimant. The claimant's bundle included a statement from Mr Channer. The respondent's bundle included statements from Mrs Goodings, Ms Neyland, Mr Evans, Mr Frazier, and one concluding, "Signed I wish to remain anonymous." I did not agree to accept any of those statements on grounds that (1) none had been signed by the witness, except that of Ms Neyland; (2) the 'anonymous' document was, given its conclusion, obviously unacceptable; and (3) while Ms Neyland had signed her statement, it consisted of a reiteration of what was said by Mr Roger, and did not seem to add anything to what he had written.

4. At the start of the hearing the correct name of the respondent was clarified as stated above. I pointed out to the claimant that although his schedule of loss included an element for holiday pay, no claim for holiday pay was before the tribunal, as he had not indicated one on his claim form. I directed

further that the tribunal would deal with liability first, and remedy, if required, later in the day.

5. Mr Roger and the claimant gave evidence. Each adopted his written statement, and was briefly cross examined. Each side gave a brief closing summary; as the claimant was unrepresented, I heard the closing summary from the respondent first, contrary to the normal order.

The legal framework

6. This was a claim for unfair dismissal. The first question for the tribunal is to decide what was the reason for the dismissal, ie the factual considerations in the mind of the person who made the decision to dismiss.

7. Redundancy is a potentially fair reason for dismissal. In its technical meaning redundancy arises when the employer's need for work of the particular kind done by the claimant has ceased or diminished.

8. When considering fairness, the tribunal must consider all the circumstances of the individual case, having regard to the factual situation, and to the 'size and administrative resources' of the employer. This last point is particularly important: an employer of three people is not expected to follow the same procedures as an employer of 30 or 300 employees.

9. The tribunal must make an objective assessment of the circumstances, including the business case for redundancy; the manner in which those at risk were selected from the workforce; the criteria for selection from those at risk; the process of consultation with the individuals at risk of redundancy; and the procedure leading to dismissal, including any appeal. Not all of these factors arise in every case, or carry equal weight in every case.

Findings of fact

10. I found the following facts:-

    10.1 The respondent company was set up in 2016 and is a car repair business. It is owned by Mr Roger.

    10.2 The claimant, who was born in 1972, was employed as a Panel Beater, and joined the respondent on 9 January 2020. When there was not enough work for him as a panel beater, he helped out with other tasks.

    10.3 I accept Mr Roger's evidence, that in the last quarter of 2022, the respondent company realised that it faced financial difficulties, and took advice from its accountant and from Ms Neyland.

    10.4 After taking advice, Mr Roger realised that the respondent would have to make a redundancy in order to achieve its advised level of cost saving. In the first place, he decided not to take any immediate action about redundancy, as he did not want to spoil Christmas for anyone. That was evidence of a serious, thoughtful approach, by an employer who understood that his decision would have an impact on

the life of an employee or employees. He put the matter on hold until the start of 2023.

10.5 The respondent had at that time four employees, who were a Paint Technician, a part-time Apprentice, the claimant and Mr Roger himself.

10.6 Mr Roger saw no need to pool the employees, ie to consider that each of the other three might be at risk of redundancy. His evidence was that the work of paint technician was specialist, and had developed significantly from when the claimant had last undertaken painting work. He considered that paint work was an essential of the business, and could not be done by the claimant or by Mr Roger himself. There was no benefit or cost saving in reality in dismissing the apprentice. However, Mr Roger's evidence was that the work required of a panel beater was in decline, and did not occupy the claimant for a full five day week.

10.7 Mr Roger explained further that panel beating was, in general, in his phrase, a 'dying trade.' He explained that there were a number of reasons for this. They included the tendency of insurers to write off damaged cars; the difficulty of obtaining parts; and the construction methods of modern cars.

10.8 In addition, Mr Roger was himself a qualified panel beater, and therefore able to undertake panel beating work, if required.

10.9 Accordingly, he approached the need for redundancy on the footing that only the claimant, and no-one else, was at risk of redundancy.

10.10 In order to prepare for the redundancy, Mr Roger took further advice from Ms Neyland. She drafted two documents for him. The first was a script of what he was to say at a first redundancy meeting. It is obvious that the script was intended to tell the claimant that he was at risk of redundancy, to give him a few days to think things over, and to return for a final meeting. The second document which Ms Neyland drafted was a letter to advise the claimant that he was at risk of redundancy, and give him time to think things over before another meeting.

10.11 The claimant was on site on Saturday 21 January 2023, and Mr Roger had a conversation with him. He did not call the claimant to a formal meeting or alert him to the need of a meeting, or what was to be discussed. Mr Roger broadly followed the script (but not word for word, as the script, for example, assumed that Ms Goodings, the co-owner, would be present, and she was not). He then handed the claimant the at prepared letter, which was dated 20 January. Both the script and the letter told the claimant that he was at risk of redundancy, although neither used those precise words. He told the claimant words to the effect that he need not work the following week, so that he would have time to get over the shock, and think over what he wanted to say to Mr Roger in reply.

10.12 The claimant's case was that at the meeting on 21 January, Mr Roger said, verbatim or words to the effect "I am making you redundant with immediate effect" and then handed him the letter.

10.13 Mr Roger denied having said that. He said that he had followed the script which alerted the claimant to the risk of redundancy and gave him time to think things over; and had then given him the letter, which was consistent with that account.

10.14 I prefer Mr Roger's evidence. I do so for a number of reasons. If Mr Beaulah was correct, it would mean that having taken advice over a period of two or three months, Mr Roger then chose to say the exact opposite of what he had been advised to say when he met the claimant. I do not believe that that happened. Secondly, I note the obvious discrepancy between Mr Beaulah's allegation, and the content of the letter of 20 January. Thirdly, given the thoughtful and serious approach which I have referred to above, it did not seem to me likely that Mr Roger would simply blunder into an immediate dismissal.

10.15 I accept that the meeting was conducted amicably and professionally. I also accept that Mr Beaulah did not take in what he was told. I do not criticise him for this: although he accepted that he was not fully occupied as a panel beater, he was nevertheless shocked to be spoken to out of the blue about redundancy.

10.16 I also accept that the claimant did not engage with the letter. It was clear that its wording was inconsistent with what he thought he had been told on 21 January: it did not say that he had been dismissed, and it said that there would be another meeting. The claimant failed to challenge the letter in a way which was consistent with his own case, eg by replying to ask how there could be a consultation if he had already been dismissed.

10.17 In the event, the claimant did not challenge or question anything in the at risk letter of 20 January, and did not engage with making any suggestions or proposals.

10.18 It was common ground that in the following week, starting Monday 23 January, the claimant visited the site of the respondent's business every day, although he had been told that he was not expected to work, and did not come in to work except to sort out tools and belongings. He remained on good terms with Mr Roger, as is shown by their exchange of WhatsApps of 27 January.

10.19 By the end of the week, 27 January, from Mr Roger's perspective, the claimant had not engaged with the offer to discuss or consult, and he therefore wrote to confirm dismissal with notice. Matters remained amicable until after the claimant had received his final payment, at which point he began the process of early conciliation, and told Mr Roger that he would bring this claim.

10.20 After the claimant's dismissal, paint beating work was done in part by Mr Roger, and, to an occasional and limited degree, and without commitment, by a self-employed contractor, when required.

Discussion

11. I find first that the reason for dismissal was that the respondent's requirements for work of the claimant's particular kind had diminished. The particular kind of work was panel beating, even though I accept that the claimant may have undertaken other tasks, if required and if he were available. It may be that the better analysis is reorganisation leading to redundancy, to the extent that the claimant's duties were absorbed after his redundancy by others.

12. I must note in particular the size and administrative resources of the respondent in the context of a redundancy selection and dismissal.

13. I accept that in late 2022 the respondent was advised that it was in financial difficulty, and that it needed to reduce costs. I accept that Mr Roger took advice, on the basis of which he formed the view that the level of savings required could only be achieved by redundancy. In so saying, I accept Mr Roger's evidence, although the respondent failed to disclose relevant documents on these aspects.

14. I also accept that from his knowledge of the industry, and of his own business, Mr Roger decided that the claimant was the only realistic candidate for redundancy, and the claimant was therefore placed in a redundancy pool of one. I repeat the discussion set out above. Mr Roger formed the view that the skill of a paint technician was essential to the future of the business, and could not be performed by employees other than the individual specialist; and that he formed the parallel view that the skill of a panel beater was replaceable by other staff or from other sources; and was, in any event, a diminishing requirement.

15. I accept that Mr Roger had a first meeting with the claimant, at which he told him that there was a risk of redundancy. I find that he did not tell the claimant that he was dismissed with immediate effect. The claimant then had a view days to engage in dialogue, but did not respond. That being so, the respondent dismissed him.

16. In my judgment, at each stage set out in the above three paragraphs, Mr Rogers formed a reasonable view, and conducted the procedure within reasonable bounds.

17. The claimant raised two specific points. One was that he was not offered the option of working for the respondent on a self-employed basis. As he put it, he had been self-employed for many years before he joined the respondent, and he was not afraid to go self-employed again. That did not seem to me a helpful point, because self-employment could only have come about after the respondent had terminated the contract of employment. In other words, the claimant would have had to be dismissed for redundancy, and self-employment might have helped him cope with the consequences, but there would still have been a dismissal to be considered.

18. The claimant's alternative and better point was that there was no consideration of part-time work, perhaps reducing his hours to three days a week. Mr Roger agreed that that had not been considered. His reason was that the claimant had not come back with a request to that effect. I accept that the claimant had made no request for part-time work and the question therefore refines to that of whether the respondent was duty bound, in these circumstances, and of its own initiative, to propose a part-time pattern to an employee who had not requested it.

19. I accept that there may be circumstances and workplaces where that is an important consideration. In this case, a reduction of the claimant's pay by 40% (even if accepted at the time by the claimant) would not have achieved the required financial saving for the respondent, and would not have met the reality of the diminution in the need for panel-beating work.

20. In the particular circumstances of this case, set out above, I do not find that the absence of a proposal from the respondent for part-time work was outside the range of reasonable conduct of the redundancy process, such as to render the claimant's dismissal unfair.

21. I find that the claimant was not unfairly dismissed, and that his claim fails.

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Employment Judge R Lewis

Date: 20 November 2023……..

Sent to the parties on:
5 January 2024
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For the Tribunal Office