



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs E Gridsale

**Respondent:** Association of British Dispensing Opticians

**Heard at:** Manchester (by CVP)

**On:** 14 and 15 November 2024

**Before:** Judge Callan

## **Representation**

Claimant: Mr. J Jenkins, counsel

Respondent: Mr. P. Keith, counsel

# RESERVED JUDGMENT

The claimant's claim of unfair dismissal is not well-founded and is dismissed.

# RESERVED REASONS

## **Introduction**

1. The claimant was employed between 2 July 2007 to 31 October 2023, latterly as Head of Professional Services and International Development when she alleges she was unfairly dismissed.

2. The respondent denies it unfairly dismissed the claimant. They say she was fairly dismissed by reason of redundancy.

## **The Issues**

3. The issues the Tribunal was to decide were:

3.1 Did the respondent act reasonably in all the circumstance in treating redundancy as a sufficient reason to dismiss the claimant? In particular:

- 3.1.1 did the respondent adequately warn the claimant and consult her?
- 3.1.2 did the respondent act reasonably in selecting her for redundancy?
- 3.1.3 did the respondent take reasonable steps to find alternative employment for her?
- 3.1.4 was dismissal within the range of reasonable responses?
- 4. If the claimant is found to have been unfairly dismissed, how much should she be awarded as compensation for her losses?

### **Evidence**

- 5. Dismissal having been admitted; the respondent called the following witnesses:  
  
Mr. N. Walsh, Head of Corporate Development  
Mr. A.J. Bridge, Chief Executive Officer and Company Secretary  
Mr. K.A. Gutsell, Director and Vice President
- 6. The claimant gave evidence on her own behalf.
- 7. I was also provided with a bundle of 385 pages plus appendices, and I read those documents referred to by the witnesses in addition to the claim and response forms.

### **Findings of fact**

- 8. The respondent (ABDO) is a company limited by guarantee and represents some 6,000 qualified dispensing opticians in the UK. Opticians are registered with and regulated by the General Optical Council. The remit of ABDO is to support and represent its members, enable their professional development, and advance the profession more generally.
- 9. Additionally, ABDO provides examinations leading to its Level 6 diploma in ophthalmic dispensing which is a qualification enabling such opticians to register as dispensing opticians. To take the Level 6 examinations, candidates must be student members of the respondent. The respondent has around 1,435 such students, some of whom are based overseas. The respondent has a separate education institute to provide its education activities, ABDO College.
- 10. The respondent's funding is largely derived from membership subscriptions and examination fees. At the time in question, it employed around 30 staff.
- 11. The International Opticians' Association (IOA) is an association whose purpose is to enhance the standing and development of the optical

profession around the world. It provides a forum for opticians and others to discuss matters which may impact on the development of the profession.

12. Since 2014, the claimant had undertaken international elements of ABDO's activities including supporting the work of the IOA. Two of her colleagues who worked in the respondent's communications team provided some support to the IOA by, for example, updating its website. However, the claimant's involvement with the IOA formed the main part of her work, along with some international development work excluding Malaysia and Australia. She worked from home throughout her employment.
13. The respondent raised the issue of a review of its international activities at a Board meeting on 20 October 2022. At the meeting, Mr. Bridge, as Head of Strategy, noted that there was a need to control costs. It was proposed that international activities would be reviewed to identify opportunities and what could be offered so as to have a sustainable future.
14. At the end of October 2022, Mr. Bridge had an urgent meeting with Mr. Walsh. He told Mr. Walsh he wanted him to develop a framework and be the lead in a review of the respondent's international activity so as to understand what activities were being done and to inform decisions about what ABDO should be doing. At the time, the respondent was forecasting a loss of £600,000 for the financial year 2023. Some of this had been rooted in the consequences the Covid pandemic had for the respondent's activities which had led to it selling some of its assets, including premises.
15. In January 2023, Mr. Bridge held meetings with his senior team to go through the budget to see where savings might be made.
16. On 26 January 2023, a paper was presented to the Board seeking views on the proposed review of ABDO's international activity and set out the terms of reference which were approved. By this time, the respondent was not filling staff vacancies and was taking other steps to manage its expenditure.
17. At the April 2023 Board meeting, the claimant presented an information paper in which she reported she had co-operated with Mr. Walsh in the review of international activities.
18. Mr. Walsh produced a framework document and invited views on it. The claimant sent a lengthy email to Mr. Walsh and others involved in the review on 5 June 2023. She suggested some changes in wording which were incorporated into the final version of the framework document for presentation to the Board.
19. In or about July 2023, the respondent suffered a cyber attack which necessitated the engagement of IT experts and forensic IT experts to deal with the data breach. This cost the organisation around £100,000, some of which was not covered by their cyber insurance.
20. The claimant attended part of the Board meeting on 20 July 2023 at which the International Review Report was considered. She delivered a

presentation about the IOA and was asked questions by Board members. Having considered all the information, the Board decided that it would no longer continue to support the International Opticians' Association (IOA) beyond the end of 2023. More broadly, taking into account its financial position, the respondent decided to refrain from the majority of its international activities for the foreseeable future.

21. Mr. Bridge had a Teams meeting with the claimant on 27 July 2023, following which he wrote to her on 28 July 2023 warning her that her role was at risk of redundancy and stating that consultation was to commence.
22. The first redundancy consultation meeting took place on 24 August 2023 with Mr. Bridge attending for the respondent, along with HR in support. The claimant was informed of her right to be accompanied and she was accompanied by her colleague Mr. Stringer. The claimant said that she had put her energies into support of dispensing opticians worldwide and to do so, had handed over some of her previous areas of responsibility. In respect of alternative employment, the claimant said that she had a preference for an outward role rather than an inward facing role and she "was up for anything" with the exception of policy work.
23. On 10 October 2023, a further consultation meeting was held with the same attendees using Microsoft Teams. The claimant raised issues about member engagement, and her qualifications. Mr. Bridge reiterated that support for the IOA was to cease due to the financial constraints the respondent was facing.
24. A final consultation meeting took place on 20 October 2023 which took place once more by Teams and the claimant was accompanied by Mr. Stringer. during which it was confirmed that the claimant's dismissal for redundancy would take effect on 31 October 2023 with payment in lieu of notice being made. Following the meeting, Mr. Bridge wrote to the claimant confirming her dismissal by reason of redundancy and reiterating that possible alternative roles had been considered but the respondent's financial position also had to be considered. Mr. Bridge stated that there were no current vacant roles which would provide suitable alternative employment for the claimant and he could not create a new role.
25. The claimant appealed the decision to dismiss her by letter dated 27 October 2023 stating that her dismissal was predetermined, and insufficient effort had been taken to find her an alternative role. The appeal hearing was held on 6 November 2023 with the claimant in attendance, accompanied by Mr. Stringer. Mr. Gutsell chaired the meeting and was supported by Ms Siers of HR. The hearing was not a rehearing but a consideration of the grounds of appeal. The claimant's case was that the review of the international activities was undertaken in order to manoeuvre her out of the organisation. Mr. Bridge had just looked at her salary in order to make savings and therefore the selection of her for redundancy was predetermined. In support of that contention, the claimant argued that Mr. Walsh did not have a solid international background to equip him to conduct the review. The review outcome was his interpretation and opinion. As to

insufficient effort being made to find her an alternative role, this was on the basis that a new position be created for her.

26. The claimant gave the example of the Head of Policy some ten years prior to her redundancy had taken on many of her committee roles and she took the role of “an ambassador for optics and ABDO on the international stage”.
27. The respondent recruited a project manager in February 2024. This was to manage the implementation of new apprenticeships which had been identified in December 2023. The post was for a fixed term from February 2024 to 1 November 2024.
28. I find that the witnesses were credible and gave their evidence straightforwardly.

### Relevant Legal Framework

29. Section 98 Employment Rights Act 1996 (ERA 1996) provides as follows:

*“(1) in determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –  
The reason (or, if more than one, the principal reason) for the dismissal; and  
that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2) A reason falls within this subsection if it –*

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*(c) Is that the employee was redundant...”*

*(4) 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...”*

30. Section 139 ERA sets out the definition of redundancy as follows:-

*“(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 out that business the 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.”*
31. In **Safeway Stores Plc v Burrell** [1997] ICR 523 EAT, it was held that the question for a Tribunal is not whether there has been a diminution in the work required to be done, rather it is whether there has been a diminution in the number of employees required to do the work. The manner in which a redundancy situation arises may be relevant to the fairness of a dismissal, but not to whether a redundancy situation exists in the first place. In **Berkeley Catering Ltd v Jackson** UKEAT/0074/20/LA, the employer admitted arranging matters so that its Director took over the claimant's duties in addition to his own duties. Those facts established a redundancy situation under section 139(1)(b). Bourne J said at para 20: A redundancy situation under section 139(1)(b) either exists or it does not. It is open to an employer to organise its affairs so that its requirement for employees to carry out particular work diminishes. If that occurs, the motive of the employer is irrelevant to the question of whether the redundancy situation exists.” Potentially, there may be the further question of whether redundancy was the reason for the dismissal or, as in the case of Berkeley, the dismissal was for a different reason (which was for personal reasons and not because it was necessitated by the redundancy).
32. The EAT in **Williams and others v Compair Maxam Ltd.** [1982] ICR 156 gave guidance in respect of the steps that a reasonable employer might be expected to follow when dismissing employees by reason of redundancy:
- 1 were the selection criteria used by the employer objectively chosen and fairly applied?
  - 2 were employees given as much warning as possible and consulted about the redundancy?
  - 3 was any suitable alternative employment considered?
33. However, in determining the question of reasonableness, it is not for the Tribunal to impose its standards and decide whether the employer should have behaved differently. Rather, the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted.
34. In respect of alternative employment, it is for the employee to say what job, or what kind of job, they believe was available and give evidence to the effect that they would have taken the job: **Virgin Media Ltd v Seddington and Eland** [2009] UKEAT/0539/08.

35. If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under s98(4) Employment Rights Act 1996. In doing so, the Tribunal applies a neutral burden of proof.

## Submissions

### Claimant

36. Mr. Jenkins, on behalf of the claimant, submitted that the procedures adopted by the respondent were outside the range of reasonable responses, applying the Sainsbury's v Hitt test at each stage of the procedure. It was submitted that the decision to dismiss was predetermined.
37. In support of the assertion that the decision was predetermined, Mr. Jenkins relied on what he said were the deficiencies in the evidence of Mr. Bridge, the decision maker, and Mr. Gutsell who gave evidence about the appeal hearing. This, said Mr. Jenkins, showed that the decision was predetermined from the outset. Mr. Jenkins also invited the Tribunal to find that Mr. Walsh was highly evasive. Although there were three meetings with the claimant, the reality was that it was all lip service.
38. He made the point that when things were being referred to the Board, withdrawal of the organisation from IOA was unclear. Mr. Jenkins said that at the end of Mr. Gutsell's evidence, he said that he knew everything he needed to by 23 July 2023.
39. Mr. Jenkins submitted that nothing was done in over 7 weeks from the dismissal to the appeal. He invited me to find that the appeal was a sham. The dismissal, and in particular the dismissal of the appeal, was predetermined.
40. In conclusion, Mr. Jenkins submitted that there were a range of different failures resulting in different degrees of unfairness which would affect the application of *Polkey*.

### Respondent

41. Mr. Keith submitted that the submissions on behalf of the claimant elided various matters. The claimant was looking backwards. It was clear certain activities were curtailed and whereas for practical purposes, the claimant's job was on the line this was not predetermined.
42. It was submitted that all parts of the process, including the international review, were fair. The terms of reference of the review went to the Board which was unlikely if the plan was to get rid of the claimant. Consultation took place at a formative stage. A business decision had to be taken before it could be determined who might be made redundant and whether

redundancies could be avoided. In any event, the claimant was included in the business decision.

43. As to Mr. Gutsell stating he knew everything by July 2023 and therefore the claimant's redundancy was predetermined, she didn't say anything in the appeal about what had changed. The ABDO withdrew from the IOA and the international duties therefore ceased/diminished. The claimant herself in her statement set out that over the years a number of her original duties had been redistributed to other staff. She gave the example of the Head of Policy some ten years prior to her redundancy had taken on many of her committee roles and she took the role of "an ambassador for optics and ABDO on the international stage".
44. Mr. Keith submitted that as to the notion of a "pool", the claimant had accepted that almost her entire role had ceased and what remained had been absorbed by other staff. With regard to consultation, the claimant believed that an alternative role should have been created for her. As to the Project Management role, this was a temporary role anticipated to be of 9 months duration and for which authority to hire into it was only given two months after the claimant's dismissal. Mr. Bridge's evidence about bringing the claimant back to fill alternative employment would have to have been justified on a financial basis, about which he was sceptical of that being feasible.

### **Discussion and conclusions**

45. I have carefully considered the facts set out above and applied the relevant legal principles. The following conclusions were reached on the balance of probabilities having considered the evidence before me and taking into account submissions made by both Mr. Jenkins on behalf of the claimant and Mr. Keith on behalf of the respondent.

#### **Consultation**

46. As outlined above, the claimant was involved in Mr. Walsh's review of the international activities of the respondent prior to the April 2023 Board meeting. She attended part of the Board meeting on 20 July 2023 and answered questions about the work of the IOA. It was at this meeting that the Board considered whether to continue to support the IOA and accepted the proposal that it should not do so and should curtail a number of its international activities for the foreseeable future.
47. Following the Board's decision, the claimant was formally informed that her job was at risk and consultation meetings were held. She was accompanied at each meeting by her work colleague, Mr. Stringer. Lengthy discussions were held in respect of her work and what alternative work might be available, the majority of which was in respect of roles the claimant believed could be created.
48. The claimant criticised the consultation process as being merely "lip service" but there was little evidence adduced by the claimant to support that



contention, other than her natural disappointment that the respondent was curtailing its international activities and in particular withdrawing its support of the IOA which she disagreed with (although she said she accepted the Board's decision).

#### Selection

49. Once the respondent decided that it needed to refocus its activities away from supporting the IOA and other aspects of its international work, this decision meant that the need for employees to do that work had diminished. The claimant was largely engaged on that work – out of the 30 or so employees who were employed by the respondent, she was the only one who was doing that work substantially, if not exclusively, for the whole of her working time. This was not a selection case and there was no pool of employees which the respondent should have considered. As the claimant said in evidence, getting rid of the IOA work “was an elegant way to make savings of my salary”. In cross-examination, the claimant accepted that the only two other employees who were candidates to include in a pool for selection were Ms. Chitty and Ms. Smith. Further, she accepted that their work in supporting the IOA was not the majority of their roles. It was her job which was at risk of redundancy, and no-one else.
50. It follows that the selection of the claimant's role for redundancy was within the range of reasonable responses.

#### Alternative employment

51. The claimant did not make a positive case that she would have taken the Project Manager post had it been offered, but rather she had general transferrable skills which meant that it was work she could have done. There was little evidence to support a finding that it would have been suitable alternative employment for her and I find that it was within the range of reasonable responses not to offer the claimant the post which was approved by the Board in February 2024, some 3 to 4 months after the claimant had finished performing her duties on 31 October 2023, having not been required to work her notice which expired on 31 December 2023.
52. The claimant's case was largely centred on an alleged failure by the respondent to create an alternative post for her, given her wealth of experience. There is no duty on an employer to create a post for a redundant employee, and given the financial circumstances the respondent faced, I reject the claimant's contention that they should have done so. It was clearly within the range of reasonable responses for the employer to reject that suggestion.

#### Procedural fairness

53. The claimant was offered an appeal which was not in the form of a rehearing, but an opportunity to consider her particular grounds of appeal.
54. Mr. Gutsell heard the appeal and the claimant was supported by her colleague, Mr. Stringer. The claimant set out the central points of her appeal and these were discussed in the hearing. The evidence supports a finding

that the claimant's appeal was fully considered and rejected having heard her arguments as to why the decision to dismiss should be overturned.

### **Conclusion**

55. Having heard the evidence, it was clear that despite saying she accepted the Board's decision, the claimant was of the view that the business decision to remove her role was made in some way to target her. However, the question for the Tribunal is whether the decision to make redundancies was genuine. If so, the Tribunal has to consider whether the dismissal was fair or unfair in accordance with the law set out above. In this case the conclusion is that the redundancy was genuine and the claimant was not unfairly dismissed.

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**Judge Callan**

Date 11 March 2025

JUDGMENT SENT TO THE PARTIES ON  
28 March 2025

FOR THE TRIBUNAL OFFICE

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