EMPLOYMENT TRIBUNALS

Claimant: **Ms E Ptaszek**

Respondent: **Compass Group UK & Ireland Ltd**

Heard at: **East London Hearing Centre (by video)**

On: **8 to 9 October 2024**

Before: **Employment Judge Hook**

Representation
Claimant: In person
Respondent: Mrs A Ralph, in-house legal executive

JUDGMENT having been sent to the parties on 14 October 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The Tribunal apologies to the parties for the delay in providing these written reasons, due to pressure on judicial resources.

2. The claimant has brought a claim of unfair dismissal.

Facts

3. The claimant worked as a receptionist at a bank in London from 2015 until December 2023. She was employed by a company that provided reception services to the bank. In 2022, the contract to provide that service was assigned to the respondent company. The claimant was transferred across to them under TUPE, maintaining her pay and conditions. Her working hours were 50 hours per week. There was another colleague who worked 60 hours and other colleagues who worked 40 hours per week.

4. The bank and respondent reviewed the reception services and decided that there was no business need to regularly staff reception before 0800 and after 1800. The respondent notified the claimant and the other affected staff member that their hours would be reduced to 40 hours per week. The

claimant's hourly rate of pay would be increased slightly but, overall, she would still be paid less than before.

5. Her hours on reception would become either 0800-1700 or 0900-1800 (one hour per day less than she had been working). It was also initially proposed that she would cease to have a paid lunch break.

6. During a consultation process, it was agreed to maintain her paid lunch breaks, making her paid hours 45 per week, although still resulting in a total salary that was less than she was earning at 50 hours per week. The claimant was unhappy about this proposal. She did not want to be paid less in total, even if her hourly rate was increasing. She also explained that the new shift pattern would cause her a problem with her travel costs. She was commuting by train from Reading to the Docklands area of London, where the bank is.

7. She gave evidence, which was not challenged, that she had to get an early train to arrive at work by 8.00. If she came in to arrive at 9.00, she would have to either catch a more expensive train one hour later or come in earlier and wait at work for an unpaid hour. In the evening, her trains from Paddington to Reading are, she said, off peak from 19.03. Finishing work at 17.00 would give her the same problem in reverse of having to pay more (to travel home earlier) or wait unpaid.

8. She was also unhappy that it was proposed to relabel her job as "guest service ambassador" rather than "receptionist". The evidence of the respondent is that it was just a relabelling and the job was effectively the same. The claimant believes the job would be different. It was also proposed to cease the practice of having a 30-minute morning and 30 minute afternoon break, which the claimant was also unhappy about.

9. The alternative to accepting these changes offered to the claimant by the respondent was to find another job with the respondent company or to leave, taking voluntary redundancy.

10. The claimant did not want to leave. She said she had worked at the bank for 8 years and felt part of the community in that establishment. She had made friends there.

11. The respondent followed a consultation process which is evidenced by the documents put before the Tribunal and also by the oral evidence of the claimant and two witnesses for the respondent.

12. On 1 November 2023 the respondent held a meeting with the affected employees together to explain the proposed changes in their shifts and working hours. A slide presentation from this meeting is in the bundle. There were then two more individual meetings with the claimant (9/11 and 20/11) and a further "decision meeting" with her. Quite reasonably, the claimant also sent some emails with questions and comments outside of those meetings.

13. During those meetings the claimant's concerns were identified. Her concern about hours was partially met in that it was decided she could continue to have the benefit of paid lunch hours and her overall weekly hours would be 45, not 40 proposed at the start of the process.

14. The position of the respondent remained that they could not give the claimant the 50 hpw (hours per week) or equivalent total pay that she desired because that did not meet the respondent's business requirements. There is no evidence to suggest that the respondent's stance on that was a sham or made up. The Tribunal accepts that the respondent had a genuinely and reasonably held view that their business need necessitated a reduction in hpw of the claimant.

15. At the end of the consultation process, the respondent would not make any further changes to its proposals and the claimant would not agree to work on the new arrangements. She did not formally take voluntary redundancy nor did she apply for any other role with the respondent.

16. The respondent treated it has a compulsory redundancy. The claimant was paid the same redundancy payment and notice pay and, in all respects, treated the same as if it had been a voluntary redundancy.

17. There is no suggestion that the claimant was anything other than a good employee. She went to work at this bank every day, travelling some distance, first under the other company that had the contract to provide reception services and then as an employee of the respondent. The respondent has made no suggestion that the claimant's work performance was in any way a concern.

The Law

18. The claimant has brought a claim of unfair dismissal. Employment Rights Act 1996 (ERA) section 94 provides that an employee has the right to not to be unfairly dismissed.

19. Section 98(1) of ERA provides that it is for the employer to show the reason (or principal reason) for the dismissal and that it is one of the reasons listed in s. 98(2) or some other substantial reason of a kind as to justify the dismissal. Among the reasons listed in s. 98(2) is redundancy.

20. If the employer can show that the dismissal was for one the reasons referred in s. 98(2) to then, s. 98(4) provides that:

> …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.

21. ERA section 139 provides:

139 Redundancy

(1) 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.

(2) the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them).

22. Decisions of the Employment Appeal Tribunal have provided assistance on correctly applying these provisions. In Safeway Stores PLC v Burrell 1997 ICR 534 EAT, a three-stage test was set out in relation to s. 139(b). A tribunal must decide:

a. Was the employee dismissed?

b. if so, had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish? and

c. if so, was the dismissal of the employee caused wholly or mainly by the cessation or diminution?

23. There have been cases where an employee's shifts or other working conditions are changed. In Barnes v Gilmartin Associates EAT 825/97 a part-time secretary was dismissed and replaced with a full-time secretary. There was business need for a full-time secretary and the company could not afford to employ both. The EAT held that was not a redundancy because there was no diminution in the requirement for employees, although the dismissal was fair for another substantial reason (a business reorganisation).

24. The present case concerns the opposite – someone being asked to work fewer hours rather than being needed to work more. Situations where a person has been required to work reduced hours have been considered by the EAT. In Packman t/a Packman Lucas Associates v Fauchon 2012 ICR 1362, the EAT upheld an Employment Tribunal decision where the claimant

was dismissed for redundancy after refusing to accept reduced hours (where there was a drop in the need for employees to do the claimant's particular type of work). Where fewer people are needed to do the same amount of work, or where the number of people is stable but the amount of work is reduced, and dismissal results, both are redundancy.

Conclusions

25. The parties agreed, the Tribunal approved, a list of issues for the final hearing. These issues are:

    a. What was the reason or principal reason for dismissal?

    b. If the reason was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The Tribunal will usually decide, in particular, whether:

        i. The respondent adequately warned and consulted the claimant;

        ii. The respondent adopted a reasonable selection decision, including its approach to a selection pool;

        iii. The respondent took reasonable steps to find the claimant suitable alternative employment;

        iv. Dismissal was reasonable within the range of responses

26. The Tribunal's conclusions on each of these issues are set out below.

What was the reason or principal reason for dismissal?

27. The 50 hours per week role no longer fitted the respondent's business need. Their client (the bank) did not need as much reception cover as it had before. This is a s. 139(2) case. The business had a diminished need for employees to carry out work of the particular kind (reception work) at the place in question. The claimant was dismissed after she refused to accept the offer of working for fewer hours. Redundancy clearly was the reason for that dismissal. The three-stage test identified in Safeway (referred to above) is clearly met.

If the reason was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant.

28. The Tribunal considered each of the points listed under i to iv above.

The respondent adequately warned and consulted the claimant

29. There was a process that lasted about two months, involving four meetings and other correspondence. The proposal (for changes in pay and hours) was clearly identified at the start of the process. There was nothing that

could reasonably have been done to additionally warn or consult the claimant and she does not suggest that more meetings or anything of that sort that would have helped in some way.

30. The claimant was not given paid leave to take legal advice but said she was able in the two-month process to take advice about her position. Her evidence and the documents show she was well engaged and thinking about the details of what was being proposed.

31. The claimant clearly was adequately warned and consulted.

The respondent adopted a reasonable selection decision, including its approach to a selection pool

32. In this case, there were two affected employees. Both were in the same position of accepting the changes or being made redundant. The two employees were selected as they were the only two already working more than 40 hours per week. This was clearly a reasonable selection. There was no-one else whom it was suggested ought to have also been included for possible redundancy.

The respondent took reasonable steps to find the claimant suitable alternative employment

33. The respondent directed the claimant to jobs advertised on its website, of which there were a considerable number. There were roles titled “receptionist” and “guest service ambassador”. The pay was similar to what was being offered to the claimant at this role, although some may have had a shorter journey for her.

34. The claimant did not apply for any role. It is suggested that the respondent did not adequately explain to the claimant that she would have priority over external applicants. It was said to her she would have to go through a full recruitment process. It should have been spelled out to her that she would have priority but having priority does not mean she would not have to interviewed and assessed for suitability like any candidate.

35. She did not apply for any role so the question of having priority for a role she was suitable for over external suitable candidates did not arise in any practical sense. The claimant presents as an articulate, intelligent woman who can process information. She did not suggest she was not capable of looking through the jobs advertised. She did not suggest that she would need extra help (as some people might).

36. The Tribunal concludes that the respondent adopted a reasonable approach in inviting the claimant to look though the jobs it was advertising and make applications.

Dismissal was reasonable within the range of responses.

37. There was a business need, which the evidence suggests was genuine, to reduce the level of reception cover at the bank. There was a consultation

process and the claimant made it clear she would not remain for 45 hours per week. In those circumstances it is hard to see what else the respondent could have done. Their response was clearly reasonable. The respondent recognised that it was a redundancy and made the claimant a redundancy payment.

Conclusion

38. The claimant's claim does succeed. The legal ingredients of a claim for unfair dismissal are not present.

39. The Tribunal accepts that the claimant feels it is unfair that her job changed after eight years of good service to her workplace. But in law the respondent was entitled to make changes of the kind it wished to make. Employers are entitled to change their working arrangements subject to certain legal safeguards for employees. The end of the claimant's employment with the respondent was not unlawful and not unfair in law.

40. The claimant's claim for unfair dismissal must be dismissed.

Employment Judge A Hook
15 January 2025