EMPLOYMENT TRIBUNALS

Claimants: **1 Mr S Kousiounis**
2 Mrs E Kousiounis

Respondent: **Grand Pier Ltd**

Heard by Cloud video **On: 13 – 14 September 2021**

Before: **Employment Judge Reed**

Representation
Claimants: **Mr Paschali, Solicitor**
Respondent: **Mr G Powell, Counsel**

JUDGMENT

The Judgment of the Tribunal is that the claimants are not entitled to redundancy payments.

REASONS

1. In this case the claimants Mr and Mrs Kousiounis sought redundancy payments from their former employer, Grand Pier Limited ("the Company"). For the Company it was conceded that the claimants had been dismissed but it was said that the reason for their dismissals was not redundancy such that they were not entitled to redundancy payments.

2. I heard evidence on behalf of the Company from Mr Moyle, General Manager and Ms Michael, a director. I also heard evidence from Mr Kousiounis himself and my attention was directed to a number of documents, upon which I reached the following findings of fact.

3. The claimants were employed by the Company at its Waterfront Fish Bar in Weston-Super-Mare. Mr Kousiounis was the Waterfront Supervisor and Mrs Kousiounis the Catering Manager.

4. Throughout their employment, the claimants were employed on "annualised hours" contracts. They actually worked during the season of each year (from Spring to Autumn) during which they took no holiday. It was assumed that their average hours each week throughout the season would be 48 in the case of Mr Kousiounis and 40 in the case of Mrs Kousiounis. Their wages were made upon that basis regardless of the number of hours they actually worked in every week or month and payment spread across the year.

5. From the end of each season (roughly the end of November) each year until the start of the following season they would be on holiday, a large element of which would be paid.

6. In 2019, the performance of the Waterfront Fish Bar gave rise to some concern on the part of the respondent, who determined to reduce outgoings.

7. At the end of the 2019 season a proposal was put to the claimants that the terms of their employment would change. There were essentially three elements to that change. Firstly, they would henceforth be employed on zero hours contracts. Secondly, the respondent believing that there were elements of their work that they were refusing to undertake, they would no longer be paid for that work. Thirdly, the proportion of their winter break holiday that would be paid would henceforth be reduced.

8. Discussions took place over the ensuing months with a view to seeing if terms could be agreed with the claimants but that proved impossible. They were each given notice of dismissal in February 2020, coupled with an offer of employment under the new contract, which each declined.

9. Section 139 of the Employment Rights Act 1996 provides that 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 the requirements of the business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

10. It was clearly not the intention of the Company that there should be a reduction in the number of employees. However, the dismissals would still have been by reason of redundancy if they were caused by a reduced requirement for a particular type of work to be undertaken. For the claimants it was said that there was such a reduced requirement, specifically in relation to their work.

11. It was suggested that the very fact that the Company was proposing a zero hours contract for each claimant meant that this must be a redundancy situation. That could not be right. If the Company fully intended that the claimants would carry out as much work under the new contract as they had under the old one, there would be no reduced requirement for work of a

particular kind. The type of contract under which the work was being carried out would be irrelevant.

12. Alternatively, it was suggested that the reduction in the amount of paid holiday meant this was a redundancy situation. I could not accept that. The fact that the claimants would receive less pay for the period when they were not working could not mean that the requirement for work of a particular kind was reduced. The proposed reduction had nothing to do with the actual work either claimant would carry out during the season (which was the only time either claimant would work). The only effect would be that the payments made to them in respect of the winter period would be reduced.

13. In reality, the claimants' case came down to this. Although the Company's witnesses insisted that they did not anticipate any reduction in the hours of the claimants (other than in relation to the work they were refusing to undertake), that was not the case. Rather, the wages bill in respect of the claimants would reduce (and the Company make the savings required) by them undertaking less work and therefore being paid less under the new contract.

14. Certainly, the claimants were entitled to point out aspects of their treatment that might appear to be at odds with the Company's case.

15. Firstly, in a situation of this sort one might have expected to see an analysis on behalf of the Company showing how the savings would be achieved. Typically, this would be done by determining the number of hours each claimant worked in the 2019 season and then projecting the number of hours it was anticipated each would work in 2020. No such exercise was undertaken. I was directed to page 68 – 69 in the bundle but that document did not really assist on that subject. It analyses one day's outgoings under the existing arrangement but compares them with outgoings following the departure of the claimants from the business altogether (which the Company anticipated would occur at the end of the 2020 season, when they retired). It was of no assistance whatsoever in determining the savings that might be made if the new contracts were accepted by the claimants for the 2020 season.

16. Similarly, if, as the Company's witnesses insisted, there was no intention or expectation that the hours of the claimants would reduce, it was surprising that no assurance to that effect was given to the claimants in the course of the consultation process. It was clear that the Company wished the claimants to stay in employment and that sort of assurance would have been the simplest thing to provide.

17. On the other hand, I did not accept the contention on the part of the claimants that documents produced in the course of the consultation process amounted to a concession on the part of the Company that the claimants' hours would indeed reduce. My intention was drawn in particular to page 92 of the bundle but all that appears to indicate is that the claimants will no longer be paid for work they are not undertaking. A reduction in "non work" cannot be a reduction in the requirement for employees to undertake work of a particular kind.

18. The question for me was simply one of credibility; in the light of the considerations to which I have referred, should I infer that the intention or expectation of the Company was that the hours of the claimants would indeed reduce under the new contract, in which case the ensuing dismissals were indeed by reason of redundancy, or did I accept the express evidence of the relevant witnesses to the contrary?

19. One particular consideration in this context was evidence (or lack of it) in relation to any proposed changes to the way the fish bar was operated. If, for example, the Company had indicated that it was its intention to reduce the opening hours, or if new equipment was being introduced that would reduce the time taken for any particular function, then it would not be difficult to conclude that the requirement for employees to carry out particular types of work was being reduced. There was simply no evidence to that effect.

20. On the contrary, everything appeared to indicate that the intention of the Company was to continue operating the fish bar in precisely the same way as it had been operated before. The claimants would be employed to undertake precisely the roles they had undertaken before (save in respect of the work that they were refusing to carry out, for which they would no longer be paid).

21. In short, my conclusion was that the requirements of the Company for employees to carry out work of a particular kind had neither ceased nor diminished nor were expected to cease or diminish. It followed that the dismissals of the claimants were not by reason of redundancy and therefore that they were not entitled to redundancy payments.

Employment Judge Reed
Date: 16 September 2021

Judgment & reasons sent to parties: 7 October 2021

FOR THE TRIBUNAL OFFICE

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.