



EMPLOYMENT TRIBUNALS

Claimant: Miss M Mistry

Respondent: Axiom Ince Limited (in administration)

Heard at: Manchester

On: 25 July 2024

Before: Employment Judge Ross

REPRESENTATION:

Claimant: In person

Respondent: Did not attend

Upon application made by letter dated 9 July 2024 to reconsider the Rule 21 judgment dated 17 June 2024 and sent to the parties on 25 June 2024, pursuant to Rule 71 Employment Tribunals Rules of Procedure 2013

JUDGMENT

1. The judgment is confirmed.

REASONS

Background

1. Oral reasons were given at the hearing on 25 July 2024, but the claimant indicated at the end of the hearing that she may wish to appeal and I therefore considered it was in the interests of justice to produce written reasons.
2. The claimant was employed by the respondent and its predecessor from October 2017 until she was made redundant on 3 October 2023. The claimant is a Solicitor and from January 2023 was a salaried partner. The

claimant made a claim to the Employment Tribunal for redundancy pay, notice pay, holiday pay, arrears of pay and other payments.

3. The claimant's claim was combined with others who also brought a claim for redundancy and other payments against this respondent. No response was supplied by the respondent who had collapsed into administration. Permission was obtained from the administrators for the claims to proceed.
4. Although the claimant (unlike other claimants) had not identified on her claim form that she was making a claim for a protective award pursuant to Section 188 and Section 189 of the Trade Union and Labour Relations Consolidation Act 1992, it was treated as if she had made such a claim.
5. I issued a Rule 21 judgment based on the information supplied by the claimant in her claim form and in a witness statement sent to the Tribunal dated 13/3/2024. The judgment was for a redundancy payment and stated there was no entitlement to a protective award.
6. By letter dated 9 July 2024 the claimant submitted a request for reconsideration.
7. I granted the request for an application for reconsideration on the basis that the claimant had not been granted the opportunity to present her evidence in person at a hearing and accordingly I was satisfied it was in the interests of justice to reconsider the Rule 21 judgment.
8. At the hearing, the claimant confirmed there was no issue with regard to her redundancy payment which she had received from the Secretary of State's insolvency fund. She wished me to reconsider my decision not to permit her a protective award.
9. I had the benefit of a small file of documents totalling 66 (electronic) pages. It included the claimant's first statement dated 13 March 2024 which is at pages 8 and 9 in the electronic numbering and a further statement at pages 10 to 13 electronic numbering. The claimant also supplied within the bundle a copy of her contract of employment with the predecessor partnership which employed her, Plexus Legal LLP, a copy of the judgment of another claimant Mr J J Turton who succeeded in obtaining a protective award and some information about staff transferring from Plexus to Axiom.
10. I supplied to the claimant an HR 1 form which was a matter of public record because it had been supplied to the Tribunal in another of the Axiom Ince cases and was admitted into evidence. This was completed by the HR Department of the Respondent and sent to the Insolvency Service and gives the record of the numbers of individuals made redundant from each establishment of the respondent.

Facts

11. I find the following facts.

12. There is no dispute in this case that the respondent Axiom Ince Limited was a law firm with offices at a variety of locations as shown in the HR 1 form with the main or head offices being based in Leeds in the North and London in the South. It is a matter of fact that Axiom Ince Limited comprised a number of predecessor law firms including Axiom Ince and Plexus Legal.
13. The claimant was a Solicitor and from January 2023 a partner. She worked for Plexus Law Limited in Manchester from 2017. She was transferred by way of a TUPE transfer to the respondent in or around July 2023. Along with other employees she was notified in August 2023 the Chief Executive Officer “CEO” of Axiom Ince and two other directors had been suspended by the Solicitors Regulatory Authority for alleged misappropriation of client funds. The SRA confirmed that the respondent could continue to trade. However the firm was not accepting any new instructions. The claimant says employees were informed on 29 September 2023 that the firm’s professional indemnity insurance was due to expire on 30 September 2023 and therefore no legal or advisory work could be carried out after that date. The claimant confirm she received her salary up until the end of September 2023.
14. On Monday 2 October 2023 the employees were notified by email that the SRA had served an intervention notice on the respondent. The claimant and other employees were served with a notice of termination of employment with immediate effect on the grounds of redundancy via their personal email address on 3 October 2023.
15. The respondent collapsed into administration.
16. I find that the claimant’s contract of employment with Plexus Law stated that her place of work was the Manchester office. The claimant completed the address of the Manchester office in her claim form in answer to the question “if you worked at a different address from the one you have given at 2.2 please give the full address”. In her first statement at paragraph 5 she stated: “whilst I was situated in the Manchester office I was also expected to travel on work out of the Leeds/Liverpool and London office”.
17. I rely on the claimant’s evidence to find that she worked in the fraud team based in Manchester. I accept her evidence that she supervised some team members in the Leeds office and regularly travelled to the Leeds office and to London. I rely on the claimant’s evidence in her second statement that Manchester was where the Motor and Employment Liability and Personal Liability “EL and PL” fraud handlers were situated. I accept the evidence in her second statement that she reported to Mr Turton who was a salaried partner and the national Head of Fraud. Mr Turton was employed between 10 July and 31 August 2023.
18. After Mr Turton left in August 2023 the claimant says that she picked up many of his duties. She also said that she carried out many of the tasks he did, prior to his appointment. However I find and it is not disputed that the claimant was never appointed to a National Head of Fraud role. I accept the claimant’s evidence set out in her statement that she was a Partner and was in the Fraud Team based at Manchester and her job involved developing and

growing the fraud team to generate an increase in revenue together with supporting the team.

The Law

19. The relevant law is set out at Section 188(1) TULCRA 1992. It states “where an employer is proposing to dismiss as redundant twenty or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.”
20. Section 188(1B) goes on to identify the appropriate representatives.
21. There is no dispute in this case that there was no trade union. There is no dispute in this case that there was no collective consultation whatsoever.
22. The relevant case law is USDAW and another -v- Ethel Austin Limited and others 2015 ICR 675 ECJ commonly referred to as the Woolworths case and Lyttle and others -v- Bluebird UK Bidco 2 Limited 2015 IRLR 577 ECJ.

The Issue

23. The issue in this case was: to which establishment was the claimant assigned? I had determined the claimant was assigned to the Manchester office. It is not disputed that the Manchester office at the relevant time had less than 20 employees (See HR1 form) and so the obligation to consult collectively was not triggered and an entitlement to a protective award was not established.
24. The claimant sought to argue that she should be assigned to either the London or the Leeds office, both of which had considerably in excess of 20 employees.

Applying the law to the facts

25. I reminded myself that although it may seem to a lay person unjust, case law has determined that establishments are not to be aggregated for the purpose of the 20-employee threshold. Both the Woolworths case and the Lyttle and others -v- Bluebird case held the establishment is the local unit to which the redundant employee was assigned to carry out their duties, not the business as a whole.
26. The main gist of the claimant’s submission was that her evidence showed she carried out a very similar role to Mr Turton, National Head of Fraud who had a pan office role. The claimant did not dispute that he was National Head of Fraud and that he held that pan office role. In that case on those particular facts I held he was entitled to a protective award finding he was assigned in his capacity as National Head of Fraud to the respondent’s Head Office in the North at Leeds. His evidence, which I relied on, was that he was headhunted for this role after the TUPE transfer when the new owners of the respondent

had decided they wished to develop this side of the business and therefore wanted to establish a new position, National Head of Fraud in a pan office role. I relied on Mr Turton's evidence that it was expected that he would spend a great deal of his time travelling between offices and his car was insured accordingly. He reported directly to CEO. His evidence was his role was strategic and unique.

27. I entirely accept the claimant's evidence that she assisted Mr Turton in some of his duties and that she travelled regularly to other offices but I find at the relevant time, based on the claimant's evidence, she worked partly remotely two days a week and partly from the office (Manchester) three days a week. I accept her evidence that by the time she was made redundant she was the only partner at the Manchester office. The claimant conceded that she was never appointed to the role of National Head of Fraud.
28. Stepping back to review the evidence I remind myself of the guidance in the Woolworths and Lyttle cases. I remind myself that the 'establishment' is the local unit to which the redundant employee was assigned to carry out their duties. I remind I must look at the facts when deciding this issue.
29. I find that the claimant, though she frequently worked at home and also sometimes travelled to other offices, was assigned to the establishment of the Manchester office. Although she assisted the National Head of Fraud as part of her role as a Partner, she was not the National Head of Fraud, whom I have found on the particular facts of that case, was assigned to the Leeds office.
30. Therefore, for these reasons I am satisfied that the decision not to grant a protective award was correct and I do not revoke the judgment dated 17 June 2024 and sent to the parties on 25 June 2024.

Employment Judge KM Ross

30 July 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

2 August 2024

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