



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE HALL-SMITH

BETWEEN:

Ms E Grint

Claimant

AND

Radiometer Limited

Respondent

ON: 3, 9 March 2017

APPEARANCES:

For the Claimant: Mrs H Winstone, Counsel

For the Respondent: Mr B Warren, HR Consultant

JUDGMENT

THE JUDGMENT OF THE TRIBUNAL is that:-

1. The Claimant was unfairly dismissed by the Respondent.
2. A Remedy Hearing will be listed.

REASONS

1. By a claim form and received by the Tribunal on 11 November 2060, the Claimant, Ms Elizabeth Grint, brought a complaint of unfair dismissal against the Respondent, Radiometer Ltd
2. At the hearing at the Claimant was represented by Mrs H Winstone, Counsel, who called the Claimant to give evidence before the Tribunal. The Respondent was represented by Mr Brian Warren HR Consultant, who gave evidence

before the Tribunal. In addition Mr Warren called Ms Anneliese Holland, Department Head, to give evidence. There was a bundle of documents before the Tribunal.

3. The issues to be determined by the tribunal involved the question of whether the Claimant's dismissal had been a fair dismissal within the meaning of section 98(4) of the Employment Rights Act 1996. The Respondent contended that the Claimant had been dismissed for the potentially fair reason of redundancy. There was also an issue as to whether there had been a genuine redundancy situation within the meaning of section 139 of the 1996 act at the time of the Claimant's dismissal.

The facts

4. The Respondent, Radiometer Limited, was engaged in the business of the development, production and sale of technical medical clinical equipment including acute care testing solutions. The Claimant commenced her employment with the Respondent on 20 March 2006. I found that from the outset of her employment the Claimant was an enthusiastic and conscientious member of the Respondent's staff.
5. In about August 2012, the Claimant was appointed to the position of Product and Marketing Communications Manager. The Claimant reported directly to the Respondent's Managing Director.
6. The Claimant's average working week involved her in travelling to customer sites on 1 to 2 days and she would spend on average two days per week working in the Respondent's head office in Crawley. The remainder of the Claimant's working week was spent by her working from home
7. I had regard to the Claimant's contract of employment, pages 82 to 90, which provided:

During your employment, you may be required to work at and travel to various places within the United Kingdom. For, your information, the principal address of your employer is Manor Court, Manor Royal, Crawley West Sussex. You may be required to travel to and work at other premises/places of work as required by your manager either in the United Kingdom or abroad.

The company reserves the right to transfer you either temporarily or permanently to a suitable alternative place of work. Domestic circumstances will be taken into account in reaching a decision if relocation is involved. Your geographical area may be altered, provided that it remains realistically accessible for your normal residence.

8. It took the Claimant two hours to drive from her home in Banbury to the Respondent's office in Crawley. The return journey to Banbury took the Claimant between 2 ½ to 3 hours. When working at the office the Claimant

would normally stay will stay overnight in a nearby hotel attend the office early the following morning and aim to leave before 4 pm to beat the rush hour traffic.

9. In 2014 Claimant was allocated an additional product to manage, namely the Respondent's "TC" product rancte.
10. In November 2015 the Claimant believed that one of her colleagues, a Product Manager named Lorenzo had been made redundant. The Claimant experienced some concern that she may herself be at risk of redundancy.
11. At the same time in November 2015, following a restructure which involved the creation of a new department called Marketing and Business Development, Anneliese Holland was appointed to the role of Marketing and Business Development Manager.
12. At paragraphs 5, 6, 7 and 8 of her witness statement, Anneliese Holland stated the following:
 5. **One of the main priorities heading up this department was to build the department as a new function and to align with the company's strategic and business objectives. I initially continued to keep the structure as was in order to review, grow and strengthen the department. This decision was in line and in agreement with senior management.**
 6. **In order to bring the team together and get close to all aspects of the business, I set about initiatives to bring the team together to increase communication and sharing best practice, in the form of weekly team meetings. Sharing best practice, skills in discussing ideas was key to building the team and also a key element fostering creativity which is an essential and fundamental asset to any Marketing function. Sharing best practice, skills and knowledge is something I have continued to grow and strengthen eg. having multiple people within the organisation trained to use software required to complete company critical documents and processes.**
 7. **In addition I also had one-to-one meetings with all my team members to review specific details of progress of core activities and objectives.**
 8. **We also created standard work in the form of Visual Management Boards (standard practice within the Danahar companies). Each team member was responsible for their own board and would present up-to-date process, countermeasures and updates for their responsible brand activities and campaigns at our weekly meetings. We were also requested to report out on our Visual Management Boards to the Senior Management Team on Mondays.**

13. The Claimant considered that she was being undermined and marginalised by Anneliese Holland. At a gala evening when long service awards were being presented to employees, the Claimant had not been presented with a gift unlike another members of staff. I accepted the evidence of Anneliese Holland that the reason why the Claimant had not been provided with a gift was because she had not informed her what she wanted. The Claimant also alleged that she was required to stay at a Premier Inn when she was working in Crawley, unlike colleagues who were able to stay in a more upmarket hotel.
14. Although I accepted that the Claimant felt at that she was being undermined by the approach of a new manager Anneliese Holland, who was making changes to the working arrangements, I did not find that there was a deliberate campaign to undermine the Claimant on the evidence. However the arrival of Anneliese Holland had certainly unsettled the Claimant and I found that Anneliese Holland's stated aim of encouraging "synergy" did not extend to engaging with the Claimant in relation to issues where the Claimant felt marginalised, such as the hotel issue, and to provide an explanation for changes or decisions which impacted on the Claimant.
15. A colleague of the Claimant's Joanna Ball resigned in April 2016. On the evidence I found that the reason behind Joanna Ball's resignation was the fact that her husband who was in the army had been relocated to another base. I accepted Anneliese Holland's evidence that Joanna Ball's resignation had been triggered by the re-posting of her husband, but the Claimant felt increasingly vulnerable by Joanna Ball's departure.
16. The substantive issue between the parties was the reason for the Claimant's subsequent dismissal. It was the Respondent's contention that the Claimant had been dismissed in circumstances of a genuine redundancy situation. The evidence of Anneliese Holland was that as a result of an analysis undertaken, it had been her proposal to move build/home-based marketing worlds into the office full-time thereby creating a full complement of office-based marketing personnel. Anneliese Holland contended that HR had reviewed the process and that moving the two field-based roles into the office full-time would be considered a significant change to their working conditions, thereby creating a redundancy situation.
17. The sole documentary evidence relating to the alleged analysis undertaken by Anneliese Holland involved a document, page 96, headed 'Marketing Changes Costs' which set out the salaries of the two field-based employees, namely, the Claimant and Joanna Ball and the cost to the Respondent of both Joanna Ball's and the Claimant's redundancy. Although the document was undated it must have been generated in March 2016, because Joanna Ball resigned in April 2016.
18. Having regard to the to the absence of any documentation apart from the costs' document, page 96, I was unable to accept the evidence of Anneliese Holland

that she had undertaken any analysis to the extent that she alleged. I was driven to the conclusion that the Respondent had taken a decision to dismiss the Claimant before any consultation process had been put in place.

19. In cross-examination when the document, page 96, was put to Anneliese Holland, Anneliese Holland stated that she had been looking at all options. I found her evidence unconvincing in relation to the existence of a document which focused on the Claimant and which was expressly referable to redundancy and which had been generated as early as March 2016. At the very least, I considered that by March 2016, Anneliese Holland, was anticipating the departure of the Claimant.
20. On 3 May 2016, the Claimant successfully launched the new product known as "TC". On 1 June 2016 after the Claimant had arrived at the Respondent's head office in Crawley, Anneliese Holland asked the Claimant to meet her in a downstairs meeting room. The Claimant on her arrival was concerned to see both Anneliese Holland and Brian Warren, the Respondent's HR manager. Anneliese Holland informed the Claimant that she proposed that all marketing team members should be based on the Crawley office. The Claimant was the only field-based team member and accordingly the proposal would have involved her having to relocate. The Claimant asked Anneliese Holland the reason for the proposal and she was told that it would help the business grow and unite the marketing team
21. The Claimant enquired why her existing role did not help to grow the business and she was told that it was all about unity within the team. Anneliese Holland stated that it was just a proposal that no decision had been made and that she wanted to talk rest of the marketing team members and senior managers. The notes of the meeting pages 143 -145 include a reference to Anneliese Holland stating the following

It's a proposal. The decision has not been made.

22. I was unable to accept that on 1 June 2016 what was stated by Anneliese Holland as a proposal to have all the field-based team members in the office at Crawley a proposal which only impacted upon the Claimant amounted to no more than a proposal. I was reinforced in my conclusion at that a decision had been made in relation to the Claimant's future by the fact that there was a proposal at the meeting that the Claimant should go on 'garden leave' on the basis that it would be a difficult time for the Claimant.
23. There had been a total absence of any meaningful consultation with the Claimant and, in substance, the meeting amounted to an ultimatum to the Claimant. Further at the end of the meeting the Claimant was asked remain in the meeting room while both Anneliese Holland and Brian Warren spoke to the other team members. As the Claimant was herself, a team member, I do not consider there was any justification for the Claimant not being present at such discussions with the other team members.

24. On the same day, the Claimant's computer was disconnected from the Respondent's server and she was unable to reset the password. Following the Claimant's enquiry as to why this had happened the Claimant received the following text message from Brian Warren namely

Liz it's Brian here. I realised today that will be able to access emails. The process for people on garden leave is to remove systems access and I wrongly assumed that you would want to be on garden leave. I told IT to fix this and that's been done.

25. I considered that the offer of garden leave and disconnecting the Claimant from the Respondents server evidenced an approach, on the part of both Anneliese Holland and Brian Warren, which was only consistent with an assumption on their part that the Claimant's employment relationship with the Respondent would be terminated either by her resignation or by dismissal. Further there was a proposal that any future meetings could take place by Skype which again in my judgement represented an approach on the part of the Respondent at, what was on any view a very difficult time for the Claimant, to distance itself from the Claimant.
26. Over the two days of the hearing I heard no evidence from either Anneliese Holland or from Brian Warren which supported any cogent reason why the Claimant was required to work at Crawley other than an explanation of community unity and bringing synergy. Although I asked on several occasions at the Tribunal hearing what was meant by "synergy" Anneliese Holland was unable to provide any convincing explanation of precisely what she meant by synergy.
27. On the same day, 1 June 2016, the Claimant received the following letter from Anneliese Holland, page 101.

Further to the consultation meeting with me today, I am writing to confirm that your role has provisionally been identified as at risk of redundancy, because I am proposing that all marketing roles will be based at the Crawley head office

I have explained to you the business rationale for the potential redundancy situation and the procedure. I would like to emphasise again, however, that no final decision has been taken in connection with any potential redundancy and this letter does not give you notice of termination of employment on the grounds of redundancy..

The company will ensure that a full consultation process takes place. The purpose of consultation is to allow further discussion of such matters as the business rationale for the changes and how we will look for any alternative employment options for you, if required.

I want to discuss with you any suggestions or ideas that you may have regarding ways of possible the avoiding redundancy, any comments you have in connection with the business proposals and any views you have on possible alternative employment including, but not limited, to working full-time in the Crawley office.

I appreciate that this may be a difficult period for you and I have offered to put you on garden leave, which means you would not be required to work. You told me today that you would prefer to work. Please let me know at any time if you want to review the situation.

The next consultation meeting will be at 11 am on Friday, 3 June. As you do not want to come to Crawley or speak by phone, this will be by Skype video call. You are entitled to ask a work colleague a trade union representative to accompany you to this meeting. This will be followed by another consultation meeting at 12 PM noon on Tuesday 7 June which can also be a Skype video call.

If you would like to discuss anything prior to our next meeting or share your thoughts about the proposal, please do not hesitate to let me know.

28. The Claimant attended the further meeting scheduled on 3 June 2000 at the head office in Crawley. Both Anneliese Warren and Brian Warren attended by Skype in the absence of camera image. At the meeting Anneliese Holland stated that that no decision had been made and that her role would be office based and that the Claimant would be spending a lot more time there.
29. On 6 June 2016 Brian Warren had emailed the Claimant setting out the Claimant's financial entitlement if in the event she was dismissed.
30. The Claimant did decide to take up the offer of garden leave provided that it was described as 'holiday'. In an email to the Claimant dated June 2016 page 114 Anneliese Holland included the following:

.....the proposal is to move both field-based marketing roles to join the existing office-based roles so that all marketing roles will be based on the office. This will mean working at the office. There will be some field travel as part of the activities, but this will not be a full time travel as currently stands with a field-based position.

The rationale for this, as we have discussed, is to build a team for the future and this is based upon enhancing on fundamentals of teambuilding based upon synergy, accountability, communication and team culture. This proposal has been made, as previously reiterated, to move the field-based positions into the office to build a team to meet the future needs of the business. This by no means a reflection of your work/performance as we have highlighted in all previous meetings/discussions.

Regarding being on garden leave/holiday (as we agreed to call it). You are correct that you are still fully employed by the company and you have chosen to take garden leave/holiday during this consultation process. As Brian has explained, this is fully paid and you are not required to work, however there is work ongoing and day-to-day management and in order to keep business activities running this is why he has requested that we receive your laptop as access to certain sites, is through your laptop only.

31. A further consultation meeting was scheduled to take place on 16 June 2016 but was subsequently rescheduled to take place on 17 June 2016. The Claimant requested to reschedule the meeting because she was unable to attend in person and a colleague whom she chose to accompany her was also unable to be present. Anneliese Holland informed at the Claimant that she had decided to go ahead with the meeting and that this would be by Skype conference call.
32. Brian Warren's notes of the meeting pages 149 to 150 recorded the first entry as the following

Following the consultation, I've made a decision. I will go ahead with the proposal to move both the field-based roles to the office with immediate effect. I need to know if you're happy to come and join us, Liz.

33. The Claimant was informed by Anneliese Holland that her decision was needed by the following Monday to make plans for the team.
34. On the same day 17 June 2016, Anneliese Holland emailed the Claimant page 127, stating,

Following the consultation, I am writing to confirm that I have decided to remove your field-based metal from the company structure and replace it with a Product Manager role based permanently in the Crawley office.

I considered carefully the points you raised during the consultation period and I fully appreciate the effect this change will have on you personally.

As you are aware, I also invited opinions from your colleagues in marketing as well as members of the Management team during the consultation period. No concerns were raised about the proposal to move the two field-based marketing roles to the office and I have therefore decided to go ahead.

These changes will take immediate effect. This means your field-based role no longer exists and your options are:

- 1. Redeployment to the office based role on a trial period (please see below) or,**

2. **If you decide not to move your employment with Radiometer would end and you will be entitled to a redundancy payment.**

If you wish to be redeployed to the Crawley based role, this will start in a four-week trial period. During this four-week period, you would be entitled decide you do not want this role and you will be entitled to redundancy payment instead.

Please note that redeployment the office based role will require you to work in Crawley each day with immediate effect. Given the circumstances, I am prepared to discuss period of time, it may agree to pay for hotel accommodation for you during the week of

As you have not made clear during the consultation period with you are willing to relocate Crawley or not, I feel that I need to set a date deadline for this. Please let me know by 4 PM on Monday, 20 June 2016 if you want to take the office based role. In that event, you will start your office based role in Crawley on Tuesday 21 June.

If I do not hear from you, I will have to assume that you do not want this redeployment and you are choosing redundancy.

35. I noted that it was not until Friday, 17 June 2016, that the Claimant was informed that what she had previously been informed had been a proposal was now going to be implemented with immediate effect and that the Claimant was required to make a decision by the following Monday 20 June 2016. The Claimant had been a long-standing employee of the Respondent, and in my judgment the Respondent's requirement that the Claimant should make a life changing decision over the course of a weekend to change her long-standing working conditions which would inevitably involve relocating from Oxfordshire was wholly unreasonable.
36. I heard no evidence of any compelling reason or any reason which justified the requirement that the Claimant should decide so quickly and why the proposed changes had to be implemented immediately. I was driven to the conclusion that Anneliese Holland knew or anticipated that the Claimant would be unable to accept and that accordingly there were in Anneliese Holland's calculations grounds for dismissing the Claimant.
37. On 20 June 2017 at Claimant emailed the following two Anneliese Holland, page 129

Taking the option for a trial period will not be logistically possible bearing in mind my domestic circumstances, therefore I have been left with no option but to accept redundancy.

38. On 22 June 2016 Anneliese Holland emailed the Claimant, page 130, informing her that

As I confirmed on 17 June I have decided to make your field-based role redundant and replace it with a Product Manager role based permanently in the Crawley office.

You were offered redeployment to this office based role and declined this in an email of 20 June 2016 you accepted redundancy. The company has not been successful in finding an alternative suitable role for you with another Danaher company.

39. The effective date of termination of the Claimant's contract of employment by a dismissal was 7 July 2016.

The Law

40. The statutory framework for redundancy is set out in section 139 of the Employment Rights Act 1996, which provides:

(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-

(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.

41. Section 98(4) of the Employment Rights Act 1996 provides:

(4) ...the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –

(a) Depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer had to reasonably or unreasonably in treating this as a sufficient reason for dismissing the employee, and

(b) Shall be determined in accordance with equity and the substantial merits of the case.

42. In a redundancy process the Employer should act reasonably throughout the entire process, namely each stage of the process, including the dismissal stage, should come within the scope or range of reasonable responses available to a reasonable employer. Thus consultation with the employee at risk should commence at the stage when proposals are still at the formative stage, and the employee should be provided with adequate information to enable the employee to engage fully in the consultation process. The Tribunal

must remind itself that it should not substitute its own views from that of the employer

43. Mrs Winstone referred me to **Exol Lubricants Limited v Birch & Perrin UKEAT 0219/14/KN**, EAT (His Honour Judge Serota). In **Exol Lubricants**, the EAT observed that in determining the place where the employee concerned was employed within the meaning of section 139 *“it is proper but by no means conclusive to have regard to the contractual provision.”*

Conclusions

44. In the circumstances of this case, I concluded, as submitted by Mrs Winstone, that the Claimant’s close connection was unquestionably with Crawley. The Claimant’s contract also provided that the Claimant may be required to work at and travel to various places within the United Kingdom. The Claimant worked at Crawley for two days a week and received her work instructions from Crawley.
45. On the evidence I found that there was no convincing reason for the Respondent’s requirement that the Claimant should work on a full time basis from Crawley and I found the explanation of ‘synergy’ and team building unconvincing. I considered that there was significant force in Mrs Winstone’s submissions on behalf of the Claimant that it was disingenuous for the Respondent to maintain that it required its staff to base themselves physically in Crawley when the Respondent’s products were UK and Europe-wide and that their customers required face-to-face conduct with their Product Managers.
46. I concluded on the evidence that there was no diminution in the work or an expectation of a diminution of the work that the Claimant was required to carry out. The requirement was that the Claimant should work full time from Crawley.
47. I found that there was no transparency in the process leading to the Claimant’s dismissal. There was no meaningful consultation process involving the Claimant and I was unable to accept Anneliese Holland’s assertion that no decision had been made during the consultation process having regard to the document setting out the cost of the two field based employees which had been generated as early as March 2016.
48. Further the Claimant was asked to go on garden leave before she had been given any time to consider the Respondent’s proposal about relocating to Crawley, The Claimant was not provided with any adequate or reasonable time to consider the Respondent’s proposal. The consultation process afforded by the Respondent, such as it was, allowed no reasonable period for consideration of any alternative proposals or any reasonable period for a search for alternative employment. Consultation should be fair and genuine – see **Rowell v Hubbard Group Services Ltd 1995 IRLR 195**.
49. There was no documentary evidence relating to the analysis which Anneliese Holland alleged she had undertaken apart from the document headed ‘Marketing Changes Cost’, page 96. At its highest, I concluded that the reality

of the Respondent's case involved a proposed reorganisation, rather than a genuine redundancy situation involving the Claimant. Accordingly, I was not satisfied on the evidence that a genuine redundancy situation existed within the meaning of section 139 of the Employment Rights Act 1996.

50. A business reorganisation can amount to some other substantial reason, SOSR, but the Respondent's case and its response were founded on redundancy. I was driven to the conclusion that the Respondent's approach, in the absence of a reasonable consultation process, involved an expectation on its part that the Claimant's employment relationship with the Respondent would cease.
51. It is the Judgment of the Tribunal that the Respondent failed to act as a reasonable employer within the meaning of section 98(4) of the Employment Rights Act 1996 in its decision to dismiss the Claimant. Accordingly the Claimant was unfairly dismissed by the Respondent. A Remedy Hearing will be listed.

Employment Judge Hall-Smith
Date: 22 May 2017