



# EMPLOYMENT TRIBUNALS

**COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals**

**This has been a remote hearing which has not objected to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in 2 bundles; the claimant's of 26 pages and the respondents of 438 pages, the contents of which I have recorded. The order made is described at the end of these reasons.**

*A: audio whether partly (someone physically in a hearing centre) or fully (all remote)*

*V: video whether partly (someone physically in a hearing centre) or fully (all remote)*

*P: paper determination which is not provisional*

*T: triage provisional decision i.e. after ENE on the papers*

**Claimant**

**Respondent**

**Ms M Maru**

**v**

**London Borough of Brent**

**Heard at: Watford**

**On: 16;17 November  
2020 & 25;26 January 2021**

**Before: Employment Judge Allen**

**Appearances**

**For the Claimant: Mr Maru, claimant's husband**

**For the Respondent: Mr Lockley of counsel**

## JUDGMENT

1. Mrs Maru's claim is not well founded and is dismissed.

## REASONS

1. The claimant's claim is for unfair dismissal; the dismissal is admitted by the respondent and the reason given for it is redundancy. Redundancy is a potentially fair reason for dismissal. Unfair dismissal is denied by the

respondent and remedy issues are in dispute. I find that this claim is not well founded. Over three days I have heard evidence from the claimant, from Ms Wane, Mr Whyte and Ms Shariff. The claimant provided a bundle of documents which was 26 pages including the index and the respondent a separate bundle of 438 pages.

2. The claims and issues surrounding this were simply this, was the claimant unfairly dismissed contrary to s.94 of the Employment Rights Act 1996 and in particular can the respondent establish a potentially fair reason for dismissal? The respondent relies upon redundancy within the meaning of s.98(2)(c) of the Employment Rights Act 1996 and in the alternative some other substantial reason within the meaning of s.98(1)(b) of the Employment Rights Act 1996. If the respondent establishes a potentially fair reason for dismissal, was the dismissal fair within the meaning of s.98(4) of the Employment Rights Act 1996.
3. I have, having heard the evidence, reached a number of findings of fact and these are as follows.

### **Findings of fact**

4. The respondent is a local authority providing services to a densely populated area of London. It has significant resources, a dedicated human resources department and employs a large workforce of some 2,600 employees.
5. On Friday 14 December 2018 the claimant was dismissed on the grounds of redundancy. At the time she was dismissed the claimant had worked for the London Borough of Brent for 17 years and had been employed as a project officer for eight years.
6. In 2018 the respondent embarked upon a restructure of a number of departments including the one where the claimant worked. The purpose of the restructure was to improve resilience and service delivery.
7. The London Borough of Brent has a published managing change policy and procedure document dated 2015 giving guidance and procedures to be followed in such circumstances and particularly in reducing the number of redundancies, the job matching exercises and consultation process.
8. The department restructure was a complex process and would affect a large number of staff in various ways including the deletion of a small number of roles. Both of the department's project officer posts would be deleted, one of which was occupied by the claimant. The project officer roles were replaced by a single lower grade support office role.
9. A number of staff were involved in the management and roll out of the restructure including Mr Whyte, who led it and was responsible for the consultation process. Ms Wane was responsible for the job matching exercise together with a member of the HR staff. Ms Wane's post was affected by the restructure. Consequently, she took no further active role in the overall restructure of the department. The job matching exercise did not decide whether the posts themselves would be deleted. In the case of the project officers the job matching exercise decided how those displaced staff would be dealt with in terms of whether they would be made redundant; given the option of a competitive assimilation or ring-fenced interview to other posts.

10. The complainant had annual appraisals with her manager; there were no apparent issues with her performance. Similar developmental areas were identified at annual appraisals in the preceding three years including: building specialist knowledge around the violence against women and girls agenda, awareness about what a quality MARAC looks like (Multi-agency risk assessment conference where information is shared about the most high risk domestic violence cases) and develop presentation skills, carry out IDVA observations (Independent Domestic Violence Advocate) to develop understanding of project lead role, plus specific training requirements regarding domestic violence and leadership. These are reviews of performance against the job description. The documentation makes no reference to discussions about the accuracy of the job description at the time of appraisal. In addition staff training and development is not confined to that identified in appraisals. Staff members are also responsible for their own development.
11. In July 2018 the project officer roles were 'job matched' to the replacement role and a partial match was identified between the deleted project officer role and the replacement support officer role. The policy document (para 7 above) requires that the job descriptions are updated as appropriate before the job matching exercise. The job description for project officers was updated in 2015 and this was the job description that applied to the claimant's role. The job description for the support officer role was also created in 2015 in preparation for an earlier restructure when then didn't happen. The exercise documents following the job matching exercise was sent to HR and subsequently approved.
12. On 30 August 2018 a staff meeting was held to tell staff of the restructure and consultation process. The restructure was in its formative stage evidenced by the fact it was amended following the consultation period. Staff were given a letter setting out the details together with relevant documentation including the job description of the new project support officer role. The Job Description for the replacement role included the core competencies upon which Mrs Maru's interview questions were subsequently based. The claimant was also told that she and her colleague would be offered ringfenced interviews for the new post.
13. On 4 and 14 September 2018 the complainant, had meetings with the consultation manager Mr Whyte and expressed her view that the new support officer role should have been filled by competitive assimilation, not ring-fenced interview. Mr Whyte consulted the job matching manager; Ms Wane who provided him with a detailed explanation of the thinking behind her decisions for both the claimant and colleague in an email dated 18 September. On 14 September the claimant submitted a consultation response, part of which was actually adopted in the restructure. Ms Wane did not see this document and was not consulted about it because she was also affected by the restructure.
14. On 27 September 2018 the staff were informed of the outcome of the consultation process, that roles would be deleted and interviews held for new posts in October.
15. Between May and September 2018, a number of project officer posts which were filled in the department, the posts were subject to specific funding conditions.
16. The claimant was keen to proceed quickly with the interview process for the new post.

17. The claimant took leave in October and changed her dates before settling on the week commencing 7 October.
18. On 8 October 2018 the claimant was sent a letter inviting her to interview; setting out the interview format and a pre-interview assignment. The letter invites her to make contact if she wishes to raise any issues. She did not raise any issues.
19. The recruitment policy allows for the inclusion of other forms of assessment in the interview process for specialist roles. Ms Wane had identified the support officer role to be filled as a specialist role.
20. Ms Wane was aware the claimant was on holiday when the invitation to interview letter was sent on 8 October and said so in her letter.
21. On Friday 12 October the claimant received the invitation to interview letter on her return from holiday. On Sunday 14 October she submitted her pre-interview assignment on time as set out in the 8 October letter.
22. Ms Wane gave evidence that had she been asked for more time to prepare for interview she would have given it. She was not asked.
23. On Tuesday 16 October the claimant was interviewed for the new role. She was the only candidate. She performed well in the pre-interview assignment and the eight-minute presentation but did not provide sufficient evidence to meet the core competencies.
24. On 6 and 11 December the London Borough of Brent held new interviews to fill the vacant support officer role. On this occasion the interviews were based on open competition and both external and internal advertisement. These interviews did not follow the format of the interview that the claimant went through in October.
25. The effective date of termination for the claimant's employment was Friday 14 December 2018. Although she was entitled to 12 weeks' notice given her length of service, she asked on 26 October that the date be brought forward to 14 December as she had been offered a new job commencing on Monday 17 December.

## **Conclusions**

26. Having regard to the findings of relevant fact, applying the appropriate law and taking into account the submissions of the parties I have reached the following conclusions:
27. I remind myself that the decision to restructure the business is a management one and the tribunal must not substitute its own views for those of the employer. In making a decision to dismiss, the employer must show that its decision and the process it followed were within the range of responses open to a reasonable employer. This is a single question comprised of the decision to dismiss and the process applied. That this was a genuine redundancy situation was not challenged by the claimant until closing submissions. I am satisfied that the restructure amounted to 'some other substantial reason' for redundancy in that two posts at the claimant's grade were deleted and replaced with a single lower grade post. I am satisfied that the respondent complied with its own policies and particularly the following fell within the range of responses of a reasonable employer:
  - 27.1 Namely the decision to tell all staff at the same time about the restructure and the deleted positions.

- 27.2 The claimant's restructure proposal was considered by Mr Whyte and implemented in part.
- 27.3 The Project Officer 2015 job descriptions were not updated before the job matching exercise. Policy required job descriptions to be updated as appropriate for the job matching exercise. Since three annual appraisals had been conducted against the claimant's job description since it was adopted in 2015 without it being challenged it was not appropriate to change it for the job matching exercise.
- 27.4 That Ms Wane concluded there was a partial match between the deleted post and the new post is a judgment call for her to make.
- 27.5 That Ms Wane attached the job descriptions to the form and did not further specify the evidence she relied upon is not inconsistent with the managing change policy.
- 27.6 To fill similar posts during the period the restructure was being planned and implemented is not inconsistent with the policy. The requirement is only to 'consider' freezing recruitment; it is not an absolute ban.
- 27.7 The claimant had the same opportunity to apply for other posts that everyone else did.
- 27.8 The decision to delete the claimant's post was not final on 30 August and in fact following her counter proposal during the consultation stage changes were made to the structure.
- 27.9 That the claimant chose not to raise any issues having received the invitation to interview is a matter for her. The invitation to interview clearly stated that if she had any issues the claimant should contact Ms Wane. She did not do so. I am satisfied that 'any issues' as set out in the letter does not exclude requesting a new date of interview.
- 27.10 That the London Borough of Brent has since chosen to make this invitation more explicit is a matter for them and does not change my opinion. I have no reason to think that the interview could not have been moved if asked; Ms Wane said as much in her evidence.
- 27.11 That the role was ultimately filled following a different recruitment format in December is irrelevant. To run a new interview format after a failed ring-fenced interview process is not unfair, they were two separate and distinct recruitment campaigns.
- 27.12 I am satisfied that the claimant knew what core competencies she would have to address in interview from as early as 30 August and that the new project support role would be filled by interview. The consultation outcome document dated 27 September stated that interviews for the new posts would take place in October although the actual dates were not stated at that stage. In the circumstances the claimant had all of September to consider her answers to core competency questions which is not unfair even taking into account her annual leave during that period. It was her choice as to when she took leave and she was aware from the outcome document when the interviews were likely to be. When she chose to prepare for the core competencies questions was also a matter for her.

28. The claimant met the requirements of the pre-interview assessment and the interview presentation, had she wanted more time to comply she could have asked for it since the invitation to interview invited her to raise any issues. I am satisfied that the timing of the invitation to interview did not affect the outcome.

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Employment Judge Allen

Date: ...20<sup>th</sup> May 2021.....

Sent to the parties on: ...24<sup>th</sup> May 2021  
THY

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For the Tribunal Office