



EMPLOYMENT TRIBUNALS

Claimant

Ms. C. Thompson

Respondent

v Alexander Mann Solutions Ltd

On: 10 – 11 September 2024

Before: Employment Judge Coll

Members: Mr. P. Maclean

Mr. D. Wharton

Appearances

For the Claimant: In person

For the Respondent: Mr. Yetman, Counsel instructed by Mills and Reeve LLP

WRITTEN JUDGMENT WITH REASONS

1. The claim of direct sex discrimination is not well founded and is dismissed.

REASONS

1. Following a period of conciliation which lasted from 12 September 2023 to 20 October 2023, the claimant presented a claim form on 17 November 2023 by which she alleged direct sex discrimination.
2. The claim arises out of the claimant's employment by the respondent. The claimant was told that her employment was terminated on 27 June 2023 because her post was redundant.
3. The respondent entered a grounds of response on 21 February 2024.

The hearing

4. At the 2 day hearing we have had the benefit of hearing oral evidence from four witnesses:
 - 4.1 the claimant
 - 4.2 Ms Money, Senior Sourcing Manager (at the time) with responsibility for everything on the Santander account
 - 4.3 Ms. Sell, Head of Business Partnering, and
 - 4.4 Mr. Noble, Head of Operations.
5. The witnesses adopted in evidence written statements which had been exchanged in advance and were cross examined upon them. The respondent's in house lawyer was also in

attendance. The parties had cooperated on a joint bundle of documents which consisted of 242 pages and a witness bundle of 35 pages. Page numbers in the joint bundle are referred to as [1] to [242] as appropriate.

The issues

6. The issues in the case remained as set out in the case summary of Judge Quill as found at [45] are:
 - 6.1 Failure to notify the claimant of the vacancy of Team Leader – Specialist Tech Team (numbered as allegation 2.1.2)
 - 6.2 Giving the claimant too low a score and a lower score than Mr. McMenemy which was unjustified (2.1.3 and 2.1.3 (i))
 - 6.3 Suggesting that the claimant was on a performance improvement plan which was factually incorrect (2.1.3(ii))
 - 6.4 Putting Mr. McMenemy into the Specialist Tech Team Leader vacancy (2.1.4) and
 - 6.5 Dismissing the claimant (2.1.5).
 - 6.6 Jurisdiction – time limits.
7. The ETD was identified as in dispute but was conceded by the claimant at the outset of this hearing as 27 June 2023.
8. Whether Mr. McMenemy could be treated as an actual comparator was not an issue noted in the Case Management Order. The tribunal therefore did not make findings about this.

The Law applicable to the issues

9. The claimant complains of a number of breaches of the Equality Act 2010 (hereafter referred to as the EQA). Sections of that Act which are relevant to the issues in this case include:
10. Section 13 (1) of the EQA, which reads:

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”
11. In every case the tribunal has to determine the reason why the claimant was treated as she was. This is the crucial question.
12. When deciding whether or not the claimant has been the victim of direct sex discrimination, the Tribunal must consider whether she has satisfied us, on the balance of probabilities, of facts from which we could decide, in the absence of any other explanation, that the incidents occurred as alleged, that they amounted to less favourable treatment than an actual or hypothetical comparator did or would have received and that the reason for the treatment was sex. If we are so satisfied, we must find that discrimination has occurred unless the respondent proves by cogent evidence that the reason for their action was not that of sex.
13. We also took account of the case law referred to by the claimant and the extracts from Harvey upon which Mr. Yetman spoke to us in his closing submissions.

Findings of fact and of credibility

14. The standard of proof that we apply when making our findings of fact is that of the balance of probabilities. Where it was necessary to resolve conflicting factual accounts, we have done so by making a judgement about the credibility or otherwise, of the witnesses we have heard from based on their overall consistency and the consistency of accounts given on different occasions compared with contemporaneous documents where they exist. Where it has not been possible to rely on the credibility of any of the witnesses on a particular point, we have relied on the contemporaneous documents, of which there are many in the bundle.
15. We took into account all of the evidence presented to us, both documentary and oral. We also took account of the closing submissions of both parties.
16. We do not record all of the evidence in these reasons, but only our principal findings of fact, those necessary to enable us to reach conclusions on the issues before us.

Credibility of witnesses

17. All the witnesses were generally credible. The tribunal had no concerns about the reliability of the oral evidence.

Background

The respondent

18. The respondent is a provider of managed recruitment services to clients, which include Santander.

The claimant's post

19. The claimant was employed from 1 November 2021 as a Team Leader in the Hub of Central Functions in Specialist External Sourcing on the Santander account. She managed a team of 9 sourcing specialists [154]. She reported to Ms. Jones, Sourcing Manager, Specialist External Sourcing, who joined in September 2022.

Individual Support Plan in 2022

20. The respondent's performance management process is set out at [59 – 65]. The Informal Individual Support Plan ("ISP") is the first stage [62]. The claimant was subject to an informal ISP at least from 31 October 2022. The claimant had a meeting with Ms. Jones in October 2022 to discuss this informal ISP [87 & 217 – 219]. The claimant was set performance and process goals [218] and competency goals [219]. Extracts from the competency goals included:

20.1 *"Mindful listening – be mindful of listening & holding space for others to finish what they are saying! Practise listening to understand (& ask questions) as opposed to listening to respond.*

20.2 *Be aware of what you are being asked for & how you present the information back.*

20.3 *Collate information from the team and then you respond as opposed to bringing them in the email trail which creates more emails and confusion*

20.4 *Judgement – gauge the audience & tailor communication".*

21. These extracts show that there were a number of goals concerned with communication.

2022 End of Year Performance Review

22. The claimant completed the employee evaluation sections before a meeting with Ms. Jones in January 2023. The claimant thought that in January 2023, Ms. Jones completed her evaluation and gave an overall rating of “needs improvement” (“NI”). The claimant looked at this review in May 2023 on Workday (the HR system) but it was available for her to look at once completed by Ms. Jones.
23. Ms. Jones’ reasoning for the NI rating was that the claimant had been on an ISP and is already making great strides. Nevertheless, she considered the claimant to be a case “of some edges that are being rounded off” which were discussed in her 1 2 1s as part of the ISP. Ms. Jones was confident that her 2023 mid-year review will show “meets” and looked forward to seeing her develop. This is reflected in the comment about the ISP “we are working through an informal ISP & she is making great progress”.
24. The claimant’s case is that she was not under an informal ISP in 2023 because there were no further documentation or meetings.
25. Ms. Money (Ms. Jones’ immediate line manager) said that she had confirmed with Ms. Jones that the claimant was on a continuing informal ISP.
26. In conclusion, the tribunal find that Ms. Jones’ three references [83, 97 and 93] to the ISP in the End of Year Performance Review and Ms. Money’s recollections establish that there was a continuing informal ISP in 2023.

Need for redundancies

27. In or about April 2023, Santander informed the respondent that the quarterly forecast had reduced, except in technology and the respondent consequently decided that the Santander account needed to be resized.
28. The respondent proposed to reduce the 5 Team Leader positions to 3, to be entitled CSM Internal Mobility and Redeployment, External Non-Technical and External Technical and Operations. These were redesigns of the previous Team Leader roles. In all, there were to be 18 redundancies.

Redundancy process

29. The respondent described the redundancy process as being in two phases.

Phase one

30. Phase one started in the week commencing 15 May 2023. It consisted of agreeing a matrix of
 - 30.1 “skills and future potential” which comprised 8 behavioural descriptors drawn from their corporate competency model and included “consistently clear communicator” and “receives excellent feedback from client services and hiring managers”, and
 - 30.2 “the standard scoring matrix” which included the End of Year Review rating and whether on an ISP.
31. The direct line manager (in the claimant’s case, Ms. Jones), scored each individual against the skills and future potential criteria and gave examples to underpin the scores. They also completed the standard scoring matrix.

32. Ms. Money then Ms. Sell moderated the matrices to ensure there were inconsistencies between scores and examples. In addition, Ms. Money checked the spread of scores. The moderated matrices are at [212 and 214 – 215].
33. Ms. Money decided that all the Team Leader roles should be put in a pool of 5 because the Team Leader roles were generic and could work across any hub.
34. By 17 May 2023, the respondent selected the three Team Leaders with the highest scores (52, 41 and 39) and allocated them to the three new Team Leader posts. The claimant has identified Mr. McMenemy as her comparator. He was put into the External Technical and Operations Team Leader post.
35. Between 18 and 19 May 2023, Letter 1 was produced for the two remaining Team Leaders. At this point, no employee knew that the outcome of the matrix exercise. In fact, no employee knew that the matrix exercise was being undertaken.

Phase two

36. All staff potentially affected by the Santander resizing were invited to a briefing on or about 23 May 2023. This marked the beginning of the consultation period.
37. Then Letter 1 invited the 2 Team Leaders without a Team Leader post to attend a 1 2 1 meeting with their line manager on 25 May 2023 [110]. Letter 1 told the claimant that it served as a formal at-risk notification but that no decision had been made.
38. At the 1 2 1 meeting, Ms. Jones told the claimant that she was in the bottom 2 for scores. Ms. Jones did not explain the detail of the scores or show the claimant the matrix.
39. Letter 2 dated 25 May 2023 summarised this meeting. The claimant was encouraged to apply for suitable alternative posts during the consultation period (which would end on 26 June 2023).
40. The claimant identified and applied for one suitable alternative vacancy. After initial discussion and application, the hiring manager told her that the post had been regraded and would be grades above Team Leader. For this reason, the claimant withdrew her application.
41. On 16 June 2023, the claimant telephoned Ms. Jones to obtain more information about her scores and the reasons. She was given all the scores over the telephone and found out that she had received a score of 1 for “consistently clear communicator” and “receives excellent feedback”. When to explain these scores of 1, Ms. Jones could not give good examples [146].
42. On 22 June 2023, Mr. McMenemy put a post on LinkedIn welcoming some team members to his (new) team, who had recently joined the claimant’s team [119]. This was the first time that the claimant knew that Mr. McMenemy had the “Tech Sourcing” Team Leader role including supervision of some of her former team members.
43. On 23 June 2023, the claimant received a copy of the descriptors used in the matrix but it was unreadable [122 – 127]. The claimant accepted that she was sent a readable copy of the descriptors on 26 June 2023; there is no copy in the bundle.
44. On 26 June 2023, the claimant received a letter of redundancy with effect from 27 June 2023, with pay in lieu of notice. The effective date of termination is no longer in dispute [129 -130].

Appeal

45. On 29 June 2023, the claimant lodged an appeal. The grounds for appeal were that the descriptors scored zero (in fact 1) were incorrect. Further, these incorrect scores were because Ms. Jones had not included any examples on which to base a higher score. There is no reference in the grounds of appeal to Mr. McMenemy or bias in favouring Mr. McMenemy as a man over the claimant as a woman.
46. On 5 July 2023, the claimant attended an appeal hearing before Mr. Noble. Her representative, Ms. Brown, was also in attendance and took detailed notes [144 – 147]. The respondent's notetaker was Mr. Ruddock; his notes are at [142-143].
47. Mr. Noble asked the claimant to clarify the grounds of appeal. The claimant wanted Mr. Noble to re-look at the scoring on those where she had received the lowest possible score. The claimant had still not got a copy of the matrix and had only seen "headers" [146]. She was unaware at the appeal on 5 July 2023 that she had lost 3 marks on the standard matrix because she had a continuing ISP.
48. Mr. Noble asked the claimant if she had any other grounds of appeal. The claimant mentioned Mr. McMenemy but did not say the difference in treatment was because he was a man. In other words, she made no explicit or implicit reference to sex discrimination or gender bias [146]. Instead, she said that she wanted Mr. Noble to consider the general unfairness of the process.
49. On 7 July 2023, the claimant received from Mr. Noble a copy of the matrix for all Team Leaders with their names redacted [212 – 215]. This showed that she had scored 20. This included the separate table with the standard matrix showing her total score of 7 and score of 0 for having a continuing ISP.
50. On 10 July 2023, the claimant provided Mr. Noble with documentation in order to give him examples of good performance in communicating and getting feedback [167 – 179].
51. In a letter dated 11 July 2023, Mr. Noble told the claimant that he accepted that the evidence she had provided should have been included in scoring her on the matrix [180]. In summary his conclusions were:
 - 51.1 The decision to dismiss was upheld.
 - 51.2 If the claimant had been awarded the top score (5) for communicating and getting feedback, she would still not have been in the top 3. The tribunal calculated that she would have obtained 35.
 - 51.3 The matrix process had been fair.
52. Mr. Noble was asked in the hearing why he considered that the matrix process did not have a gender bias. He said he had looked at the consistency of the scoring and examples as well as exploring the precise wording for evidence of gender bias, based on training received. He had found none.

2.1.2 Failed to notify the claimant of the vacancy of Team Leader Specialist Tech Team and 2.1.4 put Mr. McMenemy into that vacancy

Did the conduct at occur?

53. 2.1.2 and 2.1.4 are linked as they are part of the same process. Technically the respondent failed to notify the claimant of this post as a suitable alternative vacancy. We accepted the view from the respondent that this was one of the redesigned roles which were to be filled by the three highest scorers. The respondent chose a redundancy process in which if there was a

pool of more than two people, selection would be dealt with by a matrix scoring process. The respondent is entitled to decide on the most appropriate redundancy selection process. The Team Leader Specialist Tech was not a vacancy therefore for which the claimant could have applied.

54. In conclusion, the conduct did not occur.

2.1.3 (i) Giving the claimant a lower score than Mr McMenemy (on both matrices) and (ii) ISP

Did the conduct occur?

55. The appellant was given a score of 20 in the competency matrix. This was revised by Mr. Noble to 28 during the appeal process (by giving the top scores for communicating and feedback). Mr. McMenemy was awarded 28 on the competency matrix. The appellant was given a score of 7 on the standard matrix, whilst Mr. McMenemy was given a score of 11. The difference in scores on the standard matrix was because the claimant got 1 for NI on her performance review and 0 for ISP and Mr. McMenemy got 2 and 3 respectively. The tribunal have already found above that the claimant had a continuing ISP and her allegation that this was factually incorrect is not accepted by the tribunal. As a result 2.1.3 (ii) falls away; the conduct of falsely attributing a continuing ISP to the claimant and marking her down for that did not occur.

Did the respondent treat the claimant less favourably than it treated Mr McMenemy?

56. The respondent treated the claimant less favourably than it treated Mr. McMenemy.

If yes, can the claimant prove primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of her sex?

57. The claimant did not offer or prove primary facts from the which the Tribunal could properly and fairly conclude that the difference in treatment was because of her gender.

If so, can the respondent prove a non-discriminatory reason for the treatment complained of?

58. The burden of disproving sex discrimination does not transfer to the respondent. For the sake of completeness, however, the tribunal find that the respondent has through the evidence of Ms. Money has demonstrated that the scores awarded to Mr. McMenemy were justified by his performance [paragraph 42 – 49 of her witness statement].

2.1.5 Dismissal

Did the conduct occur?

59. The claimant was dismissed.

Did the respondent treat the claimant less favourably than it treated Mr. McMenemy?

60. Yes, because she was dismissed and he was not.

If yes, can the claimant prove primary facts from which the Tribunal could properly and fairly conclude that the difference in treatment was because of her gender?

61. The answer to the above was no. In any event, the claimant did not offer or prove primary facts from the which the Tribunal could properly and fairly conclude that the difference in treatment was because of her gender. The burden of disproving race discrimination therefore does not transfer to the respondent.

CONCLUSION

62. This claim of direct sex discrimination is therefore not well-founded and is dismissed.

Time limits

63. The respondent's position was that any allegations based on the respondent's acts or omissions should have taken place on or before 12 June 2023. The tribunal did not need to consider whether it was just and equitable to extend time because the claim has not succeeded. Had the claimant succeeded on any allegation of direct sex discrimination after the tribunal's deliberations, the tribunal would have delivered this judgment and asked for written submissions.

Conclusions

64. We concluded that in respect of the direct discrimination claims, that none were well-founded.

Employment Judge Coll
Date: ... 22 January 2025.....
Sent to the parties on: 23 January 2025
For the Tribunal Office