



EMPLOYMENT TRIBUNALS

Claimant: Ms P Barnett

Respondent: FCMS (NW) LIMITED

Heard at: Leeds via CVP

On: 9th April 2025

Before: Employment Judge Moxon

Representation

Claimant: In person

Respondent: Mr Searle, Counsel

JUDGMENT having been sent to the parties on 9th April 2025 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

These reasons are supplied at the request of the Respondent.

Introduction

1. The Claimant was employed full-time by the Respondent from 4th February 2019 until his redundancy dismissal effective 30th June 2024.
2. By a claim form, presented on 29th August 2024, the Claimant claims that he was dismissed unfairly. He stated that he was told that his responsibilities were to be absorbed within a new structure, but that someone was then employed on a 24-hour contract to undertake elements of his role. He argues within the claim that this indicates that his role was essential and he should have been offered the contract.

3. The Respondent filed a response resisting the claim and contends that the Claimant had been offered the opportunity to apply for alternative roles but had refused. The person working 24-hours a week was on temporary secondment.

Background

4. The Claimant was employed by the Respondent from 25th January 2019 and undertook the role of Business and Service Quality Lead from 1st June 2022.
5. His role was changed in September 2023 and he was not given a new job description. However, he understood his duties and emailed a summary to the Respondent on 22nd February 2024, which included eleven duties:
 - a. Meds Management – database, stock, replenishment, ordering, quarterly counts, monthly checks, cars / emergency drugs
 - b. Prescriptions – general scripts, personal prescriptions, ordering / PCSE
 - c. Ordering – stationary, water, refreshments consumables, ad hoc
 - d. Meetings – health and safety
 - e. Audits / reports – antibiotic, opioid, deep dives, H&S baseline audit, walk arounds, ward admissions
 - f. Cross Charges – SDHC meds, wound care costs, complex lives
 - g. Finance – Invoice coding
 - h. IT – Ordering of equipment, ad-hoc fixes
 - i. Smart cards – Ordering, setup / unlocking, maintenance
 - j. Adastra – setting up staff, password resets, pulling reports
 - k. Sesui – Password resets
6. There is no dispute that on 1st February 2024 the Respondent notified staff of an organisational restructure and the likelihood of potential redundancies. This information was further communicated to the Claimant within a letter on the same date from Jade Clark, Head of People and Wellbeing. The letter detailed the reasons for the restructure; that his role would no longer exist in the new structure; that he was therefore at risk of redundancy; that he would be invited to one-to-one consultation; and that he would be informed of new roles within the organisation for which he could apply.

7. The one-to-one consultation was arranged for 12th February 2024 but was moved at the Claimant's request and was held on 14th February 2024.
8. Thereafter, the Claimant was sent job descriptions for alternative roles within the organisation. These included roles of Clinical Assessment & Treatment Lead; Fylde & Wear Place Operational Manager; Blackpool Place Operational Manager; Clinical Assessment Service Operational Manager; Dental Services Operational Manager; North, East and West Lancashire Place Operational Manager; Information Security Lead; Blackpool Place Operational Specialist; Clinical Assessment Service Operational Specialist; Dental Services Operational Specialist; SDHC and ECP Operational Specialist; DRI UTC Operational Specialist; East and West Lancashire Place Operational Specialist; Fylde and Wyre Extended Access and Wound Care Operational Specialist; Fleetwood UTC Operational Specialist; Morecambe Bay Place Operational Specialist; NHS111 / 0300 Services Operational Specialist; NHS111 / 0300 Training Operational Specialist; Remote Monitoring & Treatment Operational Specialist. The job descripts include non-exhaustive duties and responsibilities for the roles.
9. The Claimant acknowledged receipt by email on 19th February 2024, in which he asked for details about his notice period if he were to take voluntary redundancy.
10. By email the following day the Claimant told Ms Clark:

"...after reviewing the Job Descriptions following the consultation, I have decided I will not be applying for any of the new roles. In order to get this process right you need the right people in the right positions, and unfortunately the new roles are not for me."

11. On 22nd February 2024, the Claimant was invited, by email, to a further meeting.
12. By email dated 8th March 2024 the Claimant asked Ms Clark:

"Any further thoughts / updates on my request for potential gardening leave / payment in lieu of notice?"

13. By letter, dated 19th March 2024, the Respondent confirmed to the Claimant that he had chosen to take voluntary redundancy and that his redundancy package would be a statutory payment of £2,990 with an additional £2,500. His last day of employment would be 30th June 2024.

14. By email, dated 27th March 2024, the Claimant was sent job descriptions for additional roles that had become available.
15. Within an internal email, dated 10th May 2024, which was not sent to the Claimant, it detailed that someone, whose name is redacted *"...has asked one of the HCA's to pick up the meds management tasks so there was some cover when Paul and [redacted] leave, I'm not sure it's a specific role or if it's even a permanent solution"*.
16. By email dated 15th May 2024 the Claimant asked for an update on his request for gardening leave as *"I'm not really doing anything / achieving anything just keeping things ticking over. I've provided a list of jobs/tasks I do that will need picking up, so I'm not really feeling needed"*. The following day he sent an email saying: *"I'm not doing anything now just turning up to collect a wage...."*
17. The Claimant was permitted to go on gardening leave, for the remaining five weeks of his notice, on 23rd May 2024. On that day, he sent an email of thanks to Ms Clark and others for the support received.
18. By email dated 5th July 2024, the Claimant submitted a formal grievance:

"I initially raised concerns on where elements of my role would fall under the new structure following my role becoming redundant, I was informed it would be absorbed.

However with the work still there, a new position has been created to pick up my roles and not absorbed within the proposed structure as stated.

I feel this is unfair, being told the role was being made redundant, then being informed a member of staff had been offered a 24 hour a week position to pick up elements of my role.

I was also initially asked to share my knowledge / train the staff member in question prior to my leave which again is not right, and not within the structure proposed to say my role had become redundant and it wasn't being replaced."

I'm not looking for reinstatement of employment, but I am keen to take the matter forward and seek compensation as I feel that the whole process has been mismanaged and unfair."

19. A grievance hearing was held on 15th July 2024, chaired by Kelly Mason, Director of Finance, and in the presence of Sarah Hart, Director of People & Wellbeing.
20. Notes of the hearing have been provided, the accuracy of which have not been challenged by the Claimant. They record that the Claimant detailed that his position was made redundant but someone "on 24 hours" had "picked up" his role. He is annoyed as he was required to train that person and share his knowledge. The person is saying that she is the "new Paul". He believes he could have undertaken that role rather than being made redundant.
21. Internal emails were sent during the investigation with an email, dated 15th July 2024, to and from people whose identities have been redacted, saying: *"If my understanding is correct then his issue is with a HCA that is temporarily picking up the meds management in the interim as we hadn't recruited to all the posts and this needed actioning"*.
22. Kelly Mason sent the Claimant an outcome letter by email on 22nd July 2024. His grievance was dismissed:

"In your e-mail you stated that you felt the redundancy process was unfair and that you felt that redundancy did not apply as elements of your role still existed and were replaced by another role. On investigating the matter I have found that the roles that were being recruited for were all presented to you as alternative roles that you could apply for and that you declined to do so and accepted voluntary redundancy. As not all of the roles were filled before those taking redundancy were leaving the business, to ensure a continuation of a safe service there was an interim solution to the some of the tasks that you had undertaken previously by backfilling an HCA in the service to cover these tasks.

As I am sure you can appreciate, in a restructure the tasks and roles pre restructure would still need to be a carried out by the new roles in the new structure and I am satisfied that you were offered the opportunity to apply for all suitable alternative roles, which you declined. We were also able to facilitate your request to leave 5 weeks before the end of your notice period by ensuring tasks required to keep our patients safe, such as Medicines Management, were covered by another member of the team until the new roles had all been recruited to. I do appreciate what a

difficult time the restructure and redundancy will have been for you and I am truly sorry that you feel there has been unfairness in this. I also appreciate that that you may have felt aggrieved to be asked to train someone else in some of the tasks that were previously part of your role, you did share that this training didn't actually take place.

I am satisfied that the process was fair.

Again, even though a role has been made redundant, some/all of the tasks would still need completing in the new role structure and following investigations I am satisfied that the role has indeed been made redundant and not replaced.

Therefore the outcome of your grievance is that the grievance is not upheld."

23. The Claimant was given the right to appeal, which he exercised. He emailed to state that he believed that none of the roles he had been offered were suitable and that the role undertaken by the HCA had not been advertised or offered to him. He said that he had been replaced by the HCA who was doing his job.
24. An appeal hearing was held on 25th July 2024, chaired by Suzy Layton, Chief Executive Officer, and in the presence of Sarah Hart, Director of People & Wellbeing.
25. The appeal was dismissed by letter from Suzy Layton, dated 1st August 2024, in which she states:

"Thank you for asking me to hear your Appeal. Following our meeting you confirmed that your reason for the Appeal is as follows:

You don't think your job role should have been made redundant because a key task i.e. Meds management is still being done by other people and was not clearly bullet pointed in a job description that you were offered as an alternative employment.

As part of my review of your hearing outcome I have looked at various elements of your position, prior to you taking redundancy, as well as the process.

My observations on your position were as follows:

1. *Your job was Service Lead for Business and Quality Improvement*
2. *You were paid £31,175 per year*
3. *You hadn't had an up-to-date Job Description from when your evolving role was separated out from the Governance Structure. (approximately a year)*
4. *You line managed the Service Delivery Co-ordinator for Quality (Adeeba) – her Job Description included the following*
 - *Management of medications across the services and work with the admin staff to develop necessary reporting around this*
 - *Complete ordering of required stock when necessary, escalating any ordering issues to service lead and clinical manager where necessary to ensure service can still run effectively.*
 - *Ensure all levels of consumables, stock, drugs working with the wound care staff and Infection control lead to assist with ordering from external providers.*
 - *Ensure cross charges including clinical governance invoices are processed in a timely manner.*
 - *Become a health and safety champion for the service, linking with Risk, HR Teams and NHS Property services to ensure high standards of health and safety are maintained through the buildings falling in line with NHS and FCMS policies.*
5. *Many of the bullet points in 4 are also on the list that you gave Jade Clark that documented your role.*
6. *Many of the tasks you listed are directly related into operations of the services*
7. *None of the tasks you listed included Business or Quality Improvement processes.*
8. *During your negotiation for gardening leave you repeatedly expressed the fact that you didn't have enough work to do*

My observations around process were:

1. *There were 45 people put at risk of redundancy in the first large scale restructure that FCMS had had in 30 years. The reasons for the restructure were laid out to you in a letter on the 19th March these included:*

FCMS believes this restructure is necessary for the longevity and sustainability of the organisation; it will also aid in achieving the following goals:

- a. To deliver services both at scale and at place.*
 - b. To improve our ability to pay staff appropriately (our lower paid staff are currently on National living wage).*
 - c. To reduce the impact of non-inflationary contract uplifts and the impact of rising living costs.*
- 2. The Job Descriptions of both new Operational Specialist roles had bullet points that generically included many of your tasks. i.e “To be responsible for the day-to-day support and management of the Doncaster SDHC and ECP services and teams.” The JDs were purposely not a “To-Do” list of tasks, that isn’t appropriate for the complexity of the services that we are providing and our aspirations as an organisation.*
- 3. The HCA post that you made reference too is a temporary secondment until October to help with the transition from the old structure to the new structure – the post is 24 hours a week, at a HCA rate of pay and is attached to Kat and governance. This does contribute to some of the medicine restocking processes although this is not the sole purpose of the secondment.*

My conclusions are that

- 1. As part of the large restructure it was perfectly acceptable to put your job at risk of redundancy. Asking for volunteers is part of the process. The fact that one or more of your “tasks” are still being done isn’t a reason for the role to remain.*
- 2. A Lead role should not be purely tasked based*
- 3. Both new Operational Specialist job descriptions had purposefully generic lines around being responsible for day to day support.*
- 4. You voluntarily accepted redundancy very early on in the process, asked for and accepted paid gardening leave and repeatedly underlined the fact that you didn’t have enough work to do.*
- 5. The process and the reasoning for your inclusion both aligned to the overall organisations goals for the restructure.*
- 6. Temporarily seconding a part time Health Care Assistant to support the transition while the new structure settles down is a sensible move.*

7. We acknowledged that this was a tough process for everyone and we allocated an extra pot of money over and above statutory redundancy - this almost doubled the amount of money that you accepted.

I therefore agree with the original hearing and your Appeal is not upheld. I hope that you manage to secure work soon."

Issues

26. There had been no preliminary hearing to identify the issues in the claim, and so I sought to do so at the outset.
27. The Claimant initially stated that his role was not redundant as it was undertaken by another. Further, he claimed that the job descriptions for alternative roles had been insufficiently detailed.
28. However, as the hearing progressed, he accepted that his role had been made redundant and that the only unfairness being pursued was the fact that another person commenced some of his responsibilities on a 24-hour contract which had not been offered to the Claimant. He argued that, as some of his roles had to be undertaken by another, he should have been retained until a permanent replacement employed.

Evidence

29. I was provided with a 299-page bundle which the parties confirmed included all of the documentary evidence being relied upon. The Claimant also relied upon his witness statement and oral evidence. The Respondent relied upon witness statements and oral evidence from Sarah Hart, Kelly Mason and Suzy Layton.
30. The hearing was conducted remotely via CVP platform. The technology worked without difficulty and no prejudice was caused to either party.
31. The Claimant was unrepresented and so was given guidance about procedure. It was explained to him that he could question the Respondent's witnesses if there is any aspect of their evidence he wished to challenge. He had only few questions to ask and did not challenge their factual accounts.

32. I gave my judgment and reasons orally at conclusion of the hearing.

Evidence at the hearing

33. The Claimant relied upon a witness statement, dated 17th March 2025, in which he detailed that he was informed that elements of his role would be absorbed in the new structure, but in May 2024 he was told that a member of staff had been offered a 24 hour a week position to undertake elements of his role. He therefore raised a grievance “...*following the position being created to pick up my role and not absorbed within the proposed structure as stated*”.

34. Within his oral evidence, he stated that he had not applied for any of the roles of which he was sent job descriptions as none of them included elements of his role. He said that there was good communication with management and he could have approached them if he had any queries about the roles advertised. He confirmed that he accepted that his position had been made redundant and he had “*no issues with the redundancy process*” but thought it unfair that the Respondent had “..*brought in someone on a 24-hour to pick up my role*”. He stated that he was told that the position was “*backfill*” and so he should have been offered the role. He confirmed that he does not challenge the Respondent’s account that the role was a secondment and believes that he should have been asked to “*stick around*”.

35. The Claimant accepted that there had been a thorough grievance process where he had attended meetings and been listened to by managers.

36. In answer to questions from the Tribunal the Claimant stated that HCA stands for Healthcare Assistant. The HCA was already employed by the Respondent and had not been recruited specifically to undertake some of his duties. The element of his role that was undertaken by the HCA as backfill was “*meds management*”. He stated that this was one of his eleven duties and had taken 15-20% of his full-time hours, and so would probably take about 25% of the HCA’s 24-hour contract. He does not know if she was undertaking any of the remaining ten tasks or what she was doing for the remaining 75% of her hours, but accepts that she would not have been doing everything that he had been doing. His hourly rate was more than that of a HCA. He would not have accepted the role if offered. He was asked what the Respondent should have done differently and replied: “*Be open and clear and offer the position to those doing redundancy*”.

37. The Respondent relied upon evidence from Mrs Hart, Mrs Mason and Mrs Layton.

38. Mrs Hart provided a witness statement, dated 10th March 2025, in which she detailed the factual background. She explained in oral evidence that the HCA was called Kennedy Moss and was already an employee. Ms Moss undertook a “*blended role*” which included her normal duties in addition to medication management that had been undertaken previously by the Claimant.

39. Mrs Mason provided an undated witness statement. She detailed how she had chaired the grievance hearing:

“I felt that the Claimant’s role had been made redundant and not replaced even though some of the tasks still needed completing. I explained that as an interim measure there were some tasks handed over to another team member whilst the restructure was being completed and the new roles filled”

40. Mrs Layton provided an undated witness statement. She detailed how she had chaired the appeal hearing:

“Along with my other observations, I found that many of the Claimant’s tasks that he identified as part of his day-to-day work were duplicated in one of his direct reports duties and meds management was a small part of his overall responsibility.

I said that there had been forty-five positions at risk of redundancy due to the Respondent’s restructure and explained the same. I concluded that it had been acceptable to put the Claimant’s job at risk of redundancy and provided my reasons. The Claimant had accepted voluntary redundancy early in the redundancy process and he had said that he did not have enough work to undertake. I acknowledged that the Claimant had received almost double the statutory redundancy money. I concluded that the Claimant’s grievance appeal was not upheld”

41. In oral evidence, she said that 45 people were put at risk of redundancy and that 17 had taken voluntary redundancy.

42. The Claimant was given the opportunity to challenge Mrs Layton in regards to her appeal findings, as outlined at paragraph 26 above. She confirmed in answer to his questions that there were at least two operations roles for which he was provided the job descriptions

and of which he could have applied. She stated that the Respondent is funded by the public and could not afford to have staff that were not productive. The Claimant had himself stated, by email, that he did not have enough work to fill his time.

43. Upon conclusion of all of the evidence the Claimant confirmed that he accepted that there was a genuine redundancy situation and that his only issue was that the HCA had been put in position to undertake his role.

44. In closing submissions, Mr Searle noted that the Claimant had not taken issue with the redundancy process and that the evidence shows that the process was fair. There is no dispute that there was a genuine redundancy exercise, borne out of a desire by the Respondent to restructure for economic reasons. There is evidence of a fair consultation exercise. The Claimant was notified of alternative jobs, but chose not to apply. He has said that he would not have accepted the HCA role if offered.

45. In closing submissions, the Claimant confirmed that had it not been for the HCA being asked to undertake the “*meds management*” duties, he would not have brought a claim to the Employment Tribunal. He believes that he should have been retained until someone had been identified to undertake his duties.

The law

46. The Claimant accepts that he was dismissed by redundancy, which is a potentially fair reason as provided by sections 98(1) and (2)(c) of the Employment Rights Act 1996.

47. Section 139(a) defines redundancy as follows:

“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)....

(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.”

48. Section 98(4) provides that the determination of the question whether a dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend 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 shall be determined in accordance with equity and the substantial merits of the case.
49. The question is whether the Respondent's conduct fell within the band of reasonable responses, not whether the Tribunal would have made a different decision.
50. As detailed by the Employment Appeal Tribunal in *Williams and others v Compare Maxam Limited* [1982] IRLR 83, reasonable employers will seek to act in accordance with various principles, which include giving as much warning as possible; ensuring a fair selection criterion; and offering alternative work where available.
51. As confirmed at paragraph 24 of *R v British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price* [1994] IRLR 72:

"It is axiomatic that the process of consultation is not one in which the consultor is obliged to adopt any or all of the views expressed by the person or body with whom he is consulting. I would respectively adopt the test proposed by Hodgson J in R v Gwent County Council ex parte Bryant ... when he said:

Fair consultation means:

- (a) consultation when the proposals are still at a formative stage;*
- (b) adequate information on which to respond;*
- (c) adequate time in which to respond;*
- (d) conscientious consideration by an authority of the response to consultation".*

52. Accepting voluntary redundancy does not preclude a person from claiming unfair dismissal, as confirmed by the Employment Appeal Tribunal in *White v HC-ONE Oval Ltd* [2022] EAT 56.

Findings of fact

53. The Claim is extremely narrow.

54. The Claimant accepts that there was a genuine and reasonable redundancy situation, namely organisational restructure, and that this meant that his duties would be absorbed within the new structure. He accepts that his role was redundant.
55. The Respondent has therefore shown a potentially fair reason for dismissal.
56. The Claimant makes no complaint of the redundancy process, whether that be in relation to consultation or selection. He accepts that 1-1 consultation was undertaken and he was notified of alternative jobs within the organization. Whilst he states that the job descriptions were not adequately clear, I have read with care those descriptions and do not agree, as they contain detailed lists of inexhaustive duties and responsibilities. In any event, he confirmed that he could have asked for more detail. It is notable that the Respondent continued to send him job descriptions even after he had decided to apply for voluntary redundancy, which was granted on favourable terms. He was granted gardening leave upon request.
57. As such, I am satisfied that the redundancy process was fair throughout, as accepted by the Claimant during the hearing.
58. Similarly, the Claimant does not challenge the fairness of the subsequent grievance and grievance appeal procedures undertaken and accepted that he was listened to by managers during meetings. During the Tribunal hearing, he did not challenge the conclusions outlined within Mrs Lawton's appeal decision.
59. The claim for unfair dismissal was maintained in relation to one discrete area: namely the fact that Kennedy Moss, a part time Healthcare Assistant, commenced undertaking one of the Claimant's duties, namely "*meds management*", after he had agreed to voluntary redundancy.
60. The Claimant contends that he should have been permitted to retain his employment rather than the Respondent utilising Ms Moss and until all the aspects of his role had been absorbed within the restructure. He says that, to that extent, he was treated unfairly.
61. That argument has no merit.
62. On the Claimant's own evidence, he had eleven broad duties, as outlined within a table that he prepared during the redundancy process, as outlined at paragraph 5, above. One of those duties was "*meds management*" that took approximately 15-20% of his full-time hours.

63. He understands that is the only one of his responsibilities taken over by Ms Moss and that it would constitute approximately 25% of her part time working hours. He does not believe that she undertook any of his other duties and he does not challenge the Respondent's evidence that she blended the meds management with her previous duties. It is accepted that she was a current employee and so was not recruited externally to take over meds management. It is accepted that she was "*backfilling*" whilst outstanding recruitment was completed pursuant to the restructure.
64. It has been accepted that Miss Moss worked part time as opposed to Claimant who worked full time and that her hourly rate was less than Claimant's. He would have rejected her role if offered it.
65. It therefore follows that to retain Claimant on the full time, better paid contract, rather than utilise Miss Moss, merely to continue to undertake one of his 11 duties, would have been contrary to the Respondent's financial interest. In any event, Miss Moss was not solely undertaking the meds management, but was also undertaking her own responsibilities that were separate and distinct from the Claimant's role.
66. As such, there is no unfairness. The redundancy was not due to the Claimant's duties not being required but because they were being absorbed elsewhere as part of an organisation restructure. As such, there is nothing unfair with the fact that one of those duties had to be undertaken temporarily by another, who combined that with their own responsibilities, whilst the new structure was fully operational.
67. The claim is therefore dismissed.

Employment Judge Moxon

Date: 24th April 2025