EMPLOYMENT TRIBUNALS

Claimant: Mrs A Perkins

Respondent: Marston (Holdings) Limited

Heard at: Liverpool (by CVP)

On:
7-8 August 2023;
19 October 2023
20 October 2023;
(in Chambers)
24 November 2023
(in Chambers)

Before: Employment Judge Ainscough
Mr P Dodd
Mrs J Pennie

REPRESENTATION:

Claimant: In person
Respondent: Mr Livingstone of Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claim of indirect sex discrimination is successful.

2. The claim of unfair dismissal is successful.

REASONS

Introduction

1. The claimant was employed as Head of Enforcement – Local Taxation in the Helmshore office of the respondent's enforcement company. The respondent is a national company assisting with the enforcement of penalties, including unpaid council tax, parking fines and child benefits.

2. The claimant has pursued claims of unfair dismissal and indirect sex discrimination arising out of the termination of her employment on 6 May 2022.

Evidence

3. The Tribunal heard evidence from the claimant. The Tribunal also heard evidence from David Burton, the National Head of Enforcement, who was responsible for managing the claimant's employment until the termination of her employment on 6 May 2022. The Tribunal finally heard evidence from Mike Wolfenden who was responsible for dealing with the claimant's appeal against the termination of her employment.

Issues

4. At the case management hearing on 17 January 2023, Employment Judge Buzzard ordered that the respondent was to send to the claimant a draft List of Issues. That List of Issues is reproduced as an Annex to this Judgment.

Relevant Findings of Fact

Claimant's Employment

5. The respondent is an enforcement company for public authority fines and taxes. The respondent acquired Rossendales Limited in 2013 with whom the claimant had been employed since 2005. The claimant had a contract of employment dated 2009 in which the place of work was recorded as Helmshore. The claimant was not required to travel within her role.

6. The claimant was the Head of Enforcement – Local Taxation and responsible for the management of the administrative team and field agents. The claimant was based in the Helmshore office and managed the team from that location.

7. The claimant's contract contained a standard mobility clause that stated she could be asked to work anywhere within the business however, the Tribunal determines that this was not a requirement to travel in the claimant's role. Rather, it was a clause that allowed the respondent to ask the claimant to move to a different location to perform her role.

Respondent's Restructure

8. On 27 July 2021 the claimant was informed by Clare Alessi, the claimant's line manager, that there would be a restructure of the Enforcement Services division. The claimant was told that it was the intention of the respondent to create one

Enforcement Services Centre based in Helmshore managed by the claimant as the Head of Enforcement Services/Head of Enforcement Services Centre. The claimant was informed that the enforcement work from Darlington, Epping and Birmingham would transfer to the centre.

9. It was the claimant's understanding that she would be responsible for a bigger administrative team based in Helmshore and that the management of the enforcement agents, who were field based, would be transferred elsewhere.

10. The Tribunal determines that there was no reduction in the work to be completed by the claimant but rather there was a change to the types of tasks that she was required to undertake. The Tribunal determines that following the restructure the claimant was still required to work to the same terms and conditions. There was no reduction in the claimant's role.

11. During the restructure, the claimant became concerned that a colleague (Bradley Langham, who was her equal prior to the restructure) had received a promotion for which the claimant had not been considered. The Tribunal determines that this issue was not relevant to the claimant's role or her future with the respondent. Mr Langham was working in a different part of the business and his role had no direct effect on the decisions the respondent made about the claimant.

12. At the end of July 2021/the beginning of August 2021 David Burton became the claimant's line manager.

13. The Tribunal determines that in July 2021/August 2021 the respondent had no intention of asking the claimant to travel outside of Helmshore. The respondent's intention, as relayed to the claimant by Clare Alessi in July 2021, was that the administrative side of the Enforcement Team would be transferred to Helmshore, and the claimant would manage the team in that location. It was on this basis that the claimant did not object to the change in her role or job title.

<u>Lack of clarity around claimant's role</u>

14. On 18 August 2021 the claimant chased David Burton for clarification of her job title and job description.

15. On 20 August 2021 David Burton told the claimant that the transfer of the enforcement administration from Epping to Helmshore should be kept confidential and not shared with the Epping team. David Burton was keen that the Epping team continued to work while the transfer took place.

16. Consequently, in September 2021 David Burton asked the claimant to travel to Epping for a meeting with the team. The claimant informed David Burton that she was unable to do this because she was the primary carer of two young children and such travel would not allow her to arrive home in time to take care of her children. As a result, David Burton set up a Teams call to facilitate the claimant's childcare.

17. In October 2021, the claimant was still asking David Burton for clarification of her job title and the job description. David Burton asked the claimant to create her

own job description. The respondent did not appoint anybody from the HR Department to assist the claimant with this task. In evidence, David Burton acknowledged that he should have instructed HR to assist the claimant.

18. On 21 October 2021 the claimant told David Burton that she was unable to travel to a team meeting in Birmingham for the same childcare reasons. David Burton informed the claimant that that was fine and that it could be conducted by a Teams meeting.

19. On 1 November 2021 the claimant provided David Burton with her own job description. David Burton did not respond and admitted in evidence that it was not his number one priority. It was clear to the Tribunal that David Burton was happy to let the claimant carry on doing her job from Helmshore.

20. On 21 November 2021 the claimant declined to travel to an optional meeting in Daventry for childcare reasons. David Burton informed the claimant that he was fine with this.

Management of the Epping team

21. In January 2022 the claimant and David Burton discussed the management of the Epping team. David Burton informed the claimant that it was his intention to transfer all of the knowledge from Epping to Helmshore by March 2022. David Burton also informed the claimant that the respondent had the option to make the remaining staff in Epping redundant.

22. At the same time, the claimant became aware that the remaining staff in Epping were unhappy with the lack of transparency about their positions. The claimant informed David Burton of this on 24 January 2022.

23. The Tribunal determines and accepts that the claimant regularly met with the Epping team virtually over Teams. The Tribunal determines that on the balance of probabilities the concerns raised by the Epping team were in regard to David Burton's lack of transparency about their roles rather than the claimant's management of that team.

24. On 28 January 2022 the claimant was told by David Burton that there was now a need to travel to Epping to manage the remaining team members. It was David Burton's evidence that the need to travel had occurred because the Epping team had raised concerns about their management. The Tribunal does not accept that the concerns were in regard to the claimant's management but rather David Burton's lack of transparency.

25. On 31 January 2022 the claimant contacted Clare Alessi about her concerns over the requirement to travel.

26. On 2 February 2022 the claimant met with Clare Alessi, who agreed the claimant needed clarity about her job but informed the claimant that she must revert to David Burton as he was her line manager. As a result, the claimant wrote to David Burton on 3 February 2022 setting out her concerns. In that email the

claimant confirmed that if the role required travel, it was no longer suitable for her. In a follow-up email on 7 February 2022 the claimant confirmed that she was able to travel reasonable distances from Helmshore provided she was able to return in time for childcare.

27. On 10 February 2022 the claimant met with David Burton and reiterated that she could only travel reasonable distances.

28. On 23 February 2022 David Burton added the phrase "travel as when required" to the respondent's general job description for a Grade 3 Manager. The Tribunal determines that the respondent's job description for a Grade 3 Manager did not contain this phrase and was not something that had previously been required by the respondent.

29. On 3 March 2022 David Burton and the claimant met via Teams. The claimant was told by David Burton that if she did not comply with the travel it could lead to disciplinary action.

30. On 9 March 2022 David Burton sent a letter to the claimant informing her that it was now the respondent's intention that the Enforcement Services Centre would be spread across Epping, Birmingham and Helmshore. The claimant was informed of a need to travel in her role and have face to face meetings. David Burton offered to pre-plan the claimant's travel to assist with childcare.

Claimant's Grievance

31. On 11 March 2022 the claimant submitted a grievance about the lack of job description and the requirement to travel in the role of Head of Enforcement Services/Head of Enforcement Services Centre.

32. On 24 March 2022 David Burton responded stating that the claimant had informally agreed to the role. It was David Burton's view that the work the claimant had carried out over the last ten months was in transition to the position now clarified following the restructure. David Burton informed the claimant that the confirmed position was that enforcement services would be transferred to Helmshore as advised by Clare Alessi in July 2022, but the Epping office would remain open longer than anticipated and the team would be required to work from home in Epping.

33. The Tribunal determines that David Burton incorrectly recorded the claimant's position as that she was not able to travel due to childcare. On 7 February 2022, the claimant had informed David Burton that she could travel a reasonable distance. In his response, David Burton informed the claimant that there was a need to travel to link in with other services and other operational managers. The Tribunal determines that this rationale differed to the requirement to travel to manage the staff in Epping. The claimant was officially put on notice of a potential redundancy situation.

34. On 25 March 2022 the claimant responded, informing David Burton that she was unable to travel and therefore unable to perform the role. The claimant reiterated that she was never told that Epping was to be retained, and the Tribunal accepts and agrees that the claimant was told that all administrative enforcement

tasks would transfer to Helmshore. In July 2021, it was never the respondent's intention to keep the Epping office open and the claimant was sold the changes to her role on the basis that she would manage the department from Helmshore. The claimant subsequently informed David Burton that travel was the only thing holding her back.

Consultation with the claimant

35. On 25 March 2022 the claimant was invited to a consultation meeting. In the invitation letter it was explained to the claimant that travel could be limited to one day per month and if this was not acceptable the change could be enforced and could lead to the claimant's termination of employment by reason of redundancy.

36. On 28 March 2022 David Burton clarified that the options for the claimant were either enforcement of change, fire and re-hire under a new contract or redundancy.

37. On the same date the Epping team complained to the claimant about the line management by Bradley Langham and David Burton. The team was clear that there was no criticism of the claimant.

38. On 2 April 2022 the claimant attended the first consultation meeting with David Burton and a member of HR. The claimant confirmed that if her employment was to be terminated, she would rather proceed down the redundancy route. The claimant was informed by David Burton that her position within the business meant that because of her seniority there was an expectation that she would travel within her role. The claimant was advised of the culture within the respondent's business and that travel would break down barriers.

39. The claimant was also informed by David Burton that there was a concern that allowing the claimant not to travel would cause barriers for future acquisitions. The claimant understood this to mean that should the respondent acquire new businesses that were further afield, allowing the claimant not to travel would set a precedent should others not wish to travel to other locations.

40. On 22 April 2022 the claimant was invited to a second consultation meeting in which the respondent commented that her lack of travel created barriers, and this was the main issue.

41. The claimant attended the second consultation meeting on 25 April 2022 with David Burton and a HR representative. David Burton was unable to give any specific examples of barriers that were created by the claimant's lack of travel, but reiterated it was the company's culture to travel to meetings. David Burton chaired the second consultation meeting via Teams because it would have required a 5.00am start from his home and he would not have returned hoe until after 7.00pm. The conclusion of that meeting was that a role existed, but with travel. No alternative roles were identified to the claimant.

42. On 27 April 2022 the claimant was provided with notice of her redundancy.

43. By 6 May 2022 the claimant had left the business.

Appeal and Grievance

44. On 3 May 2022 the claimant appealed against the termination of her employment and raised a grievance. Both were contained within the same email. The claimant confirmed that the grounds were:

(1) Unfair selection for redundancy;

(2) Failure to consider alternative employment; and

(3) Indirect sex discrimination.

45. It was the claimant's contention that the practice of requiring Grade 3 Managers to travel significant distances put women (who were the primary carers of children) at a particular disadvantage.

46. On 10 May 2022 Clare Alessi was appointed as the Chair to hear both the appeal and the grievance. The claimant objected on the basis that Clare Alessi's daughter had been given the claimant's vacant role. As a result, Mike Wolfenden (who did not know the claimant) was appointed. Clare Alessi had confirmed that both the claimant's appeal and grievance would be dealt with in the same process.

47. On 20 May 2022 the claimant attended an appeal meeting with Mike Wolfenden.

48. On 9 June 2022 Mike Wolfenden informed the claimant that her appeal and grievance were unsubstantiated. Mike Wolfenden failed to deal with the claimant's complaints of indirect sex discrimination in response to either her appeal or her grievance. In evidence, Mike Wolfenden was unable to explain why this occurred. Mike Wolfenden confirmed that he did look at the claimant's performance but that did not cause him to alter the position taken by David Burton.

Relevant Legal Principles

52 Discrimination against an employee is prohibited by section 39(2) Equality Act 2010:

"An employer (A) must not discriminate against an employee of A's (B) –

(a) as to B's terms of employment;

(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."

Burden of Proof

53 The burden of proof provision appears in section 136 and provides 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 sub-section (2) does not apply if A shows that A did not contravene the provision".**

54 In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867** where Mummery LJ held that "could conclude", in the context of the burden of proof provisions, meant that a reasonable Tribunal could properly conclude from all the evidence before it, including the evidence adduced by the complainant in support of the allegations, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. Importantly, at paragraph 56, Mummery LJ held that the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a prima facie case of unlawful discrimination. Further, unfair or unreasonable treatment by an employer does not of itself establish discriminatory treatment: **Zafar v Glasgow City Council [1998] IRLR 36.** It cannot be inferred from the fact that one employee has been treated unreasonably that an employee of a different race would have been treated reasonably. However, whether the burden of proof has shifted is in general terms to be assessed once all the evidence from both parties has been considered and evaluated. In some cases, however, the Tribunal may be able to make a positive finding about the reason why a particular action is taken which enables the Tribunal to dispense with formally considering the two stages.

Indirect discrimination

55 Section 19 of the Equality Act 2010 provides that:

> **"(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.**
>
> **(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—**
>
> **(a) A applies, or would apply, it to persons with whom B does not share the characteristic,**
>
> **(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,**
>
> **(c) it puts, or would put, B at that disadvantage, and**
>
> **(d) A cannot show it to be a proportionate means of achieving a legitimate aim."**

56 In the case of **Dobson v North Cumbria Integrated Care NHS Foundation Trust 2021 ICR 1699, EAT,** the Employment Appeals Tribunal determined that a Tribunal could take judicial notice of the fact that women were the primary carers of children and this could limit their availability to work particular hours or patterns of work. In so doing, the Employment Appeals Tribunal endorsed the Tribunal's discretion to take judicial notice of notoriously well known facts that did not require further enquiry.

57 At paragraphs 4.10-4.11 the **EHRC Code of Practice on Employment 2011** sets out that a provision criterion or practice can intrinsically disadvantage a group with a particular protected characteristic, particularly where the link between the provision, criterion or practice and the protected characteristic is obvious.

Unfair Dismissal

58 The unfair dismissal claim was brought under Part X of the Employment Rights Act 1996.

59 The primary provision is section 98 which, so far as relevant, provides as follows:

> **"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –**
>
> **(a) the reason (or, if more than one, the principal reason) for the dismissal and**
>
> **(b) that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.**
>
> **(2) A reason falls within this sub-section if it**
>
> **(c) is that the employee was redundant …**
>
> **(3) …**
>
> **(4) Where the employer has fulfilled the requirements of sub-section (1), the determination of the question 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 reasonable 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".**

60 If the employer fails to show a potentially fair reason for dismissal, the dismissal is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied.

61 Section 139 of the Employment Rights Act 1996 provides:

"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—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(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."

Submissions

Respondent's Submissions

62 The respondent maintained that the reason for the dismissal of the claimant was a redundancy situation. It was the respondent's position that the question for the Tribunal was whether the claimant's dismissal was within the range of reasonable responses.

63 The respondent submitted that it was only obliged to consult with the claimant in January/February 2022 when it became apparent that the claimant was unable to travel significant distances.

64 The respondent maintained that requiring the claimant to travel significant distances in the new role was a reasonable alternative, particularly when the respondent sought to minimise that travel and help arrange that travel in line with the claimant's childcare. The respondent also submitted that it took reasonable steps to find alternative roles that could be performed by the claimant.

65 The respondent submitted that whilst the Tribunal could take note that women were primary carers of children this was not enough to prove a group disadvantage. It was the respondent's case that the Tribunal had not been provided with either statistical or actual evidence that others were unable to comply with the requirement to travel significant distances.

66 The respondent submitted that the claimant had not looked into whether she would have been at an individual disadvantage because she dismissed the ability to travel.

67 The respondent contended that it was proportionate to insist on travel in the claimant's role to meet the business needs.

Claimant's Submissions

68 The claimant disputed that her role was redundant. She maintained that the role was still being performed but with the requirement to travel. It was the claimant's position that the mobility clause within her contract was not a travel clause.

69 The claimant submitted that if there was a redundancy situation, any suitable alternative would have been a role with travel within a reasonable distance. The claimant also maintained that there was an alternative to travel and that she was able to manage the team remotely.

70 It was the claimant's position that she had proven a group disadvantage in that women were the primary carers of children. The claimant contended that she did suffer an individual disadvantage because she was unable to attain childcare over and above that which she already had in place.

71 The claimant submitted that she was meeting the legitimate aim pursued by the respondent of business efficacy because she was performing well in the role and had done for a period of eight months and there had been no complaints about her management.

Discussion and Conclusions

Indirect Sex Discrimination

72 The respondent admitted the provision, criterion or practice of requiring the claimant to travel significant distances within her role.

73 The Tribunal determines that this was applied equally to men and women Grade 3 Managers.

74 The Tribunal has taken judicial notice of the fact that women are the primary carers of small children in accordance with the determination of the Employment Appeals Tribunal in the case of **Dobson.**

75 The Tribunal has also taken note of paragraph 4.11 of the EHRC Code of Practice – that a provision, criterion or practice can be intrinsically liable to disadvantage a group with a particular protected characteristic.

76 The Tribunal determines that a woman who is the primary carer of two small children would not be able to perform all elements of the Grade 3 management role

with a requirement to travel significant distances, because of the difficulty in finding childcare to cover the hours the woman would be away from home.

77 The Tribunal took judicial notice of the fact that, unless a woman can employ a live in childcare provider, it is only possible to secure childcare between the hours of 7am and 6pm. The requirement to travel significant distances would require a woman to leave home before 7am and return after 6pm. The requirement to travel significant distances would therefore put women, as primary carers, at a particular disadvantage.

78 The Tribunal accepts the evidence of the claimant that she was the only woman performing in the Grade 3 management role. In February 2022, David Burton added the travel requirement to the general job description for a Grade 3 Manager. The pool for comparison was all Grade 3 Managers. The Tribunal determines that female Grade 3 managers, as primary carers, in comparison with male Grade 3 managers, would be put at a particular disadvantage by the requirement to travel significant distances.

79 It was the claimant's evidence that her husband's job took him all over the country and he was simply not available for the childcare of their two small children. The claimant also confirmed that it was impossible to obtain childcare for long durations to allow her to leave home in the early hours and return late in the evening without hiring a live in childcare provider. The Tribunal determines that the claimant gave clear evidence about the lack of options available to her.

80 The Tribunal determines that Epping, Sheffield, Birmingham and London were all locations to which the claimant could be expected to travel. On the balance of probabilities, it is unlikely that the claimant would be unable to return by 6.00pm to pick up her children from available childcare. The Tribunal also notes that in order to get to these locations the claimant would have to leave in the early hours of the morning, when no childcare was available. The provision, criterion or practice would therefore put the claimant at a disadvantage in that she could not perform that part of the role.

81 The respondent contended that the requirement could be justified on the basis of business efficacy and staff morale.

82 The Tribunal rejects the respondent's evidence that the claimant caused issues with staff morale. Rather, it was confirmed by the Epping team in an email to the claimant that David Burton and Bradley Langham were the cause of their concern and the lack of transparency about their roles. The evidence the Tribunal has seen and heard confirms that the claimant had the confidence of the Epping staff despite the remote management.

83 The respondent stated that a lack of travel would create barriers to relationships and would affect future acquisitions. The Tribunal determines that this has nothing to do with the claimant, and agreeing to restrict travel for the claimant would not have set a dangerous precedent. Given the size of the respondent's business, there was no evidence that such an agreement would be detrimental to the running of the respondent's business.

49. The Tribunal notes that at the second consultation meeting David Burton could not provide details of the suggested barriers. The rationale given on 29 March 2022 by David Burton was that the claimant was required to link in with other services and operational management. There was no evidence from the respondent that the claimant had been unable to manage the team. The Tribunal determines that there was no evidence to suggest that the claimant's performance was hindered as a result of not travelling in the previous ten months. This was echoed by the Board of the respondent, who were dismayed that the claimant's employment was to be terminated.

84 The Tribunal also determines that David Burton was wrong to say that the claimant had refused to travel.

85 The Tribunal determines that it was not proportionate to require travel of significant distances in the claimant's role to fulfil the aim of business efficacy and staff morale. Instead, it appears that this was the culture within the respondent and something that the respondent wanted but not what was needed.

86 The claimant had done the job for a period of ten months without complaint and had the confidence of the staff in contrast to David Burton who was working face to face with staff. The Tribunal determines it was not reasonably necessary to travel significant distances to achieve the legitimate aims.

87 The claimant was willing to travel reasonable distances and meet face to face or virtually if significant travel was required. The Tribunal determines the legitimate aims could have been achieved in this way.

88 The Tribunal therefore determines that the claim of indirect sex discrimination is successful.

Unfair Dismissal

Reason for dismissal

89 The burden of proof was on the respondent to show that the claimant was dismissed for a fair reason, and that the dismissal was within the range of reasonable responses.

90 The Case Management Order of Employment Judge Buzzard required the respondent to send the draft List of Issues to the claimant. The List of Issues presented to the Tribunal at the outset of the hearing recorded that:

> "The parties agree that there was a potentially fair reason for dismissal under section 98 Employment Rights Act 1996, namely redundancy."

91 In the claimant's ET1, she asserted that the reason for her dismissal was redundancy but claimed that her dismissal was unfair.

92 However, the claimant gave evidence and made submissions that she did not accept that she was dismissed because of redundancy and therefore disputed that

she had been dismissed for a fair reason. The claimant also made the same assertions in her appeal and grievance.

93 In submissions, the claimant queried whether a true redundancy situation existed in accordance with the wording of section 139 of the Employment Rights Act 1996.

94 The claimant submitted that there had been no reduction in the work she performed, because on the termination of her employment, the work had been taken over by a colleague. The claimant reminded the Tribunal that the respondent's witness, David Burton, had given evidence that the respondent had opted for the redundancy dismissal rather than a disciplinary despite the claimant's breach of contract. Whilst the claimant disputed that there had been a breach of contract, the claimant pointed to this as evidence that it was not a true redundancy situation.

95 The respondent's response to the claim maintained that there had been a fair reason for dismissal, that of redundancy, and that the respondent had followed a fair procedure. The respondent maintained that the claimant had been offered a reasonable alternative to redundancy but had rejected the proposal and thus the respondent was forced to make the claimant redundant.

96 In submissions, the respondent submitted that the claimant had accepted that redundancy was the reason for her dismissal, and this was reflected at paragraph (12) of the Case Management Order prepared by Employment Judge Buzzard. However, the Tribunal does not determine that the claimant's concession during the case management hearing was binding on the claimant. The claimant is a litigant in person, and it is clear from appeal and grievance and from the evidence she gave during the final hearing and in submissions that she only opted for the redundancy reason because she did not want the respondent to pursue a disciplinary investigation.

97 The respondent submits that the claimant's role no longer existed and therefore there must be a redundancy situation. Whilst the Tribunal accepts that the claimant's job title no longer existed in the respondent's reorganisation of the business and some of the work that had been performed by the claimant was transferred to other parts of the business, the rest along with new elements, was performed by the claimant in a newly titled role.

98 The Tribunal determines that the need for the claimant to work for the respondent was not redundant. The Tribunal determines that this does not meet the definition of redundancy set out at section 139 of the Employment Rights Act 1996. The respondent did not cease to carry on the business for the purposes of which the claimant was employed or in the place that the claimant was employed. In fact, the respondent proposed to move more work to Helmshore for the claimant to manage. In addition, the requirements of the respondent's business for the claimant to carry out the role of the management of Enforcement services in Helmshore did not cease or diminish.

99 The Tribunal determines that the claimant had no choice but to agree to a redundancy dismissal rather than a disciplinary dismissal to protect her future

prospects for employment going forward. This is not the same as the claimant agreeing that there was a genuine redundancy situation.

100 The claimant was dismissed because she would not travel significant distances following the respondent's reorganisation.

101 The respondent had an expectation that the claimant would travel significant distances in her role. Mike Wolfenden in his evidence confirmed that a manager at Grade 3 level would be expected to travel. The Tribunal determines that David Burton's offer to create a role for the claimant was disingenuous. The claimant was not provided with any assistance from HR to retain her services within the business.

102 David Burton and Mile Wolfenden attempted to explain the need to insist that the claimant travel significant distances in order to future proof the respondent's business. It was their evidence that the respondent intended on acquiring other businesses further afield, and that to allow the claimant not to travel significant distances would set a dangerous precedent in the future. The respondent's witnesses however provided no evidence that there was a risk to the respondent's operation of the business if the claimant, in her very particular circumstances, was allowed to manage her teams remotely. There was no evidence from the respondent of the future acquisitions or of particular details of employees who would similarly have problems travelling significant distances.

103 The respondent relied on the legitimate aim of business efficacy and staff morale. The claimant provided evidence that the team that she managed remotely had no criticism of her management but in fact had criticism of David Burton and another colleague who were based in Epping. The claimant had successfully managed that team remotely over a period of months.

104 The Tribunal determines that in essence, Mike Wolfenden rubberstamped all that had been done by David Burton.

105 The Tribunal determines that the respondent has not provided evidence that there was a sufficient reason to introduce the requirement for significant travel. Instead, the Tribunal determines that the respondent has a culture of requiring Grade 3 Managers to travel significant distances without ever assessing if there was a real need for such a requirement.

106 The respondent has not proven that the claimant was dismissed for a fair reason set out in section 98(2) of the Employment Rights Act 1996 and therefore, the claimant's dismissal is unfair.

107 The claimant's claim of unfair dismissal is successful.

Employment Judge Ainscough
Date: 9 January 2024

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
16 January 2024

FOR THE TRIBUNAL OFFICE

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