EMPLOYMENT TRIBUNALS

Claimant: Mr R Armitage

Respondent: De Montfort University

Heard at: Leicester

On: 15 August 2018 (Reserved: 24 August 2018)

Before: Employment Judge Ahmed (sitting alone)

Representation
Claimant: In person
Respondent: Mr R Kohanzad, Counsel

RESERVED JUDGMENT

The judgment of the tribunal is that the complaint of unfair dismissal is dismissed.

REASONS

1. In these proceedings Mr Robin Armitage who was employed by the Respondent University from 5 August 2008 to 4 January 2018 (the 'effective date of termination') brings a complaint of unfair dismissal. The Claimant confirmed at the start of the hearing that despite references to discrimination in his ET1, he was not bringing any complaint of discrimination.

2. Mr Armitage was employed by the Respondent as a Procurement Clerk. He worked on a part-time basis for 22 hours, three days of the week. He was dismissed by reason of redundancy. He has been paid the correct statutory redundancy payment.

3. The facts of the case are not in dispute unless otherwise indicated. At the hearing the Respondent gave evidence from Mr Martin Satchwell, Head of Procurement and Miss Joanne Cooke, Associate Chief Operating Officer and the Appeal Officer following dismissal. This decision was reserved not because of the complexity of the issues but because there was insufficient time for deliberation on the one day allocated for the hearing.

4. In January 2017, De Montfort University (hereinafter "the University") made a decision to re-structure the Finance Directorate in order to improve the effectiveness of its financial systems. Mr Armitage worked within the Procurement Team which is part of the Finance Directorate. All posts within the Procurement Team were identified as no longer required in the proposed new structure, including that of the Claimant. The re-structure would create five new posts and specifically, for present purposes, a Procurement Co-Ordinator post at grade D. Mr Armitage was employed at a more junior grade C.

5. The process of re-structure was the subject of both collective and individual consultation. The Claimant does not take any issue as to the fairness of the consultation process only. His only 'complaint' is in relation to the content of one of the documents used in the consultation which he feels was factually inaccurate. That does not ultimately affect the fairness of the procedure itself. Mr Armitage attended individual consultation meetings on 23 August and 6 September 2017.

6. Mr Armitage was entitled to apply for and did indeed apply for the Procurement Co-Ordinator role. There were several internal candidates. The application was on a standard application form with guidance notes. The appointment panel consisted of Mr Satchwell along with two managers. Each candidate was given separate marks by every member of the panel and there was a collective mark. Candidates were judged according to 'essential' and 'desirable' criteria.

7. The University has a slotting in procedure where someone can be slotted in to a new role if there is either no change or only minor changes to the new position. In those circumstances an employee will be slotted in rather than having to make any formal application for appointment.

8. Mr Armitage was not slotted in nor was he successful in his application for the Procurement Co-Ordinator role. Indeed, as it transpired none of the internal candidates were deemed appointable. There is no suggestion by the Claimant that the exercise was a sham design to 'weed out' existing employees in favour of preferred external candidates.

9. Mr Armitage does not take any issue with the fact that there was a genuine redundancy situation or that he was in the correct pool for selection. The issues to be determined are agreed as follows:

9.1 Whether the Claimant should have been slotted into the role of Procurement Co-Ordinator;

9.2 Whether in failing to do so the Respondent breached his own policies and procedures;

9.3 Whether the Claimant should have been shortlisted for the Procurement Co-Ordinator role having regard to the merits of his application;

9.4 Whether the redundancy selection process was unfair in that the Respondent apparently used agency workers to undertake tasks which could have been done by substantive employees, including the Claimant, thus disadvantaging the Claimant in the selection process;

9.5 Whether the Claimant should have been offered some other suitable alternative employment.

THE LAW

10. The relevant law in this case is not controversial. Section 98(1)(2) and (4) of the Employment Rights Act 1996 ("ERA 1996"), so far as is material states:

"(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—

(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."

11. In **HSBC Bank plc v Madden** [2000] ICR 1283, the Court of Appeal confirmed that the correct approach to applying section 98 (4) of ERA 1996 is as follows:

"(1) The starting point should always be the words of section 98(4) ERA 1996 themselves.

(2) In applying the above section the Tribunal must consider the reasonableness of the employer's conduct, not simply whether the Tribunal would have done the same thing.

(3) The Tribunal must not substitute its decision as to what was the right course to adopt.

(4) In many cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view another employer quite reasonably take another.

(5) The function of the Employment Tribunal is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within

the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; if the dismissal falls outside the band it is unfair."

12. In **London Ambulance Service NHS Trust v Small** [2009] EWCA Civ 220 the Court of Appeal reminded tribunals of the importance of not substituting their views for that of the employer. I have been conscious of the importance of not doing so.

CONCLUSIONS

13. In the course of the hearing I was taken through the scoring exercise for the Claimant. I am satisfied that the process was consistent across the board.

14. In relation to 'slotting in', the Respondent's re-structuring and redundancy policy only permits slotting in where there is either no change or only minor changes to an employee's role. It is clear that the roles of Procurement Clerk and Procurement Co-Ordinator were very different. The significant difference in salary together with the differences in the respective job descriptions reflects that. The Procurement Co-Ordinator role only included 20% of the type of work the Claimant performed and was at a higher grade. It was a more senior role generally. Slotting in was therefore not appropriate and correctly discounted.

15. As far as the Claimant's complaints relating to agency workers is concerned that has nothing to do with the ultimate selection process. It may have disadvantaged the Claimant in the lead up to the selection process but if so it was across the board. Ultimately, it was not the substantive reason for the Claimant's unsuccessful application.

16. I have not been taken to any internal policies and procedures which the Respondent breached.

17. The nub of the Claimant's case is that he should have either have been appointed to, or at least shortlisted for, the Procurement Co-Ordinator role. In that respect I have been taken at some length to his application. It was made clear at the outset of the recruitment process that all applications were going to be assessed having regard to the information provided by the candidate rather than any personal knowledge of the candidates. The guidance makes that quite clear. The candidates were required to demonstrate their suitability regardless of any personal knowledge of their skills known to their managers who were on the selection panel. The Claimant appears not to have taken that fully on board. He plainly failed to demonstrate that the met essential criteria and assumed that his managers would know what he did. The application however required him to spell it out.

18. The Claimant also justifiably failed for other reasons. One of the essential criteria concerned a section on 'purchase to pay process and principles'. The Claimant's answer included three paragraphs which the panel was able to identify was directly cut and pasted from a Wikipedia page. I have been taken to the relevant Wikipedia page from the internet

and there can be no doubt that the Claimant's job application in respect of that essential criteria was indeed a cut and paste exercise. In deciding not to appoint a candidate, either wholly or partly because he had cut and pasted an answer to an essential element of his application from a Wikipedia page appears to be a perfectly reasonable response.

19. The Claimant also failed to meet a number of the other essential criteria according to the views of the moderation panel. There is nothing to suggest that the panel had in mind anything other than the answers the Claimant gave rather than any ulterior motive.

20. At the end of the day the Claimant failed to properly read the guidance in relation to the application. He was either over-confident in completing the form or failed to complete it exercising appropriate care and attention. I am satisfied that the selection exercise was carried out fairly and reasonably. There were no other roles identified by the Claimant which could potentially have been offered to him. There is nothing in the appeal process which could give rise to unfairness. He was therefore dismissed for redundancy within the meaning of section 98(2) ERA 1996 and the Respondent acted reasonably within the meaning of section 98(4) ERA 1996.

21. For the reasons given the Claimant was not unfairly dismissed.

_____

Employment Judge Ahmed

Date: 14 September 2018

SENT TO THE PARTIES ON