



# EMPLOYMENT TRIBUNALS

## BETWEEN

Claimant  
MR P RAYNSFORD

AND

Respondent  
EXPERIMENTAL MANOR  
AMETHYST LTD

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: BRISTOL      ON: 1<sup>ST</sup> FEBRUARY 2024

EMPLOYMENT JUDGE MR P CADNEY  
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:-      NO ATTENDANCE

FOR THE RESPONDENT:-      MR T HUSSAIN (LITIGATION  
CONSULTANT)

## JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's claim that he was unfairly dismissed is well founded and is upheld.
2. The claimant is awarded a compensatory award of £1543.75.
3. The claimant's claim for unpaid notice pay is well founded and upheld.
4. The claimant is awarded unpaid notice pay of £950.

## Reasons

1. By this claim the claimant brings claims of unfair dismissal, and unpaid notice pay. The respondent contends that the claimant was fairly dismissed by reason of redundancy and/or some other substantial reason as is set out below; and that he was paid in lieu of notice and no further sums are owing (although during the hearing it was conceded that his notice pay had been incorrectly calculated and there is still notice pay outstanding).
2. The tribunal has heard evidence on behalf of the respondent from Ms Mathilde Plegat, Ms Charlotte Reid and Mr David Masters.

### Claimant's Attendance

3. Neither the claimant nor his representative have attended the hearing in the circumstances set out below.
4. On 27th October 2023 a notice of hearing for today's date was sent to the parties. On 8th November 2023 the claimant's representative Ms S Sexton wrote stating that the claimant was unable to attend as he was undergoing RFA treatment for Barrett's oesophagus / oesophageal cancer; and that she could not attend as she suffers from the disability FND (functional neurological disorder).
5. On 14th December 2023 directions were sent for the claimant to supply a signed a written witness statement, and he was notified that in his absence the tribunal may be able to may only be able to attach limited weight to his written evidence. The claimant subsequently supplied a relatively brief witness statement. Following directions from EJ Livesey indicating that as he was not able to attend that a more detailed witness statement should be supplied the claimant supplied a second statement which has been used at this hearing.
6. The parties were notified that there was a risk of the hearing being postponed due to a lack of judicial resource, and on 26<sup>th</sup> January 2024 the claimant's representative wrote confirming that neither she nor the claimant were able to attend due to their respective medical conditions, but asking that the case not be postponed and should proceed in their absence if possible. Out of an abundance of caution the tribunal contacted the claimant's representative yesterday by telephone to confirm whether this remained their position. It was confirmed that it was, and as it is the claimant's specific request that the hearing proceed in his absence that is what I have done.
7. For completeness sake the only claims that have been brought in the ET1/claim form are the claims for unfair dismissal and notice pay. In his witness statement the claimant refers to both his back injury and cancer diagnosis and to "discrimination", and links either or both of those conditions to the dismissal, in that he asserts that they or their consequences were the true reason for his dismissal. Had the claimant attended I would have raised with him as a preliminary issue whether he was seeking

to amend his claim to include claims of disability discrimination. This would almost certainly have required an adjournment of the hearing if the application was permitted, and possibly if it was not, if there was no longer sufficient time to hear the final hearing. I do not know whether in those circumstances the claimant would have wished to continue simply with the claims for unfair dismissal and notice pay, or to have pursued the amendment application with the attendant risk of an adjournment. I have taken the view that as the claimant has specifically asked for the hearing to proceed in his absence, that it is not open to me to adjourn and inquire about a possible amendment application, which would create the very delay the claimant is obviously seeking to avoid. In the circumstances, although with some reluctance I have decided I am obliged to continue with the hearing and determine the claims currently before the tribunal.

### Facts

8. The underlying facts are not broadly in dispute. The respondent owns and operates the Cowley Manor Hotel, near Cheltenham. The claimant was employed as the Assistant Gardener, the Head Gardener being Mr David Masters. A decision was taken to close the hotel for a substantial refurbishment which was anticipated to last more than six months. The hotel closed on 2nd January 2023. A decision was taken to make three positions redundant as there would no longer be a requirement for them during the refurbishment, Operations Manager; Food and Beverage Manager, and Assistant Gardener.
9. On 27<sup>th</sup> January 2023 the claimant was invited to a meeting held by Mr Stuart Hodges (General Manager) with Ms Charlotte Reid as the notetaker, at which he was informed that he was being dismissed with immediate effect by reason of redundancy. This was confirmed in a letter dated 3<sup>rd</sup> February 2023. The claimant was paid in lieu of notice, and paid his statutory redundancy pay.

### Claimant's Challenges to the Fairness of the Dismissal

10. As set out above the claimant has not attended to give evidence, but has provided a witness statement, which in my understanding sets out a number of challenges (as identified below), as to the fairness of that decision. Discussion of each of the challenges, my factual findings and conclusions are set out below.
11. Redundancy – The claimant does not accept that the requirement for an Assistant Gardener had in fact ceased or diminished, as he asserts that the respondent continued to carry out gardening work, and subsequently re-advertised his role. In addition his actual duties included maintenance work beyond simply gardening
12. Reason for Dismissal – In addition the claimant contends that the true reason for his dismissal was that he had had significant sickness absence following a back injury and was likely to require further absence or would be restricted to light duties in the future and that he was dismissed because of that and/or because the respondent feared that his diagnosis of oesophageal cancer would require significant future absence.

13. Consultation – The claimant contends that there was no consultation; he was simply invited to a meeting at which he was dismissed with immediate effect.
14. Appeal – He was not at any stage informed of or provided with any right of appeal.
15. Alternative Employment – There was no consideration of whether any alternative employment was available.

### Conclusions

16. Redundancy - The evidence of Ms Plegat, which I accept, is that once the decision had been made to close the hotel for refurbishment she and Mr Hodges, the General Manager discussed which members of staff would be needed during a period of closure and refurbishment. They identified the three roles set out above which included the claimants. The reason for the claimant's role being considered for redundancy was that they concluded that during the period out of the refurbishment that they would only need the Head Gardener, Mr Masters, and that the position of Assistant Gardner that was therefore redundant.
17. The evidence at of Mr Masters which again I accept, is that from the point at which the hotel was shut and was undergoing refurbishment only his role was required to maintain the garden / grounds. The claimants role was not replaced, save that during the summer and autumn of 2023, as is set out in Ms Plegat's witness statement three short term contractors were engaged to assist. Prior to that point if he needed any assistance, a member of the maintenance team would assist him.
18. As set out above there is limited weight I can give the claimant's witness evidence given that he has not been able to attend to give evidence. However for completeness sake he relies on Instagram posts from Mr Dom Hargreaves, who has not been called or provided any witness evidence, that gardening work was being carried out in April and May 2023. The difficulty with this is that it is not contended by the respondent that no gardening work was being carried out, but that there was no longer, as judged at the end of January 2023, a need for a permanent Assistant Gardener and the simple fact of these Instagram posts does not in and of itself undermine that proposition.
19. In addition the claimant points to the fact that in July 2023 the respondent advertised the role of Maintenance and Grounds Assistant, which he asserts was essentially his role. The difficulty with this is that it appears to support rather than undermine the respondents case, which is not that the role of Assistant Gardener was permanently no longer necessary, but that the position of Assistant Gardener was not required and therefore redundant during the period of closure/refurbishment.
20. On the basis of the evidence of both Ms Plegat and Mr Masters, I am satisfied that the closure of the hotel for refurbishment led to the cessation or diminution of the requirement for gardening staff in general, and in particular the position of assistant

- gardener; and that this did amount to a genuine redundancy situation within the meaning of section 139 Employment Rights Act 1996.
21. Reason for Dismissal - Equally having heard the evidence of Ms Plegat I'm satisfied that the genuine reason for the selection of the position of Assistant Gardner what's the that belief that the role would not be necessary during the period of refurbishment and the reason and that that was the reason for dismissal and not the claimant's illness or its consequences.
  22. Consultation/Appeal - It is clear that there was in fact no meaningful consultation in that the meeting at which the claimant was dismissed by reason of redundancy was the first redundancy meeting. In addition the provision of a right of appeal is normally considered to fall within the basic parameters of fairness.
  23. As is set out in the case of Polkey itself: *In the case of redundancy... the employer will normally not act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation.*"(per Lord Bridge) and as has been confirmed in a number of other cases it will only be in exceptional circumstances and where it is futile to consult, and futile to offer an appeal that this apparent procedural unfairness that would not render they dismissal unfair. I expressed the view that on the face of it, the dismissal appeared to be unarguably procedurally unfair. Following the opportunity to take instructions on the point Mr Hussain did not seek to address me any further or dissuade me from that view.
  24. It follows that in my judgement the claimant's dismissal was procedurally unfair for those reasons.
  25. Alternative Employment – The evidence of the respondent is that given the reduction in headcount, and the fact that those retained remained in their existing roles there was no alternative employment available, that could have been offered to the claimant. Again I accept this evidence.
  26. For the reasons given above in my judgment the claimant's dismissal was procedurally unfair, and so I do find that he was unfairly dismissed.

#### Compensation / Polkey

27. As the claimant has been paid a correctly calculated redundancy payment there is no entitlement to a basic award.
28. However I am satisfied that had a proper procedure been carried out the same conclusion would have been reached, for the reasons given by the respondent. . The process of both consultation and appeal could in the circumstances have been achieved within one month, and so I award the claimant one month's loss of earnings of £1543.75 as a compensatory award.

Notice Pay-

29. It is not in dispute that the claimant's notice pay was incorrectly calculated by reference to his four weeks contractual pay, and not his seven week's statutory notice. He is entitled to and is awarded the shortfall of £950.

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**EMPLOYMENT JUDGE CADNEY**

**Dated: 7<sup>th</sup> February 2024**

**Judgment entered into Register  
And copies sent to the parties on**

**20<sup>th</sup> February 2024**

**for the Employment Tribunal**