



EMPLOYMENT TRIBUNALS

Claimant: Mr H Visram

Respondent: Boots Management Services Limited

Heard at: London Central Employment Tribunal

On: 16, 17 and 20 May 2024

Before: Employment Judge Anthony

REPRESENTATION:

Claimant: Mr A Macmillan (Counsel)

Respondent: Mr M Green (Counsel)

WRITTEN REASONS PROVIDED FOLLOWING A REQUEST MADE PURSUANT TO RULE 62(3)

The Tribunal gave oral judgment with reasons in this claim on 20 May 2024. Following delivery of the oral judgment, Mr A Macmillan made a request for written reasons at the hearing itself. The written reasons are set out below.

The Tribunal's judgment given on 20 May 2024 was as follows:

Unfair Dismissal

1. The complaint of unfair dismissal is not well-founded and is dismissed.

Notice Pay

2. The complaint of breach of contract in relation to notice pay fails and is dismissed.

Redundancy Payment

3. The complaint that the respondent failed to pay the claimant a statutory and contractual redundancy payment fails and is dismissed.

REASONS

Introduction

1. This is a claim about the offer of 'suitable alternative employment'.
2. The parties are agreed that the principal reason for the claimant's dismissal on 15 January 2023 when his notice period elapsed was redundancy. The issue is whether the dismissal was fair or unfair and whether the respondent acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the claimant. Central to the dispute is whether the claimant was offered a 'suitable alternative employment' and whether the claimant was reasonable in rejecting it.

The Evidence

3. The Tribunal was provided with:
 - a) an index (9 pages) and a final joint hearing bundle totalling 624 pages;
 - b) witness statement of the claimant totalling 24 pages;
 - c) witness statement of Mohammed Shah Ali totalling 5 pages;
 - d) witness statement of Dipesh Shah totalling 5 pages;
 - e) a cast list prepared the respondent;
 - f) chronology prepared by the respondent;
 - g) written submissions from Mr A Macmillan totalling 32 pages;
 - h) written submissions from Mr M Green totalling 11 pages;
 - i) caselaw and extract from IDS from Mr M Green.
4. For the respondent, Mohammed Shah Ali (Store Manager) and Dipesh Shah (Area Manager) gave evidence. I heard evidence from the claimant.

The Issues

5. On the first day of the hearing on 16 May 2024, there was a discussion regarding the issues. It was agreed that the List of Issues originally prepared following a Case management Hearing had largely been superseded following the claimant's amendment to his claim to abandon his claims of disability discrimination.
6. Mr Macmillan confirmed that the claimant wished to withdraw his claim for loss of wages for attending the consultation meetings with the respondent. Mr Macmillan confirmed that the claimant also wished to withdraw the claim for 'Expenses' itemised at paragraph 37(e) of the Amended Particulars of Claim.

7. The issues before the Tribunal were as follows:

Unfair Dismissal

- a) Was the claimant's dismissal fair or unfair?
- b) Did the respondent undertake appropriate consultation with the claimant on the method for selection and the process adopted?
- c) Did the respondent take steps to find the claimant suitable alternative employment within the business?
- d) Whether the claimant was reasonable in rejecting the offer of suitable alternative employment?

Redundancy Pay

- e) Should the claimant have been paid his statutory and enhanced contractual redundancy pay?

Notice Pay

- f) Should the claimant have been paid notice pay from 4 November 2022 to 15 January 2023?

Relevant Law

- 8. I have taken into consideration the relevant law drawn to my attention at paragraph 11 to 34 of Mr Macmillan's written submissions. I have also taken into consideration the relevant caselaw and extract from IDS provided by Mr Green.
- 9. The relevant statutory provisions in respect of redundancy is set out in section 98(4) of the Employment Rights Act 1996:

Where the employer has fulfilled the requirements of subsection (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 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.

- 10. The relevant statutory provisions in respect of suitable alternative employment and whether the employee is entitled to redundancy payment is set out in section 141(1)-(4) of the Employment Rights Act 1996:

- (1) This section applies where an offer (whether in writing or not) is made to an employee before the end of his employment—
 - (a) to renew his contract of employment, or
 - (b) to re-engage him under a new contract of employment,with renewal or re-engagement to take effect either immediately on, or after an interval of not more than four weeks after, the end of his employment.
- (2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer.
- (3) This subsection is satisfied where—
 - (a) the provisions of the contract as renewed, or of the new contract, as to—
 - (i) the capacity and place in which the employee would be employed, and
 - (ii) the other terms and conditions of his employment,would not differ from the corresponding provisions of the previous contract, or
 - (b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee.
- (4) The employee is not entitled to a redundancy payment if—
 - (a) his contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of the offer,
 - (b) the provisions of the contract as renewed or new contract as to the capacity or place in which he is employed or the other terms and conditions of his employment differ (wholly or in part) from the corresponding provisions of the previous contract,
 - (c) the employment is suitable in relation to him, and
 - (d) during the trial period he unreasonably terminates the contract, or unreasonably gives notice to terminate it and it is in consequence terminated.

11. A mere change of workplace is unlikely to make a job unsuitable if the nature of the job itself is unchanged. Rather, if an employee turns down an offer of identical work at a different location, his or her reasonableness will generally be in issue. In *Payler v Douglas Wemyss LLP ET Case No.3501678/10*, the employer had its main office in Leicester, but for many years also had an office in Loughborough. P had worked as a fee earner in the Loughborough office for 15 years until the employer decided to close it and begin consulting with staff

on relocating to Leicester. P was offered an increased salary to offset her extra travelling costs, as well as the ability to work from home two days a week. However, she refused the offer and claimed a redundancy payment. An employment tribunal found that the employer had tried to counter every objection that P had raised to the move — it had even offered to pay for a dog-walking service. In refusing even to countenance the offer of suitable alternative employment, P had acted unreasonably.

12. The question of reasonableness will depend very much on the personal circumstances of the employee, since a change of workplace may affect employees differently. Generally, significant extra travelling time and cost will make a refusal to relocate reasonable. The nature of an industry is also a factor to be taken into account. An employee may have personal objections to new premises, in which case a refusal to move may be reasonable if the objections are justifiable.

Findings of fact

13. In order to answer the above questions in the list of issues, I will need to resolve the following factual disputes between the parties:

- a) When was the suitability of Sedley *vis a vis* the claimant's hearing loss raised?
- b) Did the respondent investigate the suitability of other stores apart from Sedley?

14. I begin my consideration of the documentary evidence and events in chronological order. The pages in brackets refer to the page numbers in the joint hearing bundle.

Health Questionnaire

15. The claimant completed a Health Questionnaire on 3 August 2003 (page 123). The claimant reported mild sensorineural hearing loss in the Health Questionnaire. At the time, no specific issues were raised regarding working at Sedley and/or any potential impact on the claimant's hearing loss.

Emails

16. I have considered the email thread between the claimant, Natalie Winstone (Pharmacy Deployment Planner), Gareth Ecott (Pharmacy Deployment Planner) and his line managers between June and November 2021 (page 138 to 147). I find the focus of these emails were on three issues. Firstly, the mistakes in shift allocation where the claimant was on the rota to work more than his contracted hours. Secondly, I find the claimant raised issues of difficult journey times in relation to certain stores such as Camden. Thirdly, I find the claimant raised difficulties with working at specific stores due to his hearing loss.

17. I find from the email dated 20 October 2021 (page 144) that the claimant specifically stated he had difficulties working at Camden as it has a small dispensary and the circular reception area is generally noisy. In the claimant's email dated 2 November 2021 to Gareth Ecott (page 143), the claimant stated that due to "wearing hearing aids I am unable to work in branches with very busy multiple queues". I find that no specific issues were raised in respect of Sedley. Although Sedley is mentioned in the emails, this was in the context of the difficult journey time to Camden.
18. On 9 November 2021, the claimant's line manager Orla Dyriv responded to Natalie Winstone (page 148 and 149). Orla Dyriv confirmed that she had had a meeting with the claimant on 4 November 2021. Although the respondent's first witness, Shah Mohammed Ali was copied into this email, his oral evidence is that he has no recollection of reading the email at the time. The email states that the claimant has a hearing impairment and has a hearing aid to assist him. The email states that "certain environments are more difficult for [the claimant] to manage than others". The email states "multiple individuals talking in close proximity always made it more challenging to communicate efficiently."
19. The email goes on to state that the claimant has requested the respondent avoid placing him into certain stores due to the hearing loss issues. The claimant highlighted two stores which were "most impactful" on his hearing difficulties – store 1524 Queensway and 0735 Camden Town. The email from Orla Dyriv concludes by requesting that Natalie Winstone avoid placing the claimant at Queensway and Camden Town. I find the only two stores mentioned in this e-mail is the Queensway store and the Camden Town store. At the time, I find no specific issues were raised regarding Sedley *vis a vis* the claimant's hearing loss.

Availability Form

20. I have given careful consideration to the Availability Form (page 173 to 174). I find the claimant specified the following essential criteria:
- a) a commute which was no more than his present commute (i.e. 45 minutes from home) given the one hour journey time to pick up his children;
 - b) same weekly contracted hours of 19.5 hours;
 - c) specific hours so that he could fit his role at Boots round his other role at the GP surgery, take his children to school and have certain weekends entirely off;
 - d) a store with a large pharmacy area because of his hearing difficulty.
21. I find no specific issue regarding Sedley was raised *vis a vis* the claimant's hearing loss in the Availability Form.

First Consultation Meeting dated 8 July 2022

22. I have considered the notes of the first consultation dated 8 July 2022 (page 167), the claimant's witness statement and Mr Ali's oral evidence. I find there is no mention of Sedley in the first consultation meeting notes. Mr Ali accepts in his oral evidence that the consultation notes are a summary of the discussion and may not be accurate. I find the consultation note for this meeting is inaccurate given both Mr Ali and the claimant are in agreement that Sedley was discussed. The dispute between the parties lie in the extent of that discussion.
23. In oral evidence, Mr Ali was unable to recall who was the notetaker for this meeting and who had suggested Sedley as a potential store for the claimant to work at. Given Mr Ali's inability to recall who had suggested Sedley, I do not accept his evidence that he could recall clearly the claimant asserting at this meeting that he was "happy" to work at Sedley.
24. I find the discussion on Sedley arose in the context of considering different stores for the claimant to relocate to. I accept the claimant's evidence that he did not put forward or specifically ask for Sedley. However, taking the claimant's witness statement at paragraph 22 at its highest, I find the claimant did not raise any difficulties in respect of his hearing loss impacting on his ability to work at Sedley at this meeting. I find that Mr Ali would have inferred following this meeting that the claimant had no difficulties working at Sedley thus far.
25. I take into consideration the claimant's oral evidence. I find from the claimant's oral evidence that at the time he worked at Sedley, he himself did not notice any problems caused by his hearing difficulties. If it is his evidence that his hearing had deteriorated, I find the claimant has not stated when the deterioration occurred. Furthermore, he has produced no medical evidence to substantiate any deterioration in his hearing. I find the focus at this first consultation meeting was plainly on finding shifts which would maintain the hours the claimant was contracted for; the journey time to any new location and the claimant's requirement for a large pharmacy area.

Second Consultation Meeting dated 22 July 2022

26. I have considered the second consultation meeting notes (page 175) and the claimant's annotated version of the meeting notes (page 183). I place weight on claimant's annotations which I find were reasonably contemporaneous. I find the claimant's objections regarding Sedley at this meeting were in respect of the requirement to carry out travel vaccinations and the risk of confusion for the claimant if required to do so due to his role at the GP surgery. Taking the claimant's annotations at its highest, I find no specific issue regarding Sedley *vis a vis* the claimant's hearing loss was raised at the second consultation meeting.

Third Consultation Meeting dated 19 August 2022

27. Having considered the notes of this meeting (page 211), I find no specific issue regarding Sedley *vis a vis* the claimant's hearing loss was raised at this stage. I find the focus of this meeting was on store 1132 where the claimant was

continuing to work on a Sunday. I find Mr Ali had presented the claimant with store 1132 as an alternative store to Sedley.

Fourth Consultation Meeting dated 8 September 2022

28. The meeting notes for this consultation meeting are brief. I have taken into consideration the notes and the claimant's annotated version of the meeting notes (page 265). I find the parties are in agreement that the claimant was told at this meeting that he did not have to do travel vaccinations at Sedley as he would be the second pharmacist at the store. The claimant was told that the hours that he would be offered would be in line with his Availability Form.
29. I find from the claimant's oral evidence that he was in agreement that the respondent was trying to make things more suitable for him. In oral evidence, the claimant stated that he did raise his hearing loss *vis a vis* Sedley as an issue at this meeting. However, I find his own annotated notes do not support his oral evidence. I find the specific concerns raised at this meeting was in respect of staffing levels at Sedley. The claimant is recorded as working under protest because there was no permanent pharmacist at Sedley; that one pharmacist had resigned and there were two new dispensers.
30. Having heard oral evidence from Mr Shah, I accept Mr Shah's evidence that there is a large staff turnover at Boots and that the staff turnover situation at the time at Sedley was nothing unusual. Mr Ali's evidence was that the 'ACI' or "Allocation of Colleague Investment" namely the ratio of staff at Sedley was in line and proportionate to its size and number of sales carried out. I find this was confirmed to the claimant in writing (page 312). I find that the letter dated 22 September 2022 to the claimant confirmed that contrary to his concerns, at the time in question, there were no vacancies for a store based pharmacist and that should a pharmacist leave, a vacancy would be raised as per the respondent's recruitment policy.
31. Although the claimant suggests that this is untrue, I have seen no documentary evidence or other evidence to suggest otherwise. I conclude from the documentary and oral evidence that the claimant raised no specific issue regarding Sedley *vis a vis* his hearing loss at this meeting. I find the focus of his concerns at the time was staff turnover and staffing levels. I find that the claimant had been reassured during the consultation process regarding staffing levels.

Fifth Consultation Meeting dated 15 September 2022

32. I place weight on the notes of the fifth consultation meeting (page 295) which I find are more comprehensive in contrast to previous meeting notes. I find the focus at this meeting was about the claimant's amended availability. I find the claimant could no longer work Wednesdays every 4th week. I find Mr Ali offered the claimant a different shift pattern. I find from the claimant's witness statement that he did not accept the revised offer and instead requested to continue working only at store 1132 on Sunday and to receive a redundancy payment.

Grievance Letter dated 30 September 2022

33. I find the claimant's hearing difficulties *vis a vis* Sedley was raised for the first time in his grievance letter dated 30 September 2022 (page 318). I find the claimant also raised issues regarding his eyesight and the difficulties reading private handwritten prescriptions. In oral evidence, the claimant stated that he would need slightly longer than others to read such prescriptions but that he could do it. I find the claimant was referring to "scruffy handwriting" in general on handwritten prescriptions. I find the issue of "scruffy handwriting" is a problem that will be encountered by any pharmacist working in similar roles. I find the claimant has not raised anything specific in his health condition which makes it particularly difficult for him to read such prescriptions compared to other pharmacists. The claimant states that Sedley in particular receives a high number of handwritten prescriptions. Even if I were to accept the claimant's analysis as statistically true, as I have stated, there is nothing to indicate the claimant would be unduly burdened by the task of deciphering handwritten prescriptions anymore compared to another pharmacist.

34. The claimant complained in the grievance letter about the number of tills (three). However, I find from his oral evidence that the number of tills had not changed during the period of time in which he had completed his 40 shifts at Sedley. I find the fact that there were three tills at Sedley is wholly irrelevant because firstly, the number of tills had not affected the claimant previously when he completed the previous 40 shifts at Sedley. Secondly, the number of tills had not increased since the time he last worked there. Thirdly, it is unclear if the claimant is arguing that his hearing had deteriorated. As stated above, if it is his evidence that his hearing had deteriorated since his last shift at Sedley, I find the claimant has produced no medical evidence to substantiate the deterioration in his hearing loss.

Sixth Consultation dated 13 October 2022

35. I find the notes of this consultation meeting are more comprehensive than the previous consultation meetings (page 334). I find the claimant raised issues regarding the length of the consultation process. I find Mr Ali explained that the reason the consultation process had been lengthy was because each time an option was presented to the claimant, there would be further objections or new information which would come to light which necessitated a further adjournment and a further meeting. I find it is clear from the number of consultation meetings that the respondent had sought to address the claimant's concerns at each stage.

Grievance Letter dated 19 October 2022

36. The claimant raised procedural concerns and other grievances in his email dated 19 October 2022 (page 365). This letter refers to the first grievance letter. The focus of the second grievance letter was on a number of issues which had already been raised previously. In summary these were regarding increased workload due to staff turnover at Sedley; the difference between Sedley and his previous store namely Sedley being a larger store; health concerns in particular

his hearing difficulties meant he would have to concentrate harder and the fact he wears glasses meant he would have to raise his distance glasses to read; the length of the consultation process and the fact that the claimant had received calls to take up shifts at other stores which he perceived as harassment and detrimental to his overall wellbeing.

Appeal

37. I find the claimant set out in writing the matters in which he was unhappy with in a letter appealing the termination of his employment to Mr Shah (page 392).
38. I find from the claimant's appeal letter that he accepts he had not discussed these issues with a manager at Sedley. I place significant weight on this admission. If his hearing and sight difficulties had caused him concerns such that he could not safely work at Sedley, I find it is curious the claimant did not raise any of these issues with a manager at Sedley throughout 2022 and/or before.
39. As for the issues regarding handwritten prescriptions, measure patients and the fact it was a busy store, I find these are matters that had not changed from when he was working there previously.
40. I accept from Mr Shah's evidence that he did not have sight of the claimant's first grievance letter. However, I find the claimant was given an opportunity to ventilate his concerns as detailed in the meeting notes (page 334 to 343) and subsequently in the letter of dismissal (page 360). I find Mr Shah did discuss all of the issues raised by the Claimant.
41. On the issue of working during his notice period, I find the claimant made it clear that he felt he should not have to work his notice but to continue to be paid. I find Mr Shah offered the claimant the chance to continue working his Sunday hours but the claimant did not take up the offer. In oral evidence, I find the claimant was vague regarding why he did not continue with his Sunday hours despite stating throughout the process that he was happy working his Sunday hours at store 1132. Having heard oral evidence, I find the reason the claimant did not continue working Sundays at store 1132 was because he had hoped to receive a redundancy payment.
42. The claimant also stated in oral evidence that he was going to do locum work and that working Sundays with the respondent would prove too much. However, the claimant also admitted that although the intention was to do locum work, he could not find locum work which fitted in with the very specific hours and days that he required.
43. I do not accept that continuing to work Sundays would have been too much. I find this was what the claimant had done for some years. I find the real reason he no longer wished to work for the respondent on Sundays or otherwise was because the claimant had by this point negotiated with the GP surgery he worked at to take on audit work. I find the facts strongly indicate the claimant

had arranged alternative work and was happy to be given permission not to work his notice, albeit unpaid.

The Claimant's Oral Evidence

44. In oral evidence, the claimant stated that his definition of a "large pharmacy area" should be understood by others as where "noise does not bounce". If this was what the claimant had meant by a "large pharmacy area", I find this was not what the claimant had articulated either in his previous correspondence with Natalie Winstone, Gareth Ecott and his previous line manager Orla Dyriv in 2021 when there had been a discussion regarding the (un)suitability of stores *vis a vis* his hearing difficulties. I find the claimant did not articulate this definition in his availability form; in the various consultation meetings and in his witness statement prepared for this hearing. The first time this definition was put forward was in his oral evidence.
45. I do not accept that a "large pharmacy area" would be understood by others as where "noise does not bounce". Even if it could be understood by others as that, I find that Sedley was not identified as such a store (where "noise does not bounce") until the claimant's oral evidence. In conclusion, I find the issue of his hearing problems *vis a vis* Sedley was not raised until his grievance letter of September 2022. However, as I have already found, the substance of his grievance letter was dealt with by the respondent at the appeal stage and subsequently in the dismissal letter.

Dipesh Shah's Evidence

46. I accept Mr Shah's evidence that if claimant had returned to work, a referral would have been made to 'Colleague's Health', an outsourced occupational health service. I accept Mr Shah's evidence regarding the circumstances in which a referral would normally be made. I find from Mr Shah's evidence that a referral was not made because claimant did not wish to work his notice period. I find from the claimant's correspondence that he worked for the last time at Sedley on 3 November 2022. I find from the correspondence between claimant and the respondent that the claimant agreed to vary his contract to "permission unpaid" for his notice period.
47. I accept Mr Shah's evidence that in 2003, the respondent did make a referral to 'Colleague's Health' for advice on how best to support the claimant in the workplace when the claimant disclosed via the Health Questionnaire that he suffered from mild sensorineural hearing loss. I find that had the claimant agreed to continue working for the respondent, it is highly likely that a referral would have been made to 'Colleague's Health'.

Alternative Stores

48. One of the disputes between the parties is whether the respondent had investigated the suitability of other stores. The claimant's evidence is that Mr Ali who had carried out the consultation process with the claimant was fixated on deploying the claimant to Sedley.

49. I find from Mr Ali's evidence that there were over a 100 vacancies for pharmacists at the time in question. However, most of the stores with vacancies were not suitable because it did not fit the claimant's three criteria of a) specific hours and days; b) specific journey time to work and c) large pharmacy area.
50. I accept the evidence I heard that although there were a high number of stores with vacancies for a pharmacist, the requirements for the claimant's unusual hours, specific work days, specific journey time and the requirement for a large pharmacy area meant that a significant number of stores were deemed not suitable by the respondent. I accept and find that is the reason why the respondent did not put forward those other stores as a suitable alternative. I find from the claimant's oral evidence that even though he had looked on the respondent's intranet for suitable vacancies at the time, he himself was unable to identify a store which suited his criteria.
51. I find the respondent did offer the claimant store 1132 as an alternative store to Sedley. I find this was a store that the claimant had said throughout the consultation process that he would be happy working at. I find this was a store that the claimant continued to work his Sunday shifts. I find the only sticking point between the parties at this stage was the start time of 9 a.m. rather than 10 a.m. on Thursdays. I find the claimant rejected this option outright without further consideration as to whether he could make alternative arrangements with his wife for the morning school run. I find it was open to the claimant to ask for more time to discuss with his wife and to assess whether this store would be a suitable alternative. I find claimant unreasonably refused to negotiate or to consider whether he could make alternative school run arrangements.

Was the Dismissal Fair or Unfair?

52. I find the claimant raised many different concerns at different times throughout the consultation process and the appeal process. The issue which is at the heart of this claim is whether and when the claimant had brought to the respondent's attention the potential (un)suitability of Sedley *vis a vis* his hearing and sight difficulties. I have already found that the first time this was raised was in his grievance letter dated 30 September 2022. I find this was after the respondent had completed five consultation meetings with the claimant.
53. I have considered whether the respondent undertook appropriate consultation with the claimant and whether the process adopted was fair. Taking into account the respondent's size and administrative resources, I find the respondent had allocated appropriate resources to this issue and had undertaken appropriate consultation with the claimant as demonstrated by the six consultation meetings, the appeal process and the length of the process itself. I find the reason the process was drawn out was because at each stage, the claimant introduced a new criteria, for example, the requirement to undertake travel vaccination and when that was resolved to his satisfaction, the claimant introduced the issue of staff turnover and staffing levels at Sedley.

54. I conclude the respondent had acted objectively reasonably to identify all suitable alternatives in light of the store closure for the store where the claimant had previously worked and in light of the claimant's criteria identified in the Availability Form. I find the respondent had tried to counter every objection that the claimant had raised to the move reasonably.
55. As stated above, I find that the respondent did identify two stores which met the claimant's specification. I find that Sedley met all of the claimant's specification as set out in the Availability Form. I find that store 1132 met the claimant's specification in part subject to one sticking point regarding the start time for Thursdays. I find it was open to the claimant to accept the offer of alternative employment either at Sedley or at store 1132. I find the claimant acted unreasonably in rejecting the offer of suitable alternative employment because he no longer wanted to work for the respondent for two reasons. Firstly, because he had already sought alternative work with the GP surgery to undertake audit work and secondly, he was under the impression that he could receive a redundancy payment if he rejected the offer of alternative employment. I find this is evident throughout the consultation meeting notes where the claimant had insisted on receiving a redundancy payment.
56. In this case, I find the nature of the job itself had not changed and there had merely been a change of workplace. In refusing even to countenance the offer of suitable alternative employment, I find the claimant had acted unreasonably. I conclude the respondent had acted reasonably in its offer of suitable alternative employment and that the claimant had acted unreasonably in refusing the offer. Accordingly, I conclude the claimant's dismissal was fair in all the circumstances.

Contract of Employment

57. The issue of whether there was one or two contracts is an issue identified in Mr Macmillan's list of issues within the written submissions. However, this was not an issue which had been specifically identified either in Mr Macmillan's opening submissions or in discussions at the outset of the hearing on 16 May 2024. Furthermore, I find Mr Macmillan has not dealt with this issue in substance in either his written or oral submissions.
58. I have nevertheless considered whether the claimant was working under a single, unified contract of employment, or two distinct contracts. I find even if the claimant was working under two separate contracts, it was open to the claimant to continue working at store 1132 on a Sunday only as had been offered to him by Mr Shah. However, it is clear the claimant refused to do so.
59. I have already found the claimant did unreasonably refuse the offer of suitable alternative employment in replacement for his hours at the store which closed. In the circumstances, I find the respondent was left with no choice but to issue redundancy notice for both roles because of the claimant's refusal to continue working for the respondent. Therefore, whether there was one or two contracts does not in my view assist the claimant in his claim.

Notice Pay

60. In respect of the notice pay, I find it is clear from the correspondence between the claimant and the respondent that he did not wish to work his notice period and was happy for the notice period to be unpaid. I find the complaint of breach of contract in relation to notice pay fails for that reason. The claimant is not entitled to notice pay because he agreed to vary his contract so that he did not have to work his notice (permission unpaid). I find the reason is because he had already arranged alternative work at the GP surgery.

Redundancy Payment

61. I find the respondent offered the claimant a suitable alternative post within the business. I find the respondent took steps to accommodate the claimant's specific requirements as set out in the Availability Form and later in further discussions with the respondent during the consultation process. Given the claimant unreasonably refused an offer of suitable alternative employment, I find the claimant is not entitled to be paid the statutory redundancy payment pursuant to section 141 of the Employment Rights Act 1996.

62. However, the claimant argues that he is entitled to enhanced redundancy payment. In the document titled 'Information on the Redundancy Policy' (pages 109-115) paragraph 8 deals with alternative roles and a trial period:

If you terminate the trial and unreasonably refuse the position, you will bring your employment to an end and will not be entitled to a redundancy payment .

63. Given my findings of fact above that the claimant did unreasonably refuse the offer of suitable alternative employment, I find the complaint that the respondent was in breach of contract by failing to pay the claimant the enhanced contractual redundancy payment must fail and is accordingly dismissed.

Conclusion

64. These are the reasons why the claimant's claim against the respondent is dismissed in its entirety.

**Employment Judge Anthony
22 May 2024**

Judgment sent to the parties
on:

18 July 2024

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For the Tribunal:

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