



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BALOGUN

BETWEEN:

MR G BIALASZ

Claimant

AND

INTERNATIONAL FEDERATION OF GYNECOLOGY AND OBSTERICS (FIGO)

Respondent

ON: 24 & 25 May 2017

Appearances:

For the Claimant: In person

For the Respondent: Mr J Stuart, Counsel

JUDGMENT

1. The unfair dismissal claim fails and is dismissed.
2. The claimant's deposit of £500 shall be released and paid to the respondent towards its costs.

REASONS

1. By a claim form presented on 29 November 2014, the claimant complains of unfair dismissal. Dismissal is admitted by the respondent who says that it was by reason of redundancy or some other substantial reason justifying dismissal i.e. reorganisation. The Claimant's case is that there was no genuine redundancy and that his dismissal was not for a potentially fair reason.
2. I heard evidence from the claimant. On behalf of the respondent I heard from Professor Hamid Rushwan, Chief Executive; Bryan Thomas, retired Administrative Director and; Sean O'Donnell, Administrative Director. The parties presented a joint bundle of documents and references in square brackets in the judgment are to pages within the bundle.

Issues

3. The issues as set out at paragraph 15 of the case management order of Employment Judge Freer of 15.12.16 [97] are:
 - a. Was redundancy or reorganisation the actual and genuine reason for dismissal and if so;
 - b. was dismissal for that reason in all the circumstances fair.

The Law

4. Section 94 of the Employment Rights Act 1996 ("ERA") provides the right not to be unfairly dismissed.
5. Section 98(2) sets out the potentially fair reasons for dismissal. These include redundancy. Section 98(1)(a) provides that a dismissal for some other substantial reason of a kind such as to justify dismissal is also potentially fair.
6. Section 98(4) provides that in determining whether a dismissal is fair or unfair, the tribunal must have regard to whether in all the circumstances the employer acted reasonably or unreasonably in treating the reason shown by the employer as sufficient reason for dismissal.
7. Section 139(1)(b) ERA provides that an employee is dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements for employees to carry out work of a particular kind has ceased or diminished or is expected to do so.

Findings of Fact

1. The respondent is a registered charity whose objectives are the improvement of women's health and rights and the reduction in the disparities in healthcare available to women and newborn children, as well as the advancing the science and practice of gynaecology and obstetrics throughout the world.

2. The claimant was employed as Head of Finance and in that role was responsible for conducting and supervising the financial control and accounts function of the charity. This was essentially an administrative function involving bookkeeping and financial reporting. The claimant reported to Bryan Thomas, the then Administrative Director.
3. The Gates Foundation – set up by Bill and Melinda Gates – was the single largest source of funding for the respondent’s charitable work worldwide. Towards the end of 2013, one of the Foundation’s sponsored projects known as LOGIC was coming to an end and the respondent wanted to discuss with the Foundation putting any outstanding uncommitted funds to use on other projects. To that end, the claimant was tasked with providing a reconciliation of those uncommitted funds. The claimant reported that \$750K was uncommitted and this information was relayed to the Foundation. However, it later transpired that this was incorrect and that the figure was in fact much lower at \$98K. This was a matter of extreme professional embarrassment for the respondent and caused the Foundation to be concerned about its financial accounting systems, so much so that the Foundation insisted on carrying out its own review and audit of those systems before committing further funds to the respondent.
4. Following the review, the Foundation issued a report dated 2.7.14 setting out its findings and recommendations. The Foundation found, among other things, that the leadership in the finance team was deficient and that there was poor communication and ineffective accountability mechanisms between finance and the program team members. [239]
5. The report makes recommendations and these are split into matters that are required to be done and those that should be considered. One of the required actions was that the respondent undertake a broad review of the finance and accounting structure and team. [238] The claimant tried to suggest that this requirement meant that only the finance and accounting structure should be reviewed and not the team itself. I disagree. The wording is unambiguous and refers to both. Another recommendation was the appointment of a leader with experience in building and managing financial systems for multi-country grant funded INGO. [239]. Further, it recommended that the respondent use the imminent retirement of Bryan Thomas as an opportunity to review its organisational structure and operating model and to consider putting in place stronger financial systems and internal controls. [240]
6. Dealing with those recommendations was a matter of urgency for the respondent as the Foundation had made clear that it was not prepared to invest in further projects until it was satisfied that steps were being taken by the respondent to address the issues identified. The respondent acted promptly to address these issues by appointing Paul Mudali, a Chartered Accountant and Management Consultant, on a 3 month fixed term contract to advise on the best way to implement the recommendations. By the time he started, on 15 July 14, the claimant was on sick leave so in addition to his primary role, Mr Mudali also covered the claimant’s absence.
7. In his report of 21 July 2014, Mr Mudali recommended a new structure in the finance department comprising 3 new roles in place of the existing ones. These were: Chief Financial Officer, Finance Supervisor (or similar) and Finance Assistant. The report also set out key aspects of the duties of each position. [271D] The respondent accepted Paul Mudali’s recommendations and went about putting them into effect by creating 3 new roles, albeit with slightly different titles but with similar job specifications. The new roles were: Financial Controller, Project Accountant and Finance Administrator.

8. In the meantime, the claimant had been signed off work with a stress related condition since 2 July 2014, and apart from a brief appearance on 28 July, did not resume work again before his dismissal.
9. On his return to work on the 28 July, the claimant attended a meeting with Professor Rushwan, Chief Executive and Sean O' Donnell, the new Administrative Director, and Bryan Thomas, the outgoing Administrative Director, where he was informed of Mr Mudali's recommendations. There was some discussion about the 3 roles though the parties' accounts differ on what was said. The claimant says that he was told by Sean O'Donnell that there was no point him applying for the top job – Chief Finance Officer - as he didn't have the professional qualifications required. Mr O'Donnell's case was that whilst there had been a discussion about the qualifications needed for the role, the claimant had been told that he could apply for any of the 3 roles. That evidence was supported by Mr Thomas at this hearing and he gave the same evidence at claimant's redundancy appeal hearing. [361] When it was put to the claimant in cross examination that he was told he could apply for any of the 3 roles, his replied that that was not the impression he got. That falls short of an outright denial. I also note that the claimant's impression of events was a recurring theme in his case and I have had to consider whether his impression in this case was founded in fact. In relation to this dispute I find that it was not and prefer the respondent's account of the meeting.
10. Immediately after the meeting, the claimant was signed off sick again.
11. On 12 August, the respondent wrote to the claimant informing him of the proposal to make his position redundant under the new structure and he was invited to attend a consultation meeting on 19 August so that he could put forward his views on the matter. [277]. The claimant did not respond to the invitation but instead instructed solicitors to send a grievance alleging, among other things, disability and race discrimination and breach of contract. The grievance did not directly address the proposals. [278-282]
12. There were 2 further attempts to engage the claimant in consultation but once he made clear via his solicitors that he would not be participating, the respondent wrote to him on 26 August 14, with formal notice of dismissal by reason of redundancy with effect from 30 September 2014, subject to any consultation beforehand. The letter enclosed the job specifications for the 3 new roles and included an invitation to a further meeting to discuss them. [293-303] Again, this invitation was not taken up and the claimant did not apply for any of the alternative roles. His employment duly came to an end on 30 September. [332]
13. The claimant appealed against his dismissal but following an appeal hearing on 16 October, the decision was upheld. [351-353]

Conclusions

14. Having considered my findings of fact, the parties' submissions and the relevant law, I have reached the following conclusions on the issues:

Was there a genuine redundancy?

15. The claimant's case on this is rather confusing. He contends that the redundancy was not genuine because Professor Rushwan used the Gates foundation report as an opportunity to get rid of him so as to conceal his (professor Rushwan's) failures so

serious as to amount to gross misconduct. The claimant further alleged that Professor Rushwan instructed Sean O'Donnell to devise a structure that would have the effect of excluding him from the business and that this was done in collusion with Mr Mudali, who was recruited for this purpose. What we have here is the classic conspiracy theory and like many conspiracy theories, it appears to be based on suspicion and supposition and very little, if any, concrete evidence.

16. There was no evidence before me of the alleged failures of Professor Rushwan. More importantly, there was no evidence of such failures before the Foundations' auditors. Despite the claimant writing to the Foundation and the trustees of the charity with these allegations, they have rejected them.
17. I can see no basis at all for Mr Mundali's professionalism to be questioned. The report that he produced is well reasoned and is consistent with the recommendations of the Foundation. There is no reason at all to doubt the genuineness of the views expressed in the report or the conclusions reached.
18. The claimant makes much of the fact that he was not copied into an email notifying staff of the appointment of Mr Mudali. The respondent is unsure why this happened but has suggested that it was possibly an oversight or them not wanting to disturb him while he is off sick. Those reasons appear more plausible than the claimant's suggestion that it was done deliberately to keep him in the dark about their plans.
19. It is quite clear from the respondent's evidence that the new role of Project Accountant is one that the claimant could potentially have done and had he applied for it, it would have been difficult for the respondent not to have appointed him. If, as he says, the respondent had engineered his departure, they would have made sure that there was little possibility of him being suitable for any of the roles.
20. Taking all of this into account, I can find no evidence to support the claimants' assertions about the reason for his dismissal. I am satisfied that the circumstances described by the respondent lead to the claimant's dismissal.
21. The question for me is whether those circumstances fall within the statutory definition of redundancy. The work carried out by the claimant was still continuing. According to the evidence of Sean O'Donnell, the tasks forming part of the role of Head of Finance were absorbed by the roles of Financial Controller and Project Accountant. There is no suggestion that the type of work carried out by the claimant had diminished. Indeed I was told that there were more projects in prospect. Nor was there any suggestion that the work needed to be done by fewer people – the department increased from 2 to 3, even though individual jobs disappeared as a result. Rather than a redundancy situation, what we have is a re-distribution of the same work among different employees.
22. I find that dismissal was not by reason of redundancy as the statutory test has not been met. The dismissal was due to a reorganisation of the Finance department and I am satisfied that there was genuine business need for the reorganization based on the recommendations of the Foundation and the follow-on report of Mr Mudali. A dismissal for SOSR has been made out.

Was the dismissal fair?

23. In considering whether the dismissal is fair, I have reminded myself that I should not substitute my view for that of the employer but simply consider whether the respondent's

actions fell within the range of reasonable responses open to an employer. The *range of reasonable responses* test applies to both the decision to dismiss and the procedure applied. Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23 CA.

24. Factors that are relevant to a redundancy dismissal apply equally to reorganisation. when assessing the reasonableness or otherwise of the dismissal. In this case, they would be consultation and redeployment though to a certain extent they overlap.
25. Whilst the subject matter of individual consultation will to a certain extent depend on the particular circumstances, generally, it would include: warning about provisional selection for redundancy and the basis for it; an opportunity for the employee to comment on their selection; a proper and genuine consideration of those comments by the employer; and consideration of alternative positions that may exist. The respondent took steps to do all of these things.
26. The Claimant was made aware of Mr Mundalli's recommendations at the meeting on 28 July 14. He was written to on 12 August and informed that his position was at risk and the reasons for this. At the same time, he was invited to attend a consultation meeting so that he could express his views on the proposals. Rather than take up this invitation, the claimant decided to lodge a grievance instead and would not engage in further attempts to consult. That was his prerogative but having taken that stance, he cannot place the blame for lack of consultation at the respondent's door. I am satisfied that the respondent made reasonable attempts to consult.
27. I am also satisfied that the respondent made reasonable efforts to assist the claimant in finding suitable alternative employment. He was provided with 3 vacancies to consider and there is no suggestion that there were other suitable vacancies within the business. Because of the claimant's refusal to engage, he did not consider any of the vacancies. Again that cannot be laid at the respondent's door.
28. In all the circumstances, I find that the dismissal of the claimant was fair.
29. The unfair dismissal claim therefore fails and is dismissed.

Costs

30. The deposit of £500 paid by the claimant pursuant to a Deposit Order dated 17 March 2015 shall be released by the tribunal and paid directly to the respondent.

Employment Judge Balogun
Date: 31 May 2017