



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mrs P Joseph**

**v**

**Larksfield Surgery Medical  
Partnership**

**Heard at:** Cambridge

**On:** 21 March 2018 and  
11 June 2018

**Before:** Employment Judge Ord

## **Appearances**

**For the Claimant:** In person.

**For the Respondent:** Mr Williams (Counsel).

## **JUDGMENT**

1. The claimant's complaint that she was unfairly dismissed is not well founded and her claim is dismissed.

## **REASONS**

1. The claimant was employed by the respondent as Practice Manager. She commenced her employment on 4 February 1980 and was dismissed on 17 May 2017 on the stated ground of redundancy. The claimant brings a complaint that her dismissal was unfair. First, she disputes that there was a redundancy situation within the premises, and secondly that in any event the dismissal was unfair within the meaning of s.98(4) of the Employment Rights Act 1996.
2. During the course of the hearing I have heard evidence from Ms Patricia Gray, HR consultant who has since 1997 provided a management consultancy to general practitioners; Dr Rafe Radford a general practitioner and partner in the respondent medical partnership, and from the claimant.

3. The issues for me to determine in relation to the question of liability were established as follows:
  - 3.1 First, what was the reason (or if there was more than one the principal reason) for the claimant's dismissal?
  - 3.2 Second, was that reason a potentially fair reason within s.98 of the Employment Rights Act 1996?
  - 3.3 Third, if the principal reason was redundancy, was there a genuine redundancy situation within the meaning of s.139 of the Employment Rights Act 1996?
  - 3.4 If not, was the claimant dismissed for a substantial reason of the type justifying the termination of her employment (the respondent relies upon a business reorganisation)?
  - 3.5 If there was a genuine redundancy situation, was it reasonable in the circumstances of the case to dismiss the claimant for redundancy?

**The facts**

4. Based on the evidence which is being presented to me, I have made the following findings of fact:
  - 4.1 In 2013 the partners in the respondent practice considered that the difficulties which the practice was facing warranted the commission of a report from a practice management/HR consultant to identify areas where the practice could improve its service and how the financial position of the practice could be improved.
  - 4.2 Ms Gray was commissioned to prepare this report and she spent two days at the practice during which time she interviewed the GP partners and all the available practice staff as well as reviewing employment documentation. Included in the documents which she reviewed was the claimant's contract of employment which is dated 1 September 1987. I have not been shown any subsequent amendment or alteration to that contract of employment which has been put into effect.
  - 4.3 Ms Gray visited the practice on 22 and 23 January 2014, and her report which is simply dated January 2014 identified a number of issues including low staff morale and a lack of feedback from the GP partners; staff feeling unsupported with their work; lack of information being cascaded down to staff; an absence of staff appraisals; isolation in the dispensary and a perceived threat to practice income.

- 4.4 The recommendations were that the role of the practice manager (the claimant's role) should change from an operational role to one of a strategic business manager, that a deputy manager should be in place whose role would be operational. The issue Ms Gray identified was that the claimant and her deputy were both working on an operational level, and the business therefore lacked strategic direction and planning. A facilitated partners awayday was suggested at which a redefinition of management roles could take place to be then shared with staff.
- 4.5 The facilitated awayday took place on 3 November 2014. It involved the GP partners and the managers (including the claimant). Although Ms Gray took notes of the meeting they have not been produced to me. The claimant was given at that meeting a job description for the job title "practice manager/business manager", but there was not, as far as I have been told, progress towards implementing this job description in so far as it amounted to any change of role for the claimant. That was not in fact the first draft job description which the claimant had been given. She was given a revised job description in June 2014 and a further revision in November 2014. She estimated (and her evidence was not challenged) that between January 2014 and the day her employment ended she attended approximately eleven meetings to discuss the job description none of which resulted in any conclusion.
- 4.6 A recurring theme in the claimant's evidence, both contemporaneous to the events of 2014 and subsequently is her view that the revised job descriptions do not differ significantly from the role she was carrying out and that those matters of "strategy" were aspects of the practice manager or business manager role which the partners had retained to themselves. Her evidence was that if they wished her to be more strategic to meet the aims and objectives of the partnership she would need to be included in planning meetings (from which she said she had been excluded) and that she was told that some of the aspects of the job description which she was given in the middle of 2014 were aspirational, dependent on national legislation and restrictions imposed by local bodies as well as requiring a revision of her deputy's role so that work could be delegated downwards by the claimant. None of that evidence was challenged at all. As far as I have been made aware no steps were taken to implement changes to the claimant's position after the away day in November 2014.
- 4.7 The claimant was asked in August 2015 to provide a business plan for the dispensary. This had been suggested by Ms Gray in her report in January 2014. The (again unchallenged) evidence of the claimant was that the dispensary had never fallen within her remit, but had been the responsibility of a lead partner and the dispensary manager. She questioned whether, given her lack of direct

knowledge of the dispensary and further given that the practice accountants, the lead GP and the dispensary staff had been unable to identify where any problems in the dispensary lay whether she could add anything new to the thinking. The dispensary staff had identified a variety of reasons for a drop in profits and there had been many meetings in-house to discuss the issue.

- 4.8 The claimant's concerns do not appear to be answered in any way and as far as I have been told the matter was not pursued with her.
- 4.9 Included in the bundle of documents before me is a record of an appraisal which took place on 10 November 2016. There is a pre-appraisal self-assessment form completed, apparently, by the claimant and some appraiser comments. The appraiser is identified by two pairs of initials, RR and ES but the document is unsigned. The claimant has said that she cannot recall having a formal appraisal and Dr Radford (RR, ES is identified as Dr Elizabeth Skinner) refers to the appraisal only to the extent that there was a discussion about finalising the claimant's job description and the fact that the claimant was considering retiring five years hence (i.e. in about 2021 by which stage she would have been 61 years of age and would have been in service for over 41 years).
- 4.10 The claimant then received a further job description (title: "Practice Manager) by email from Dr Skinner on 27 February. The previous day, a strategy meeting had been held by the partners with Ms Gray although the claimant was unaware of this. No notes of that meeting have been produced, but according to Ms Gray the partners told her that the claimant had been reluctant to change her role in any way to provide business management. In her evidence Ms Gray expressed a belief that the claimant had been asked to carry out work "on areas such as providing strategic financial management and taking responsibility for staff appraisals". Dr Radford makes no mention of those matters but said that it was clear to the partners that very little or no progress had been made to strengthen business management/strategy and that the partners had continued to undertake this duty. At no stage did he say the claimant had refused to carry out any particular tasks which had been given to her and in evidence the only matter that was put to the claimant was that she had not produced a business plan for the dispensary in respect of which the claimant's comments are reported above.
- 4.11 Ms Gray was asked by the partners to produce a further business report and proposed restructure of the practice management as a means to address their concerns. Her proposal was to appoint a business manager, an operations manager and a reception manager, thus placing the practice manager deputy practice manager and finance clerk/bookkeeper roles at risk of redundancy. Ms Gray's unchallenged description of this proposed structure was

one that was “becoming more than normal in GP practices of a significant size”.

- 4.12 Dr Radford and the claimant both stated that there had been substantial changes in the practice since January 2014. Ms Gray's report in March 2017 was not, however, based on any updated information which she had received other than from the partners.
- 4.13 That report contains errors which have been identified during the course of this hearing. It suggests sub-letting or renting rooms in the practice which, according to the unchallenged evidence of the claimant, would be contrary to the terms of the respondent's lease. It says that the practice had adopted agenda for change terms for the staff and describes how this is financially unviable and too restrictive for GP practices. In fact agenda for change had not been adopted (although it is of note that the claimant's contract of employment from 1987 refers to Whitley Council rates of pay and job grade, Whitey Council being the predecessor of Agenda for Change).
- 4.14 Further the new management structure sets out proposed salaries of £45,000-£50,000 for the business manager, approximately £30,000 for an operations manager and a reception manager (no salary given but according to the job description attached to the report the anticipated salary was £25,000 per annum). The report then says that the proposed management costs would be £75,000-£80,000, taking no account whatsoever of the reception manager's salary. It describes the current management cost as £73,367 per annum. The breakdown of that figure is not given, and Ms Gray could not explain it, but the claimant's salary was £41,373, the deputy was being paid £30,000 and that would leave £1194 per annum for payment to the bookkeeper and to the outsourced payroll company. No account is taken of any pension contributions, national insurance contributions and so on and thus the total cost of both the current and the proposed structure is clearly inaccurate as Ms Gray accepted in evidence and as I find must have been apparent to the GP partners reading the report.
- 4.15 On 24 April 2017 the claimant was advised that her role was at risk of redundancy and a first consultation meeting was held on 26 April 2017. Ms Gray attended the meeting along with Dr Radford and Dawn Kirby was present as the claimant's. The claimant had been given a copy of the business report from March 2017 and job descriptions for the positions of business manager, operations manager and reception manager, each with person specifications together with a letter from Dr Radford confirming that the partners had decided to change the management structure of the practice and that therefore her post as practice manager was redundant under the proposed plan "but no definite decision has been made". The claimant was advised that

there would be a two-week consultation process before any final decisions were made.

- 4.16 At a meeting on 26 April 2017 the claimant was told by Ms Gray the background to the proposals, said that no decision had been made and there was a period of "letting you know what is proposed on the table and suggest roles". When asked what her initial feelings were, the claimant said that she was "waiting to hear what was on the table" and when asked about the job descriptions she said that they were very similar to what was already being done so it was very difficult to identify differences.
- 4.17 She said that in her view the vast majority of the business manager role was already being done by her to which Ms Gray said "okay".
- 4.18 Notwithstanding the suggestion that there should be a reception manager as set out in Ms Gray's report the reception team lead (Ms Moore) was told that her role was not at risk of redundancy which Dr Radford said he did "in case she heard that there was a potential redundancy situation and was concerned that she could be at risk of redundancy". Neither Ms Gray nor Dr Radford explained why there would be a need for a reception team leader and a reception manager, but that part of the business plan had been, in fact, dropped and has not been progressed.
- 4.19 On 29th April Dr Radford wrote to the claimant confirming the outcome of the meeting on 26 April but saying that the partners had identified the operations manager role as "the most appropriate alternative for you in the proposed new structure" and suggested that if the claimant was prepared to consider this role it could be taken up on a four-week trial period which could be terminated at the instigation of either party in which event the claimant would still receive her statutory redundancy payment.
- 4.20 A further meeting was then held on 17 May, again Ms Gray and Dr Radford were in attendance and the claimant was accompanied by Ms Amos. The claimant said that she was not interested in any of the roles on offer. She said that taking the operations Manager role would involve demotion, reduction in pay and reduced holiday allowance and she therefore did not want the alternative employment the respondent had offered her. The claimant had already written to the respondent on 9 May in reply to an invitation to attend a meeting on 10 May to discuss the proposed business reorganisation. In her letter she said that she felt she had sufficient information regarding the proposal "and enough intelligence to realise what your intentions truly are" which, did not elicit any enquiry or comment from the respondent.

- 4.21 The claimant said that she wished to accept the respondent's offer of a payment in lieu of notice and left the practice that day.
- 4.22 It is against the factual background that the claimant brings the complaints.

### The law

5. Under s.94 the Employment Rights Act 1996 every employee has a right not to be unfairly dismissed.
6. Under s.98(1) it is for the employer to show the principal reason for the dismissal, and that it is either a reason for them within sub-section (2) or some other substantial reason of account such as to justify the dismissal of an employee holding the position which the employee held.
7. Under s.98(2)(c) redundancy is a potentially fair reason for dismissal.
8. Under s.98(4) if a potentially fair reason for dismissal is established the question of whether the dismissal was fair or unfair depends on whether in the circumstances including the size and administrative resources of the employer's undertaking employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial facts of the case.
9. Under s.139 of the Employment Rights Act 1996 an employee who is dismissed should be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that his employer has ceased intends to cease to carry on the business for the purposes of which the employee was employed by him or to carry on their business in the place where the employee was so employed; or the fact that the requirements of that business for employees to carry out work of a particular kind of 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.
10. In James W Cook & Co v Tipper & Others [1990] ICR 716 it was confirmed that what is to be done by way of a business re-organisation is largely for the employers to decide on the basis of the information available to them and that an Employment Tribunal should not investigate the commercial or economic reasons behind business decisions that prompt redundancies.
11. In Orr v Vaughan [1981] IRLR 63 the Employment Appeal Tribunal emphasised that if the if an employer acts on reasonable information, reasonably acquired, that is sufficient to meet the relevant test.

12. Applying the facts found to the relevant law I reached the following conclusions:
  - 12.1 This was a business reorganisation. It was not a redundancy situation. There was no diminution in the respondent's need for work of a particular kind to be carried out and this was not a situation where the work previously carried out by a number of employees was to be carried out in the future by a lesser number. Indeed, the rationale for the decision-making process was that the administrative/managerial staff should take on more, different tasks, relieve the GP partners of such tasks, including business strategy and allow them to concentrate on their primary function as doctors. There was a changed need for the nature of the tasks which the managerial/administrative staff were carrying out.
  - 12.2 The respondent acted in accordance with information and advice from an appropriate source namely Ms Gray who has, for some 20 years, in a management consultant advising GP practices and also with a background in human resources and qualification from the chartered Institute of personnel and development. The original report prepared by Ms Gray in 2014 was prepared on the basis of a two-day visit to the practice and interviews with all available staff members.
  - 12.3 The recommendations included changing the role of the manager from an operational one to a strategic one. That change of structure would involve a redefinition of the management roles which Ms Gray suggested could be undertaken by the partners at an away day and then shared with the staff.
  - 12.4 Whilst an away day was held, I do not find that any steps were taken at that time to implement these proposals at all. There was some discussion about changing the claimant's job title to include the words business manager and there was some discussion about changing that job description to include additional tasks. But these were not progressed in any meaningful way.
  - 12.5 Ms Gray's second report was prepared without further discussion with staff and without a visit to the practice. There was an absence of contemporaneous information and she could not say (nor was any evidence being given in support of the allegation) how or by whom she was advised that the claimant had been reluctant to change her role at all. Those are matters which can legitimately be raised as criticisms of the second report, but the respondent was entitled to assume that MS Gray had sufficient information to enable her to prepare an updated report, and that had she lacked such information she would have raised that with the respondent. Accordingly, the respondent was reasonably entitled to rely on the two reports prepared by Ms Gray.



- 12.6 The claimant received proposed change to job descriptions most significantly on 27 February 2017, the day after a meeting between the partners and Ms Gray, and which was on the evidence I have the most recent communication between the partners and Ms Gray before her report of March 2017. That job description was titled practice manager and was sent to the claimant with an email from Dr Skinner saying that it had been devised between her and Dr Radford and "hopefully covers what you end we would expect".
- 12.7 There was then a sea change when the claimant was advised that she was at risk of redundancy based on the report of March 2017. The claimant criticises that report in a number of ways and maintained throughout the period when the respondent was considering a restructure of its management that the tasks set out in the job description for the business manager were substantially being carried out by her already and that she was willing to undertake others. However, the claimant never expressed an interest in the role of business manager, and when she was offered a trial period as operations manager rejected it. She did not suggest a trial period as business manager and specifically stated that she was not interested in any of the roles available.
- 12.8 The claimant formed the view, hat the die was cast. She was, it seemed to her, being offered a role at a reduced rate of pay, with less holiday and at a reduced status. Her deputy had challenged the position of reception manager (when the reception leader had been told the job was safe) and had received no meaningful answer. According to Dr Radford no operation manager has yet been recruited by the respondent.
- 12.9 What then was the substantial reason for the claimant's dismissal? Was that reason sufficient to justify the dismissal of the claimant?
- 12.10 In the circumstances of this case, I find that the reason was a management restructure and that it was sufficient to justify the dismissal of the claimant. The respondent relied upon the advice from Ms Gray. It was flawed, but not fatally so. It was based on a report which had been initially prepared three years earlier and had then been updated following a meeting with the partners. The practice remained in difficulty, as is accepted by all parties. The respondent chose to seek to alleviate those difficulties by implementing the proposals made by Ms Gray. She erroneously described them (and the respondent erroneously implemented them) as a redundancy process, but the substantial reason which led to the claimant's dismissal was a managerial decision to change the structure of the administrative and management team within the respondent practice.

- 12.11 I have been taken to an analysis of the role the claimant was previously carrying out against the roles of Business Manager and operations Manager (the two new roles). The changes may be seen as somewhat nuanced, but there is clearly a greater emphasis on the business manager role on strategy and business planning. I am satisfied that the differences are sufficient to consider this role to be materially different to the role which the claimant was undertaking. I am, however, in no position to assess whether or not the claimant could have carried out that role – and given her rejection of it it is not necessary for me to do so.
- 12.12 The claimant was aware of all the roles available in the restructure and whilst she said that she was already carrying out a number (perhaps the substantial majority) of the tasks which formed the new role of business manager she did not express any interest in it. The respondent could be criticised for identifying to the claimant a specific role for her consideration in the way they did, but after considering the matter at length I do not find that that was sufficient to render the dismissal unfair in particular because when the claimant was asked at the final meeting whether she was interested in any of the roles she said that she was not. The claimant sought to justify that approach before me by saying that in her view the die was cast and that she was not to be offered any role, but that is not compatible with her being offered the operations manager role. The claimant could have put her case to the respondent for the role of business manager but she did not do so. Had she done so the respondent would have been obliged to consider whether the claimant was capable of undertaking that role, perhaps with training, but as the claimant specifically stated that she was not interested in any of the roles on offer there was no need for them to do so. I am reminded, that it is not my role to criticise an employer for failing to meet what might be seen as a counsel of perfection but rather to consider whether in the round the respondents behaved reasonably when they took the decisions that did. In the circumstances of this case, whilst the respondent can be criticised for their approach of identifying a specific and lesser role as being the “most suitable” for the claimant, which appears to have caused the claimant rather more distress than a more carefully handled process might have done that is not sufficient to render the dismissal unfair and overall the respondent behaved, I find, reasonably, both in seeking to implement the recommendations in Ms Gray’s reports (and reasonably determined not to implement the proposal for a reception manager) and accepting the claimant’s statement at her final meeting that she was not interested in accepting any of the roles which were created by the reorganisation.

- 12.13 That did indeed mean the “die was cast” as the Respondent was faced with a need to implement a business reorganisation and an employee who was rejecting all the roles on offer. In those circumstances the claimant was fairly dismissed on the basis of a substantial reason (a business reorganisation) sufficient to justify her dismissal and her dismissal was in the circumstances, fair.
- 12.14 Had I been minded to find that the reason for dismissal was redundancy, I would have found the dismissal not to be unfair, for the same reasons. The claimant’s old role was disappearing and she did not wish to be considered for any of the roles on offer. Even if such dismissal was unfair on procedural grounds, I would have found that it was certain that the claimant would have been dismissed following any fair process in particular because of her unwillingness to be considered for any role in the new structure. In those circumstances, had I found in favour of the claimant, she would have received no compensation as following the ruling Polkey v A E Dayton Services I would have reduced the compensatory award to nil and the claimant has already received the equivalent of a basic award albeit described by the respondent as a redundancy payment.
- 12.15 For those reasons the claimant's complaint that she was unfairly dismissed does not succeed and her claim is dismissed.

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Employment Judge Ord

Date: 20 / 6 / 2018

Sent to the parties on: .....

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For the Tribunal Office