



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Julian Afari

v

Royal Mail Group Limited

Heard at: Watford

On: 8-10 March 2016

Before: Employment Judge Henry

Appearances

For the Claimant: Mr N Toms, Counsel

For the Respondent: Mr C Bailey, Solicitor

JUDGMENT

1. The tribunal finds that the claimant has not been victimised.
2. The Tribunal accordingly dismiss the claimant's claims

REASONS

1. The claimant by a claim form presented to the tribunal on 16 December 2015, presents complaints for discrimination by way of victimisation.
2. The claimant commenced employment with the respondent on 1 March 1998. The claimant remains employed having been employed for 27 years.

The Issues

3. The issues for the tribunal's determination were as follows:

The Protected act

- 3.1 It is not in dispute that, the act of the claimant in providing a witness statement in support of an allegation of race discrimination against the respondent in February 2015 was a protected act pursuant to s.27 of the Equality Act 2010 (EqA).

Detriment

- 3.2 Was the claimant subject to the following detriments within the meaning of s.27(1) EqA:
 - 3.2.1 Being required to locate to HCN on or around 20 July 2015;
 - 3.2.2 The respondent not taking into consideration the claimant's childcare duties from 20 July 2015 to the presentation of the claim;
 - 3.2.3 Being threatened with disciplinary action on 30 July 2015;
 - 3.2.4 Working at EC deliveries between 15 September – 19 October 2015;
 - 3.2.5 Being located to Greenford on 19 October 2015;
 - 3.2.6 The respondent's failure to respond to the claimant's request for redeployment from Greenford on 23 November 2015.
- 3.3 If so, was the claimant subjected to the detriment(s) because he had carried out the protected act?

Time/Limitation Issues

- 3.4 If any or all the allegations found to amount to victimisation within the meaning of s27 EqA, were they presented within the primary time limitation period and/or do they amount to conduct extending over a period ending within the primary limitation period?
- 3.5 If not, was any complaint presented within such other period as the employment tribunal considers just and equitable?
4. The claimant's complaint of detriment on a failure to respond to his request for redeployment from Greenford on 23 November 2015, was withdrawn by the claimant during the proceedings, and are dismissed.

Evidence

5. The tribunal heard evidence from the claimant and from the following witnesses on behalf of the respondent:
 - Mr Gary Gyde – Mount Pleasant mail centre plant manager;
 - Mr Daniel Lennox – head of HR Essex and
 - Mr Peter Molyneux – HR Business Partner.
6. The witnesses' evidence in chief was received by written statements upon which they were then cross examined. The tribunal also received in

evidence, a statement of Mr Babatunde Ladeinde – Operational postal worker, on the claimant's behalf, but who did not give oral evidence before the tribunal.

7. The tribunal had a bundle of documents, exhibit R1. From the documents seen and the evidence heard, the tribunal finds the following the material facts.

Facts

8. The respondent is the Royal Mail Group. The claimant was employed as a work area manager, having held a substantive managerial position from 8 October 2004. The claimant worked as a work area manager at the respondent's Mount Pleasant Mail Centre.

9. On 20 July 2014, as a result of the respondent's continued efficiency programme (CEP), the claimant was displaced from his then position as a work area manager, working on the respondent's weekend shift; the role being deemed surplus to requirements.

10. The continued efficiency programme is a scheme whereby the respondent manages change, and identified as a continuous focus on efficiency, that:

“We need to do this to effectively compete in letters and parcels. This is the best way to ensure that continued delivery of the universal service and the good quality jobs we provide.

11. By the Continued Efficiency Programmes questions and answers document, (R1 p99) in addressing the question “*who is affected by the role reduction?*” it provides:

“We are consulting with our unions on a proposal to reduce the number of roles in Royal Mail by 1600. As part of the process, we expect to create around 300 new or enhanced roles. This means we expect to achieve a net impact of around 1300 roles.

The vast majority of employees impacted will be across our managerial population. Some CWU roles will be impacted in our support and administrative functions. Front line employees, including postmen and women are not included in this initiative.”

12. And in respect of the question “*Will there be compulsory redundancies?*” it provides:

“We always aim to avoid any need to make compulsory redundancies. We have a strong track record of managing change through natural turnover, redeployment and voluntary redundancy/severance wherever possible.”

13. There is no issue arising as to the claimant being displaced by the CEP exercise.

14. It is also here noted that, by the respondent's *key principles* in their Managing Change policy, it provides that “*Surplus employees will be expected not to unreasonably refuse suitable alternative employment.*”

15. On a member of staff being displaced, it is accepted that the process is an administrative one, of the member of staff on being displaced, being matched to a new templated role by reference to; grade, skills and geography, and that the process is undertaken by human resources.
16. It is equally not in dispute that, on a member of staff being displaced by the CEP, whilst a search for a new substantive post (known as a templated post) is carried out, the member of staff displaced, remains performing their roles on a temporary basis until a new templated role has been found for them, the duties then of that role as being performed by that member of staff, is then subsumed into the templated role for that area within the established structure.
17. In respect of the templated roles of "area works manager" relevant to the claimant, this was reduced from five to one area work manager.
18. On the claimant being displaced thereby, he remained performing his role pending a suitable alternative templated role being found, and remained so until July 2015, when he was matched to a templated role, and is the first detriment of which the claimant complains.
19. On being displaced, the letter to the claimant dated 21 July 2014, informing him of his being so displaced under the continued efficiency programme, provides:

"I understand that this will be disappointing news and I will work with you to try and identify a reasonable alternative job for you at your substantive grade using the redeployment process within MtSF. In the meantime, you will continue to report to your current line manager."
20. For completeness, it is here noted that the claimant appealed against his being displaced, however the matters relating thereto are not material to the issues for this tribunal's determination.
21. In January 2015, in support of a work colleague who had presented a complaint to the employment tribunal complaining of discrimination on the protected characteristic of race, the claimant prepared a witness statement, but was then unable to attend the tribunal to give oral evidence at the hearing in February 2015.
22. It is the preparation of the witness statement that the claimant relies on as the protected act. It is accepted by the respondent that this was a protected act for the purposes of s.27 of the Equality Act 2010 ("EqA").
23. In respect of the issues being raised by the claimant's colleague at tribunal, one of the matters in issue revolved around matters for which the claimant's colleague had presented a grievance, which grievance was heard by Mr Gyde, who at the material time had had no previous dealings with the claimant's colleague or otherwise the claimant. The claimant did not feature as part of the grievance.

24. Mr Gyde was not a party to the claimant's colleague's tribunal claim, and had no involvement therewith.
25. The tribunal pauses here, as it has been advanced on behalf of the claimant that, Mr Gyde had been involved in that tribunal claim, on account of paragraph 47 and 48 of his (Mr Gyde's) written statement to this tribunal, in which he records that he had not seen the claimant at tribunal, and that the only tribunal hearing that had taken place prior to his preparing his written statement for this tribunal hearing, was the tribunal hearing in February 2015, and thereby inferring his involvement in the claimant's colleague's claim and consequential knowledge of the claimant's statement is support thereof.
26. Mr Gyde in evidence before this tribunal, has been categoric in his evidence that, he had not attended that tribunal hearing, and had not been involved in the tribunal claim heard in February 2015, and that the paragraph referred to in his statement, had been an error, which error had been amended before any evidence was received by this tribunal.
27. The tribunal accepts the evidence of Mr Gyde, that he had not been in attendance at the tribunal hearing in February 2015, and had not been involved in the preparation of that case at that time; Mr Gyde's involvement only arising following an appeal to the employment appeal tribunal, where issue was then raised as to the grievance hearing of which Mr Gyde chaired and that it was at some time after that, when the respondent was preparing for that case, which had then been remitted back to the employment tribunal, that he would have read any statement of the claimant, albeit he is not certain that he had had such sight at that time, but that he had since read the statement in preparation for this tribunal hearing and of which Mr Gyde states, he had no recollection of the claimant's involvement in his colleagues case, although acknowledging the claimant having been a member of the public at the remitted hearing, but who did not give evidence.
28. It is also here worthy of note that, with regards the issues raised by the claimant's colleague by his grievance, Mr Gyde's findings were in favour of the claimant's colleague and from which there is apparent no basis for Mr Gyde to then have any antipathy against the claimant's colleague, or the claimant for his support thereof, so as to call into question Mr Gyde having any resentment or otherwise, against the claimant, to account for Mr Gyde seeking to take action against the claimant for having done the protected act. There is equally nothing presented in the claimant's statement in support of his colleague's claim that relates to Mr Gyde.
29. On or about 20 July 2015, Mr Lennox, the HR business partner responsible for displaced staff in the Mount Pleasant plant area, being one of the many areas he held responsibility for, and the area in which the claimant worked, in carrying out the matching exercise as part of the continuing efficiency programme, matched the claimant against a role in Home Counties North mail centre. The claimant does not challenge this exercise and accepts that it was part of the CEP process.

30. In respect of the indentified role, Mr Lennox informed Mr Gyde, as the claimant's manager, to inform the claimant of the match. Mr Gyde had no input regarding this exercise otherwise than that of communicating the information. This communication was subsequently confirmed in writing by a standard letter, which is here set out in full, as it forms the basis of the claimant's complaints to this tribunal:

"I am writing to confirm our discussion today.

As you were aware you are currently displaced, that is to say you do not currently hold a templated position.

I am delighted to tell you that you have been matched against a vacant position.

The new role is in Home Counties North mail centre as late shift work area manager and the late shift manager there is ... who will be your line manager and point of contact.

I would like you to take the next three weeks to complete any outstanding tasks you have in order that you are ready to take up your new position w/c 10 August 2015 at 14.00pm.

For the purposes of any additional miles you may incur, this move is treated as a compulsory move. This means any additional miles (net of what your current requirement is) is claimable.

Finally, I would like to thank you for all your time and effort at Mount Pleasant Plant and wish you the very best in your new role."

31. On 29 July 2015, the claimant responded that, having seriously considered the offer and discussed it with his family and having travelled to HCN to test the journey he "cannot take the offer due to personal and domestic circumstances", the claimant thereon set out that his wife could not rearrange her shift pattern which had been arranged to accommodate his shift patterns, and that he would not be able to share responsibility for his young children in taking them to and from school, asking that he be given an opportunity for a more reasonable match.
32. It is the respondent's evidence, which although challenged by the claimant, is nevertheless accepted by the tribunal, that, Mr Gyde, having discussed the claimant's concerns and taken advice from HR, it was the expectation under the CEP, that the claimant would take the new post and should be encouraged so to do, determining that the claimant had been offered reasonable opportunity to make alternative childcare arrangements for which the following letter was sent to the claimant, which is again here set out in full as it is the ground on which the claimant further complains of detriment, and asks the tribunal to read the document in context to glean it's full meaning. The letter provides:

"Thank you for your letter date 29th July 2015. I think there seems to be some misunderstanding, this was not an offer that could be accepted or not accepted, this is

now your new templated role and is absolutely reasonable in line with your grade and in terms of location.

Whilst the business understands your domestic situation with regards to your children you were given three weeks to make the necessary arrangements, in reality this is actually seven weeks because the children are now on summer leave from school.

I need to crystallise the situation, this weekend will be your last at Mount Pleasant, you will then start at Home Counties North on 10 August 2015 at 14.00pm. In your new role, if you do not arrive on that date, at that time, it will be deemed as failure to attend.

Once again thank you for your efforts and commitment in your time at Mount Pleasant.”

33. The claimant contends that this letter was a threat of disciplinary action and predicated on his having done the protected act. The claimant here maintains that, whilst the letter does not say disciplinary action, reference to the term “*deemed as failure to attend*” refers to disciplinary action under the disciplinary code, and not under any attendance code. The respondent does not accept this interpretation submitting that, it was a reference to the then state of affairs, for which the claimant would be called upon to give an explanation should the event occur of his not attending as directed, and that dependent on his explanation, only then would a decision be taken as to whether any disciplinary infraction had occurred, albeit they do accept that a reading advanced by the claimant could be inferred by the wording.
34. The tribunal also pauses at this juncture to note that, there is no issue arising of any animosity or otherwise poor working relationship between the claimant and Mr Gyde. The claimant’s evidence on point being that, he had a good working relationship with Mr Gyde and Mr Gyde expressing nothing but respect for the claimant. It is further noted that, it is the claimant’s evidence that there was nothing that happened from February to July 2015 to evince any change in attitude of Mr Gyde towards him, but that following his being matched to the HCN position, Mr Gyde did not then want him back in Mount Pleasant, for which the claimant states he did not know why, but that the only explanation he could give was his having prepared his written statement in support of his colleague’s tribunal claim, which he subsequently raised for the first time by a grievance raised on 24 November 2015, referred herein.
35. In respect of the correspondence, on 5 August 2015, the claimant wrote to the director, Mr Cameron, under the subject heading “Urgent personal issues” stating:

“The issue is that I’m displaced and currently cover various roles on the weekend shift. I became displaced as a result of the last CEP and although there were a number of us affected, most have somehow been moved into jobs in the mail centre except two of us and I have been asked to transfer to Home Counties North (HCN) and the other person to Medway.

Three weeks ago, my plant manager informed me (sic) this role at Home Counties North (HCN) and suggested I should consider it due to my home location which is Enfield, and the fact that there is no job for me at Mount Pleasant. I went to see him

again the following week and told him about the difficulties I would have in terms of transportation, financial loss and potential childcare issues as I have two very young children. However, on Monday, 20/07/2015 my plant manager told me “I’ve got three weeks to sort out my child’s issue and start work at HCN at 2.00pm on 10th August 2015.”

After discussing with my family and travelling to HCN to experience the transportation aspect of the move I decided that I couldn’t take the offer so I consulted my CMA function representative who told me I have a choice of up to two offers under CEP and if I cannot accept this offer based on my personal and family circumstances, I have to let my plant manager know. I therefore wrote to my plant manager on 29/07/15 to inform him I couldn’t take the offer and the response I had was that the offer is “not one that could be accepted or not accepted as the position it’s (sic) now my new template job” which is contrary to what my union representative told me.

.....

My plant manager has not considered my mitigating issues and rather ordered me to report to HCN on 10/08/15 at 14:00 and “if I do not arrive it will be deemed as failure to attend”. I understand where the business is going in terms of cost reduction and efficiency but I’ve been asked to leave my current role which is a full duty over three days as follows: TOPS 2k and Manual Flats; Sunday – Inward SD/tracked 24 and 48; Mon - Mail sort/DSA and All Platforms, only for it to be covered by overtime? I am being forced out of London and my work/life balance suffering as a result and shown no compassion at all. However, I know there is a scope to absorb me because currently this is the situation at Mount Pleasant in terms of front line role cover...”

36. The claimant thereon set out roles at the Mount Pleasant Plant which were being covered temporarily or otherwise by overtime, the claimant continuing:

“What I find really unfair is why am (sic) asked to leave this office because there is no job for me under the Continued Efficiency Programme (CEF), a cost saving programme, while a huge amount of money is being paid to managers on overtime and substitution weekly to cover so many jobs?

....

Royal Mail is a great company to work for and I always do my best because I value my job but I really feel let down by this as it makes me feel my plight and other commitments in my work life haven’t been considered at all. For instance, I am supposed to be on my annual leave on 10/08/15 which is the same day I’ve been asked to start to HCN which clearly shows that not much care and thought has been put into this and I feel I haven’t been treated with any value or dignity and just being pushed out.....”

37. The claimant was responded to on Mr Cameron’s behalf by Mr Songhurst, Process and Collections Director, who advised the claimant that the HCN position was considered suitable and reasonable, and that he had been given three weeks to rearrange any circumstances that may have prevented him from taking up the role, thereon advising:

“Please note, employees in your position are expected to accept an offer of suitable alternative employment where it is reasonable to do so. I am however aware from your note that it is your belief is (sic) that this role is not reasonable. To further explore the reasons behind this I have asked your HR Business Partner to set up a meeting with yourself, your plant manager and your trade union representative (should you wish) to discuss this in detail.

You will need to bring comprehensive information as to why you believe this role is not reasonable. For example, if the issues you highlight involve childcare we need to understand the current arrangements/options available, the age of your children, the location of their schools, your wife's work pattern.

The business will then review the information you have submitted and make a decision accordingly.

I also wish to highlight your comment "I have a choice up to two offers under CEP" is not in accordance with business policy.

I would like to confirm the business is currently reviewing the most effective resourcing profile at Mount Pleasant. I have spoken to the plant manager and he has confirmed that there are no templated roles for you.

In summary, you are currently displaced and this is not a situation that can be sustained either for yourself or the business
...."

38. A meeting was arranged and took place on 13 August 2015, between the claimant, Mr Lennox of HR and Mr Gyde. As a consequence of discussions had, it was agreed that the HCN role was not suitable for the claimant, for which Mr Lennox agreed to carry out a search for other suitable vacancies, and in respect of which, Mr Lennox on 26 August updated the claimant as to his efforts.
39. Later than day, the claimant wrote to Ms Whalley, under the heading "Personal Matter" by which he set out a number of issues he had had since commencing his employment with the respondent in 1998, culminating in his receiving a poor appraisal in 2013, which fed into the CEP and by which he was displaced, thereon stating:

"In 2013/14 I was displaced under CEP because I had a low appraisal marking. However the process is supposed to select the best person for the job based on skills and experience as well, but I strongly believe this did not happen in my case the focus was mainly on my PDR evidence but not my capability in terms of knowledge, skills and experience as outlined on the CEP. I was however determined to improve my performance and with the support of my line manager took on a more involving and demanding role. I started making gradual progress and working towards getting my performance back to where I should, only to be asked to leave the office completely.

In July this year my Plant Manager mentioned a vacant job at "Home Counties North" mail centre and asked me to consider the offer as I was displaced. I made him aware of my personal circumstances and told him I would discuss that with my family for me to decide. However on Monday 20/07/2015 my Plant Manager called me again and told me that I've got three weeks to sort out my child's issue and start work at HCN at 2pm on 10th August 2015.

This came as a shock as although I had raised my domestic issues with him that was not considered at all. I have been asked to move out the mail centre entirely because I'm displaced and there was no job for me. I am well aware that under CEP all management roles were to be allocated at substantive grade and therefore non-managerial grades were excluded from the process however there is a temporary promoted manager

covering a substantive work area manager's role on the night shift at my mail centre while I am being asked to leave because there is no job for me.

What I find really difficult to accept is why am (sic) asked to leave my office because there is no job for me under CEP, a cost saving programme, while a huge amount of money is being paid to managers on overtime and substitution weekly to cover so many other jobs? As at 26/07/2015 managers were still being trained at the weekend to cover overtime, which clearly shows that there are still jobs to cover and the situation is as follows..."

40. The claimant thereon set out his observations of the shifts and roles at the office, then claimant continuing:

"I believe Royal Mail is a great company to work for and I always try to do my best but it's some of the people who have made decisions around me, who have made it so difficult and I now look up to you higher management as guardians of this great company to do something to stop the favouritism and unfairness I have faced and believe it's the plight of many more like me....."

41. Ms Whalley responded, advising that she would take the matter up with HR.
42. The claimant was then on annual leave from 10 August 2015, due to return on or about 4 September 2015.
43. On 3 September 2015, the claimant wrote to Mr Lennox, stating:

"Just a reminder that my annual leave ends this week. Hoping to hear from you soon."

44. Mr Lennox responded on 4 September 2015, advising:

"Hi Julian,
Yes, I'm continuing to explore whether there are any alternative suitable vacancies. Again, thank you for your patience."

45. On 9 September, the claimant again wrote to Mr Lennox, stating:

"Many thanks for your continued help. I know you are working hard to resolve my situation and I really do appreciate that, however I am concerned that I'm currently at home after my leave and do not know what to do. In the meantime, can I continue with my role at Mount Pleasant until something is found for me?"

46. Mr Lennox responded on 10 September, advising:

"Yes – Please return to Mount Pleasant MC.
As this is not a template role and you are displaced, I am continuing to assess whether there are any alternative suitable vacancies...."

47. Mr Gyde, later that morning, wrote to the claimant asking that he make contact to discuss an attendance pattern.
48. The claimant responded at approximately 12.14 enquiring whether Mr Gyde would like him to call him personally, or the resource centre, and at 12.39 the claimant contacted Mr Walpole, stating:

“I thought I was returning to the same role but had this email from Gary regarding attendance so I've replied that I can also do the early shift because of my domestic situation as he has indicated that weekend is not really an option.”

49. At 12.41 Mr Walpole responded to the claimant advising:

“See what we get back from him in terms of the hours he offers but keep me advised.”

50. At 12.25 the claimant responded to Mr Gyde advising: “Gary, I can do the early shift.”

51. At 13.15 Mr Gyde responded to the claimant advising:

“In essence the weekend is not really an option so would be keen to know what you can do during the week?”

Mr Gyde subsequently asking the claimant to give him a call.

52. With regards the claimant returning to the role he had been performing at Mount Pleasant, it was Mr Gyde's evidence to the tribunal that, he did not consider it a good idea for the claimant to return to Mount Pleasant long-term as a displaced manager doing the type of work he had been doing, as not being efficient or an effective use of his managerial skills, and that he was working towards the new templated structure. In respect of the templated roles and displaced managers, Mr Gyde here explained, which has not been challenged by the claimant, that, on a displaced Work Area Manager being found a templated role, the role that they had been performing whilst displaced, would then have been absorbed by the templated role and thereby the templated role would, over time, take up its full function.

53. It was accordingly Mr Gyde's evidence that, on the claimant's intended return to Mount Pleasant, he had become aware of a temporary position within EC Deliveries, which was located on the floor above that which the claimant had previously worked at Mount Pleasant, which required an investigation into quality control checks, which the incumbent had been unable to resolve and for which the claimant was considered a suitable candidate to undertake the task, and was accordingly allocated to him.

54. The claimant here submits that this was a demeaning role, in that, it was junior to the role he had previously been performing and that colleagues had assumed that he had been demoted, not knowing what his function was within EC Deliveries. Mr Gyde does not accept this role to have been junior or otherwise demeaning, advancing that it was a valued and meaningful role for the organisation.

55. The claimant remained working in EC Deliveries until 1 October 2015, when he was matched to the role of Work Area Manager at Greenford Mail Centre, the claimant being written to by Mr Lennox, advising:

“Once again, apologies for the delay and thank you for your patience.

The business has been continuing to assess whether there are any alternative suitable vacancies for yourself given your skills, grade and geographical location. The business has identified a templated role for you.

It is an ML4 early shift Work Area Manager role in Greenford Mail Centre.

The business believes that this role is suitable and reasonable.
Your home to office for this role would be 20 miles and 49 minutes

Your start date for this role will be Monday 19th October...”

56. The claimant duly took up the position and on 25 October wrote Mr Lennox as follows:

“... I am very glad you finally managed to find a role for me and I’m very grateful.

I started at my new location last week as directed however my main concern has been the return journey which has so far taken me an average one and half hours due to traffic at the time of day. As I mentioned to you at our meeting I need to pick my daughter from school at 3.05 PM hence the concern as I have struggled all week to do this.

Secondly as you pointed out in your email, the home to office distance for the role is 20 miles as against my previous 12 miles so any information regarding extra mileage?

I would like to thank you again for all your help”

57. Mr Lennox responded on 29 October, advising of his having moved roles and that he was forwarding the claimant’s email to the relevant person, but that they were on leave that week asking for the claimant to be patient, further advising that he would be contacted the following week.
58. On the 4 November, Mr Molyneux, Mr Lennox’s replacement, having had discussions with the claimant, wrote to the claimant, advising:

“...

As discussed I think there are a couple of actions tyou (sic) should take to see if we can resolve your time issues.

Firstly – have a chat to your line manager and discuss how you can work efficiently to ensure you get away at the end of shift as promptly as possible – what kind of issues do you have at shift end – how can you deal with these differently.

Secondly – have a review of the current childcare/school collection arrangements with your wife and children – wife enquire about flexible working arrangements with her employer – shift change, possibly child could be collected by a trusted friend or relative / stay with a friend until you are home / school clubs or other school options.

Obviously it is important you as parents are comfortable with your children’s care as a priority but by exploring the options you may find a suitable change that works for everyone.

If you are unable to find a practical solution do let me know, options are very limited but I could possibly explore vacancies in delivery.

Either way let me know how you get on.”

59. On 23 November, the claimant presented a grievance stating:

“I would like to raise a formal grievance in accordance with the company’s procedure and the ACAS Code of Practice about the following:

1. COMPULSORY TRANSFER FROM MT PLEASANT MAIL CENTRE

I believe the decision to transfer me was done without proper consultation. I see it as an act of victimisation in retaliation to my complaints about discrimination / less favourable treatment at work and in particular, the statement I provided in February 2015 in support of Ladeinde and others v The Royal Mail Group Limited ...which is currently subject to an appeal in the Employment Appeal Tribunal.

1.1 Not much care and thought was put into my initial transfer from Mount Pleasant to Home Counties North (HCN) Mail Centre. My plant manager was rather very unsupportive and was not prepared to listen and co-operate with me regarding my domestic situation which he was already aware of. In particular, my childcare commitments were not taken into account at all.”

60. The grievance was referred to the Appeals Case Work Manager, for which a grievance hearing was held on 9 December, the findings of which are not material to the issues for this tribunal’s determination.

61. On 27 November, the claimant responded to Mr Molyneux’s letter of 4 November, the claimant stating:

“...I’ve had a chat with Rajeev my line manager, who has been very supportive but the main issue is even if I leave at 14.00 hours my official finish time, I will still not make it for 15.05 hours due to the traffic congestion, as it takes me up to 2 hours to get to my daughter’s school in Cheshunt.

It’s been really stressful for me as I’m still finding it extremely difficult to pick up my daughter at 3.05pm when she finishes school. I have also looked at the other options mentioned ie after school clubs or staying with friends etc and haven’t been able to find any real solutions.

I don’t know what other options you’ve got for me but would appreciate if you could look again please?...”

62. Mr Molyneux responded, advising the claimant that he was scoping delivery options for him, and would let him know how he got on.

63. Further to discussions had between the claimant, Mr Molyneux and Mr Gyde, the claimant was subsequently temporarily placed at Mount Pleasant before being offered the permanent role of Night Shift Parcels Manager, in July 2016, which post the claimant currently holds within Mr Gyde’s plant at Mount Pleasant.

The Law

64. The law relevant to the issues in this case have been succinctly set out by the submissions of both the claimant and respondent, at their paragraphs 8-14 and paragraphs 2-13 and of their respective written submissions, and paragraph 1-12 of the respondent's submissions on out of time. The tribunal also makes reference to the authorities of Igen Limited v Wong [2005] EWCA CIB142, Madarassy v Nomura International plc [2007] EWCA CIB33; Hewage v Grampian Health Board [2012] UKSC37; The Law Society v Bahl – EAT/1056/01/DA; and Chief Constable of West Yorkshire Police v Khan [2001] UKHL48.

Submissions

65. The Tribunal received written submissions from the parties which were then advanced in oral submissions. The tribunal have duly considered the written submissions as supported by the oral presentations.

Conclusions

The claimant being required to locate to HCN on 20 July 2015

66. The claimant accepts that his being required to locate to HCN was the natural consequence of the administrative task of matching his grade, geography and skills, and was an exercise carried out by Mr Lennox against whom he does not allege had acted in consequence of his having done the protected act. In these circumstances, there is no substance to the claimant's allegation.
67. On the claimant before the tribunal submitting that, although his being matched for the HCN role was a purely administrative task performed by Mr Lennox, it was nevertheless advanced that Mr Gyde was operating behind the scenes, but exactly how, the claimant has been unable to state, how he was then directing HR
68. The tribunal finds no evidence upon which to support the claimant's allegations, or otherwise evidence from which an inference could be drawn, in this respect.

The respondent not taking into consideration the claimant's childcare duties from 20 July 2015 to presentation of claim (16 December 2015)

69. It is clear from the evidence presented to the tribunal that, consideration of the claimant's childcare duties were clearly given effect to on the HCN position being deemed unsuitable, as too for the Greenford Mail Centre role, that there is no merit in the allegation.
70. On the claimant subsequently submitting that, he claims that consideration to childcare duties was not given at particular times, being on Mr Gyde's advising him on 30 July 2015 that he had been afforded three weeks to

make childcare arrangements, was to be considered in isolation of the further considerations of his childcare duties. In light of the circumstances relating to the claimant's redeployment at that time being in a state of flux and in circumstances whereby the CEP process, the initial consideration in determining suitable alternative employment was the claimant's skills, grade and geography; Mr Gyde having taken advice from Human Resources, he was then doing nothing other than giving effect thereto. It was thereafter for the displaced member of staff to make out a case for its non-suitability. This was not a matter for the manager's consideration but that of Human Resources under the CEP process; the manager being subject to direction in this respect from Human Resources and into which they had no input.

71. The tribunal finds no evidence upon which to support the claimant's allegation of Mr Gyde having taken the action alleged.

Being threatened with disciplinary action on 30 July 2015

72. Whilst acknowledging that the correspondence of 30 July 2015, could be read as intimating disciplinary action, when viewed in context and noting that the correspondence does not make reference to disciplinary action, which one would expect to have been there set out as being a potentially disciplinary matter under the Disciplinary Procedures, the tribunal accepts the interpretation of the respondent, that it reflected the current state of affairs, relating to the event that, were the claimant not to attend as directed, he would have to give an account for his non-attendance in circumstances where, for the reasons being advanced by the claimant, his attending Home Counties North Mail Centre was not an excuse per se. It is also pertinent to note that, on the claimant being matched to the Home Counties North position, he then ceased to be under the responsibility of Mr Gyde and that any explanations of the claimant for any non-attendance would not then be addressed by Mr Gyde
73. It is, nevertheless, clear from the factual matrix that, the correspondence of 30 July, was predicated on discussions being had as to the claimant taking up the role at Home Counties North, which match had nothing to do with the claimant having done the protected act, and the efforts of Mr Gyde and Human Resources had been premised on the sole basis of having the claimant take up the matched role and to encourage him so to do
74. The tribunal does not find the evidence to support the claimant's allegation.

Working at EC Directives between 15 September and 19 October 2015

75. The tribunal acknowledges the claimant's submissions in this respect, and are somewhat sympathetic to his argument for roles being available at Mount Pleasant which were being filled on a temporary basis or otherwise overtime, as advanced by the circumstance regarding his colleague, Miss King, the particulars of which are not material to the resolve of this issue. However, in giving consideration to the operation of the CEP and the respondent's desire to work to the new structure, such that of paramount consideration was the matching of displaced staff to templated roles, and

working away from roles being filled temporarily or otherwise through overtime, the tribunal accepts the respondent's submission that the concern of Mr Gyde was to have staff, and in this instance, the claimant, perform roles to meet the respondent's needs, which on the claimant having the requisite skills and ability to carry out the required investigations within EC Deliveries, the tribunal is satisfied that this was the basis upon which the claimant was allocated duties within EC Deliveries on his return to Mount Pleasant in September; there being no vacant templated role for a Works Area Manager, this being distinct from performing tasks that a Works Area Manager may perform.

76. The tribunal is satisfied that direction of the claimant to working in EC Deliveries, was not because the claimant had done the protected act.

Being located to Greenford on 19 October 2015

77. As above evidenced at paragraph 55 and 56, the tribunal is satisfied that the Greenford position, on the claimant being matched thereto, was for all intents and purposes, reasonable, which the claimant at the material time equally believed to be the position. It was only on the claimant having taken up the post and worked to his shift, that difficulties in the post, as regards his childcare responsibilities, became apparent. These difficulties were not previously foreseen, as accepted by the claimant.
78. The tribunal further finds that, on the match being the product of Mr Lennox's search, matching him thereto, for which Mr Gyde had no involvement, in circumstances where the claimant does not allege the actions of Mr Lennox to be anything other than the exercise of an administrative function and in no way based on his having done the protected act, and in circumstances where there is no evidence to support the claimant's submission that Mr Gyde was dictating to Human Resources behind the scenes, the reverse being the true state of affairs, the tribunal finds no merit in this contention.

The respondent's failure to respond to the claimant's request for redeployment from Greenford on 23 November 2015.

79. On the evidence presented to the tribunal, there is no evidence of any request from the claimant for redeployment from Greenford on the 23 November 2015; the claimant presenting his grievance on that date, which grievance does not make reference to any request for redeployment from Greenford.
80. With regards the claimant making a request for redeployment from Greenford, this is addressed by his correspondence of 27 November 2015, to Mr Molyneux, which was duly acted upon by Mr Molyneux, and of which the claimant has not complained.
81. In this respect, it is also pertinent here to note that the request being made to Mr Molyneux, as opposed to any other officer, and on there being no question of Mr Molyneux acting in any way against the claimant because of

the claimant having done the protected act, the tribunal finds no substance to the claimant's contention in this respect for victimisation.

82. For the reasons above stated, the tribunal finds that the claimant has not been victimised, and accordingly dismiss the claimant's claims

Employment Judge Henry

Date: 06/05/2017

Sent to the parties on: 06/05/2017

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For the Tribunal Office