



EMPLOYMENT TRIBUNALS

Claimant: Mr M Birch

Respondent: AMC Installations Ltd

Heard at: Watford **On:** 22 and 23 June 2026

Before: Employment Judge Bartlett

Representation

Claimant: in person

Respondent: Mr Curtis, of Counsel

JUDGMENT

1. The claimant's claims for unfair dismissal are dismissed.

REASONS

Background

1. The claimant brought claims of unfair dismissal in an ET1 submitted on 19 February 2025. The claimant was employed as a plasterer at the respondent from 11 April 2022 until his dismissal on 4 December 2024. It was not disputed that there was a dismissal.
2. The respondent submits that there was a fair reason for dismissal namely, redundancy or some other substantial reasons (SOSR) namely business re-organisation.
3. The claimant's claim is that on 18 October 2024 he was in a vehicle accident when he was travelling for work with two other staff members. He suffered injuries of such seriousness that he took a period of sick leave from work. He submits that when he was off sick the respondent attempted to recruit another individual into his role. He does not accept that there was a fair reason for dismissal and he submits that the dismissal process was unfair in that there was a 2 day consultation and alternatives were not considered.
4. The respondent submits that they were looking to hire a second plasterer whilst the claimant was off sick and not to replace the claimant. This process was halted because the business was not doing well and there were significant profitability concerns which led to the redundancy situation. The respondent says that as evidence of the redundancy

there were other steps taken to reduce costs which included an overtime ban. The business ultimately decided to reorganise the way that plastering work was done and to outsource it to subcontractors. It was recognised that the claimant did carry out some other duties such as general labouring when there was insufficient plastering work but this was not considered cost effective as the claimant was paid at a higher rate as a plasterer than as a general labourer. It was submitted that the claimant was in a pool of 1 as he was the only plasterer in the workplace.

The issues

1. What was the reason for dismissal where the respondent asserts that it was a reason related to redundancy or some other substantial reason?
2. Did the respondent act reasonably in all the circumstances in treating the alleged redundancy as a sufficient reason to dismiss the claimant. The tribunal will consider:
 - 2.1. was there a genuine redundancy situation?
 - 2.2. if so, was the claimant's dismissal attributable to that redundancy?
 - 2.3. did the respondent adequately warn, and consult with, the claimant?
 - 2.4. did the respondent adopt reasonable selection criteria, including its approach to any selection pool?
 - 2.5. did the respondent take reasonable steps to find the claimant suitable alternative employment?
3. Was the decision to dismiss a fair decision? That is was it within the range of reasonable responses open to a reasonable employer when faced with the facts at the material time?

The hearing

5. Mr. Green appeared as a witness for the respondent and Mr Birch appeared as a witness for himself. They were both asked questions in cross examination.

The Law

6. S98 of the Employment Rights Act 1996 sets out the legal test which must be applied to determine whether or not a dismissal is fair:

“General.

(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—

(a)the reason (or, if more than one, the principal reason) for the dismissal, and

(b)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—

(a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b)relates to the conduct of the employee,

(c)is that the employee was redundant, or

(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3)In subsection (2)(a)—

(a)“capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b)“qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) 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.”

7. Section 139 of the ERA contains the definition of ‘redundancy’ and provides 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 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“

8. In *Williams and ors v Compair Maxam Ltd* [1982] ICR 156, the EAT set out a number of steps that a reasonable employer might be expected to follow when dismissing employees

by reason of redundancy, namely:

- 8.1. Were the selection criteria used by the employer objectively chosen and fairly applied;
 - 8.2. Were employees warned and consulted about the redundancy;
 - 8.3. If there is a union, was the union consulted; and
 - 8.4. Was there any alternative work available?
9. The EAT stressed, however, that when the Tribunal decides whether the dismissals were fair or not, it was not for the Tribunal to impose its standards and decide whether the employer should have acted differently. Rather, the Tribunal should ask the question 'did the dismissal lay within the range of conduct which a reasonable employer could have adopted'?
10. *Safeways Stores plc v Burrell* [1997] ICR 523 and *Murray v Foyle Meats Ltd* [1999] ICR 827 show that there are three tests to be considered when deciding whether redundancy was the reason for dismissal under section 98(2) of the Act.
- 10.1. The first is to ask whether the employee has been dismissed.
 - 10.2. The second is to ask whether the requirements of the business for employees to carry out work of a particular kind have diminished.
 - 10.3. The third is to ask whether the dismissal is attributable, wholly or mainly, to that state of affairs.
11. The case of *Polkey v AE Dayton Services Ltd* [1988] ICR 142 established the importance of procedural fairness in determining whether the dismissal was fair or unfair under section 98(4) of the ERA. In that case the House of Lords decided that a failure to follow a fair procedure was likely to render a dismissal unfair unless, in exceptional cases the employer could reasonably have concluded that doing so would have been futile. Lord Bridge concluded, in his judgment, that *"the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by deployment within his own organisation."*
12. Procedural fairness will, therefore, make a redundancy dismissal unfair, but the question of whether the employee would have been dismissed even if a fair procedure has been followed will be relevant to the question of compensation payable to the claimant.
13. In *Langston v Cranfield University* [1998] IRLR 172 the Employment Appeal Tribunal held that it was implicit, unless the parties had agreed otherwise, that an unfair redundancy dismissal claim incorporates unfair selection, lack of consultation and failure to seek alternative employment on the part of the employer, even if those specific issues are not raised before the employment tribunal. The Tribunal must, therefore, consider each of those issues when reaching its decision on the fairness of a redundancy dismissal.

Findings of fact

14. The respondent is a small business with approximately 20-25 employees. It constructs garden rooms, annexes and exhibit installations.
15. On 18 October 2024 the claimant was travelling on work business with several other colleagues when that vehicle was involved in an accident. The claimant was the only individual in the vehicle who suffered injuries and it resulted in him being off sick from work from 18 October 2024 until 26 November 2024. During the time of his sickness absence the claimant received statutory sick pay and he sent in his sick notes to the respondent.
16. During the claimant's absence Mr. Green said that the company became aware of the pressure resulting from only having one plasterer in the team and they started the process to recruit a second plasterer. This resulted in an offer of a full time salaried contract being

made to a Mr Coote with a starting date of 2 December 2024. Mr Coote accepted this role. This was not disputed.

17. When the claimant returned from sick leave on 26 November 2024 he was informed about the above and told that he would be starting a job on 2 December 2024 with Mr Coote.
18. Around this time the company was looking to recruit a salesperson and that process continued with a second interview on 27 November 2024.
19. However, on 28 November 2024 the claimant was called into a meeting and told this was a meeting to put him at risk of redundancy. The claimant was taken by surprise.
20. I am not sure that the claimant disputed that Mr Coote was at any point employed by the respondent. The respondent's position was that they withdrew the offer of employment and Mr Coote was not at any time an employee. Instead, following the claimant's redundancy Mr Coote was offered some work as a subcontractor.
21. The claimant expressed difficulty in accepting this because he had seen written evidence about the offer of the employment to Mr Coote but he had not seen any written documentation to show that the offer was withdrawn. No such written evidence was provided to the Employment Tribunal. Instead, the respondent relied on invoices from Mr Coote which covered the period December 2024 to February 2025 which set out that he invoiced the respondent for a total of 15 days work over that period.
22. It is a little odd not to have any record of the withdrawal of the offer of employment to Mr Coote given there is written documentation about the process of and the ultimate offer to him. I can understand why the claimant was confused by this. However, the claimant did not dispute that Mr Coote did at those times work as a sub contractor for the respondent. In any event, I accept that the invoices set out that Mr Coote worked on a contractor basis and that he did not work on a full time basis and he was not an employee.
23. I find that the situation relating to Mr Coote added a level of confusion to the claimant's understanding about a fast moving situation. However, I am satisfied that Mr Coote was not an employee and therefore nobody was recruited into the claimant's or anybody else's role around the time of the claimant's dismissal.
24. On 2 December 2024 the claimant was sent a follow up e-mail about the consultation and a letter that suggested a second meeting on Wednesday (2 days later) or Friday (4 days later). The claimant was given an at risk of redundancy letter on 2 December 2024.
25. The claimant accepted the second meeting which was a consultation meeting on Wednesday 4 December 2024. That meeting took place. Neither the respondent nor the claimant had any alternatives to redundancy. The claimant was dismissed on 4 December 2024 and that was set out in a written letter which gave him the right to appeal against the dismissal.
26. Mr Green's evidence was that in the last few weeks of November 2024 he had carried out a financial interrogation of the company's finances due to a slowing down of work. Several documents were relied on to support this. These included a "statement of cash flows" which set out the cash flow for the six month period between June and November in both 2023 and 2024 this document sets out that in 2023 the net cash flow was approximately £25,000 and in 2024 it was a negative amount of over £136,000.
27. A document called "profit and loss" for the six months ending 30 November 2024 set out that there was a negative operating profit of approximately £140,000.

28. Two other documents were referred to, one which set out the lead times. Mr Green's evidence, which I accept because it is supported by the document, sets out that from August 2024 until December 2024 there was a sustained period of reduction in lead times. What the lead time meant was the gap between the dates of the client's order and the work commencing. The shortening lead time meant there was a risk that the work they had could not occupy the staff that they had.
29. The other document was a graph relating to exhibition income and Mr Green's evidence, which I accept as it is consistent with the document, sets out that from November 2022 there was a consistent and significant decline in exhibition income which was particularly pronounced in 2024 and the downward trend was continuing in October and November 2024.
30. I find that these documents support the respondent's position that the financial position of the company was deteriorating and that this was the reason behind the redundancy. I accept that the need to make cost savings was an important factor in the decision to dismiss the claimant. The need to save costs is often behind a decision to make redundancies and that does not mean that the reason for dismissal cannot be redundancy.
31. I accepted Mr Green's evidenced that on 2 December 2024 a message was sent via WhatsApp to the employees carrying out Carpenter roles that there was no overtime unless they were on site and that this led to a reduction of 400 to 500 hours work which was equivalent to 2 to 3 employees. I have seen that message. I find that the respondent was considering and seeking several ways to make cost savings.

Decision

32. The claimant did not question the financials of the company, in his submissions he stated that he felt the company did not do enough to consider alternatives. He focused on Mr Coote being given sub contracting work and he was not despite his recognised quality work and relationship with the respondent.
33. The claimant argues that he was effectively replaced by Mr Coote. As I have set out above that I find that Mr Coote was not employed by the respondent. I accept that a business decision was taken to outsource the plastering work and this falls within S139(1)(b)(i) therefore the claimant's role was removed from the business and nobody was employed to carry out that work.
34. The question I have to ask myself is whether there was a redundancy situation within the definition set out in section 139 of the ERA. I am satisfied, in this case, that the reason for dismissal was that the requirements of the respondent for employees to carry out work of a particular kind namely plastering, had reduced and were expected to reduce in the future. This falls within the definition of redundancy set out at section 139(1)(b)(i) ERA.
35. It was unclear if the claimant relied on a claim that he carried out other work as well as plastering and therefore he should have been given other work rather than being dismissed. The respondent did not dispute the claim that he did do other work as well as plastering but its position was that he was paid at a higher rate than a general labourer and it did not make sense to pay him for doing that work. I find that the predominant part of the claimant's work was plastering work and that the need for this to be carried out within the business had reduced and such there was a redundancy situation.
36. I am satisfied that the respondent has proved that the reason or principal reason for the claimant's dismissal was redundancy which is a potentially fair reason for dismissal.
37. I find that the respondent acted appropriately to put the claimant in a pool of one. There

were no other employed plasterers and I find that that was the predominant part of his work. There is no suggestion that another employee carried out plastering work such that they should be in the same pool or that other employees should be in the same pool as the claimant.

38. The claimant challenges the redundancy process as unfair. He submits that the process was predetermined and this is evidenced by the fact that the consultation period lasted for two days.
39. The claimant was asked if he could suggest any alternatives to redundancy. It is not disputed that he did not suggest any alternatives. This is far from determinative. An employee is not obliged to suggest alternatives and often they are not in a position to do this. This is not a point I take against the claimant.
40. There was a dispute about if the claimant suggested he could carry out work on a subcontractor basis in the redundancy meetings. The claimant said that he said this and Mr. Green disputed that it was said. In the claimant's submissions, this was his key issue; that there were alternatives to redundancy. I accept that the claimant was upset at not being offered sub contractor work. This is understandable given his relationship with the respondent. However, if he had been offered sub contractor work this would not have made the redundancy fair if it was not otherwise or eliminated the need for the redundancy. To the contrary, the reason for redundancy would be clearly there.
41. I am satisfied that the respondent warned the claimant of potential of redundancy on 2 December 2024. I find that the respondent took reasonable steps to consider whether there was any alternative employment. The company had stopped recruitment into two roles and reduced overtime on 2 December 2024. As the claimant was the only individual carrying out plastering work, consultation would not have taken a substantial period of time.
42. I find that there was no alternative work in the business as is evidenced by there being no overtime. I do not consider that carpentry work for example would be suitable alternative work or that there was any other suitable alternative work because the most part of the claimant's work was plastering.
43. I find that the consultation period was very short and that this was shocking to the claimant. I bear in mind that this was a small employer with no HR function, the claimant was in a pool of one and no one else was at risk of redundancy. I consider that the short period was not unfair. I also consider that in the circumstances, the consultation was fair.
44. I have given consideration as to whether the dismissal was procedurally unfair and I find that it was.
45. I find that the dismissal by reason of redundancy was within the range of reasonable response of a reasonable employer. I must not substitute my decision for that of the respondent. The question is whether this dismissal was within the band of reasonable responses of an employer and I find that it was.
46. I recognise that the claimant feels genuinely aggrieved by the situation. He was off sick from an accident in the course of work for which he bore no responsibility, when he came back he was told another person was joining to do the work he did with him and 2 days later he was told he was at risk of redundancy, 2 further days later he was dismissed and not offered sub contracting work despite thinking he had a good relationship with the respondent. I think anyone reading that summary can understand the claimant's position. However, it does mean, for all the reasons set out above, that his dismissal was unfair in law.

Approved by:

Employment Judge Bartlett

9 July 2026

JUDGMENT SENT TO THE PARTIES ON
12 August 2026

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FOR THE TRIBUNAL OFFICE