

EMPLOYMENT TRIBUNALS



Claimant

Miss Lucy Scott

Respondent

v

LAH Property Marketing Limited

Heard at: Bury St Edmunds

On: 6 January 2022

Before: Employment Judge R Wood

Appearances

For the Claimant: In person

For the Respondent: Miss Alice Beech, Counsel

RESERVED JUDGMENT

The Claimant was fairly dismissed on the grounds of redundancy.

RESERVED REASONS

Claims and Issues

1. The Claimant alleges that she was unfairly dismissed. She disputes that the reason given, namely redundancy, was the genuine reason for her dismissal. Instead, she asserts that she was pushed out by the Respondent on the false pretense that there was a redundancy situation and/or that she had been dismissed for such a reason. She points towards the fact that she had a difficult working relationship with her line manager, a Mr Matthew Hazelden, and that there is still someone working for the Respondent who is essentially doing her old job.
2. On behalf of the Respondent, Miss Beech argued that it was a genuine redundancy situation, brought on by a significant drop in the number of contracts held by the Respondent attributable to the pandemic. She also suggested that there had been an adoption of new technology by the Respondent, which reduced the need for the type of work which the Claimant was employed to do. The Respondent had adopted a fair

procedure which was, in essence, to invite those selected in the pool of those at risk of Redundancy to apply for one of three new positions, namely Regional Cover Managers (“RCM’s”). In failing to apply for the new post, the Claimant had refused to engage in the process. It was this which had resulted in her dismissal. In the alternative, Miss Beech submitted that the dismissal was fair by reason of the need to restructure the business.

3. At the beginning of the Hearing, we identified that the Tribunal must consider the following key issues:
 - (i) Redundancy having been identified as the reason for dismissal, did a genuine redundancy situation arise?
 - (ii) Was the Claimant dismissed because of the redundancy situation?
 - (iii) Did the employer act reasonably in the circumstances?

Procedure, Documents and Evidence Heard

4. The Hearing took place on 6 January 2022. I heard evidence from the Mr Matthew Hazelden, the HR Director for the Respondent; and from the Claimant, Miss Lucy Scott. I also had an agreed Bundle of documents which comprises 153 pages. I also had the benefit of reading the skeleton argument submitted by Miss Beech dated 5 January 2022, to which were attached copies of judgments in the cases of Morgan v The Welsh Rugby Union UKEAT/0314/10/LA and Hollister v National Farmers Union [1979] IRLR 238.
5. What appears below is a summary of the evidence. I have chosen to focus on the key aspects of the testimony so far as my relevant findings of fact are concerned.
6. I first heard evidence from Mr Hazelden. He adopted the contents of his witness statement which is dated 31 December 2021. He described the business of the Respondent as providing front of house reception and on-site marketing teams for commercial property developers. Mr Hazelden is the HR Director and had been employed since August 2019.
7. Miss Scott had been employed since 2 March 2015, but only as a Site Cover Coordinator (“SCC”) since 1 July 2019. He explained that the Respondent’s business had been significantly impacted by the Covid-19 pandemic. Prior to 23 March 2020, the Respondent had held 115 site contracts, with about 225 - 250 staff. Post 23 March 2020, all contracts were lost and 99% of staff were placed on furlough, including the Claimant. As time passed, a proportion of the contracts were re-acquired. Mr Hazelden stated that the high point post March 2020 was 86 contracts. The turnover in 2019 had been £5,457,184. In 2020, this had reduced to £2,714,399 (at best).

8. On 3 August 2020, Miss Scott was put on a temporary part time reception contract. She was to remain on flexible furlough in respect of the rest of her contract hours. On 12 August 2020, Mr Hazelden explained that he went to see Miss Scott and gave her a business overview which set out the matters of concern touched upon above, and that they were looking at restructuring in a way which may affect her role. He also mentioned that the integration of the new PARiM software was to be accelerated. It was intended that this software would streamline the process of scheduling cover on sites (a significant part of the Claimant's role) and would bring about cost efficiencies.
9. There was a further meeting on 30 September 2020 involving, amongst others, Miss Scott, Mr Hazelden and Miss Michelle Pretty, the Regional Manager. There are minutes of the meeting at page 115 of the Bundle. This was described by Mr Hazelden, as another general business meeting and not a part of the formal redundancy process which followed. The low level of business was discussed, as well as the possibility of combining the roles of SCC and Site Cover Ambassadors ("SCA") to create an RCM role for each of three separate regions. It would be an enhanced role as it would sit alongside the Deputy Regional Manager role in the management structure. In particular, the new role would involve a minimum of three days of cover each week, with the rest of the time spent coordinating the 'over-schedule'.
10. Miss Scott was informed that 20 people were at risk, although Mr Hazelden confirmed to me at the Hearing that this was an error and that only 10 people were in the pool. Mr Hazelden noted that Miss Scott appeared defensive and negative about the proposal and suggested that the RCM role was a "glorified" SCA role. It was suggested that the old SSC role had responsibility for 85 sites nationwide, whereas the RCM role would be regionalised and have responsibility for approximately 25 - 30 sites. The removal of SCA's reflected a move away from staff on the payroll, to the use of ad-hoc cover. The emphasis for RCM's would be on providing personal cover and being present on site, building relationships with building managers and improving the network of staff cover.
11. Mr Hazelden went on to explain that the introduction of PARiM online scheduling software enabled ad hoc staff to apply for "open shifts" in real time, which had led to a significant downturn in the utilisation of SCA's. There was no need to collate brand new rotas on a monthly basis and to upload them to an excel spreadsheet, as was previously the case and which he stated had taken up a lot of the Claimant's time.
12. He wrote to the Claimant on 2 October 2020 [page 122 of the Bundle] which included the business case for the restructuring, and to which was attached a copy of the job description for the RCM role [119]. There was a further meeting on 7 October 2020 during which the new role was discussed with the Claimant. The deadline for applications for the new role was extended to 12 October 2020, in the light of the Claimant's previous refusal to apply for the new role.

13. On 12 October 2020, Miss Scott emailed the Respondent to inform them that she would not be applying for the new role, due to the fact that it was identical to her current role and that there was no genuine redundancy situation. She also objected to the fact that changes had been made to the job description for the RCM role [129 - 130].
14. On 16 October 2020, the Respondent wrote to the Claimant notifying her of alternatives vacancies within the company and extended the deadline for applications for them [131]. There was a further zoom meeting on 28 October 2020 and a letter to the Claimant on the following day [138] and 30 October [140]. The final consultation via zoom was on 2 November 2020 at which the Claimant was informed that her role was redundant and that she was dismissed. This was followed by the dismissal letter of the same day [143]. Miss Scott was notified of her right to appeal, but no appeal was received.
15. Mr Hazelden was cross-examined by the Claimant. On two occasions, I explained to Miss Scott the process of asking questions, namely that she should examine Mr Hazelden about any aspect of his evidence which was inconsistent with her own case, or some part of her evidence. I further explained that if she did not challenge a part of Mr Hazelden's evidence, that it was conventional and likely that I would treat it as uncontroversial testimony. She indicated that she understood.
16. She asked about the main purpose of the RCM role. Mr Hazelden suggested that it was to cover for staff absence. There was also an element of putting together schedules. Each was to take control of 25 - 30 sites and were expected to be on site and building relationships with customers. He went on to explain that the company no longer had retained cover. There was to be less working remotely and less need for working on spreadsheets. He suggested that it was the result of the turnover of the business having reduced by half.
17. Miss Scott suggested that PARiM was still being used which was similar to using spreadsheets. Mr Hazelden agreed that there were similarities. He also explained that Miss Scott has been put on reception duties because she was one of a group of non-fee earners in the company who were most at risk as a result of the loss of business. In order to protect her employment, he stated that the best way was to get her back to work. They were being told by the government to get people off furlough where possible. They had hoped that the other half of her working week would build up as business returned.
18. Mr Hazelden confirmed that no managers had been made redundant, although one of four had been lost during the pandemic. He also explained that the business had been concerned that the Claimant was responsible for 75% of business and that there were limited contingencies in place if she was absent. She was the only one fully versed in how to use the spreadsheets. They wanted to create some support for her. The introduction of PARiM had been very successful. The main difference was

that it was an on-line system which improved access to all members of staff and did not need to be manually updated repeatedly. He was not sure where the number of 20 people at risk had come from. It accepted it was an error.

19. Miss Scott then gave evidence. She too adopted the content of her witness statement which is dated 31 December 2021. She confirmed the general history of her employment with the Respondent. She explained that the main part of her job of SSC had been to organise cover for employees at 85 sites for when they were sick or needed annual leave. She was happy working for the Respondent until she was dismissed. She was never sick and was never disciplined.
20. When he took over, she never felt supported by Mr Hazelden as manager. She felt that he micromanaged her. Miss Scott also explained that she had mentioned to Louise Hazelden, the founder of the Respondent and married to Stuart Hazelden, that she would never progress to a managerial position. She also felt that Mr Hazelden was, at times, aggressive towards her. There were several times when he had humiliated her, and left her in tears, she alleged.
21. In July 2020, she suggested she was told verbally by Mr Hazelden that she would be able to continue her role as SSC in September. She was then told in an email that she would be taking on a reception post at Watchmoor Park. She was further informed that had she not agreed to take on this work, then the Respondent would have needed to begin formal discussions about her role as SSC. She stated that she felt blackmailed into taking the role.
22. She stated that she first learnt that she was at risk of being made redundant on 30 September 2020. She felt used and bullied at this time. She was invited to apply for one of three RCM roles. She asked to see the job description. The first one she was given was, in her view, substantially the same as her current role. She made this view clear to Mr Hazelden. On 13 October 2020, she was further invited to apply for the RCM role, and was given an updated job description. It had changed. In Miss Scott's view, this was because she had told the Respondent that the previous version was the same as the SSC role.
23. In October 2020, she felt ostracised by the Respondent. She was not visited at the Watchmoor site, even though Louise Hazelden had been on site to visit another member of staff. She decided not to apply for the RCM role. She was also offered 5 other part time positions, which she stated were not suitable because she needed a full time position with a similar salary to be able to afford her bills and within reasonable travel distance. Three out of the five positions were also to cover for maternity leave and so were unlikely to be permanent.
24. Only one of the three RCM roles was filled as a result of the redundancy procedure, so the other two had to be filled by advertising within the business. She felt that she had been pushed out and that the pandemic

had been used as an excuse to create the false impression of a redundancy situation.

25. In response to Miss Beech's questions, Miss Scott agreed that she was put on furlough because there was a lower number of contracts to service, with fewer staff, rotas, and shifts. She accepted that there would be less work for her to do as a result. She disagreed that she had been told that she would be on furlough until at least September 2020. She also agreed that the discussions leading up to her dismissal had included mention of there being less contracts. She didn't challenge this part of the Respondent's analysis of the situation. She was told it was 50% down and she did not take issue with this.
26. She said the first time she had been fully aware that her job was at risk was on 30 September 2020. In an email dated 12t October 2020 [130], she had raised her suspicions that this was not a genuine redundancy situation. She agreed that the introduction of PARiM software would have alleviated some of her work. She accepted that she had not raised a grievance against anyone in the Respondent company. Miss Scott stated that she had text messages that corroborated her allegations of bad treatment from Mr Hazelden, but these were not in the Bundle.
27. She explained that she had not applied for the RCM role because she didn't think she would get it in the light of the way that Mr Hazelden had treated her, or that there would be a robust interview process. She agreed she had not specifically mentioned this as a reason for not applying before, although she had talked about feeling ostracized. She did not agree that the core responsibility of the RCM role was to cover personally, or that this was a change of emphasis from the SSC role. If she had been given one of the new roles, she would have done it. She would not have had a choice. She did not want to be made redundant in a pandemic, just before Christmas.
28. I then heard helpful submission from Miss Scott and Miss Beech. The Claimant stated that she had been promised her job back in September but had then been forced to take a part time reception role. She was then made redundant when her job still existed and continues to exist. It was her primary argument that this was not a genuine redundancy even though she accepted that there had been a reduction in the amount of work as a result of the impact of the pandemic on the business. Her job was still being done; there were people still organising cover for staff on the sites. The lead up to the redundancy had been a difficult period for her. She didn't feel as though she had a chance when it was 20 people going for 3 posts. Even if she had known it was 10 people, she would probably not have applied for the RCM roles. In not applying, she felt she did the best for herself. She had not been in good place in terms of mental health.
29. Miss Beech relied primarily on the matters set out in her skeleton argument, to which I will return below. In addition, she maintained that context was important here. Work was down due to the pandemic and the introduction of new software. There was to be a change from a national to a regional

model within the business. The RCM role was to be a new job in a new structure, with a changed emphasis on cover rather than scheduling.

30. At the conclusion of the Hearing, I reserved my decision.

Legal Framework

31. Section 98 of the Employment Rights Act 1996 (“ERA 1996”) is the statutory basis for unfair dismissal and reads as follows,

“General

(1) In determining for the purpose of this part whether the dismissal of an employee is fair or unfair it is for the employer to show—

- (a) the reason (or if more than one, the principal reason) for the dismissal, and
- (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it-

- (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed to do,
- (b) relates to the conduct of the employee,
- (c) is that the employee was redundant, or
- (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

.....”

32. A redundancy is defined in section 139(1) ERA 1996:

“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-

- (a) the fact that the employer has ceased or intends to cease –
 - (i) to carry on business for the purposes of which the employee was employed by him, or
 - (ii) to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of the 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 a place where the employee was employed by the employer

have ceased or diminished or are expected to cease or diminish.”

- 33. The Tribunal is required to consider the questions of selection, consultation, and alternative employment in any redundancy dismissal case (Langston v Cranfield University [1998] IRLR 172). The standards of behaviour for an employer undertaking a redundancy procedure are set out in Williams v Compare Maxam Limited [1982] IRLR 83. These include giving employees as much warning as possible of redundancies; consulting with unions to determine selection criteria; developing objective selection criteria; ensuring the fair application of any criteria; and considering whether any alternative offers of work could be made.
- 34. Selection can take the form of both employees being scored or applying for new roles (Morgan v The Welsh Rugby Union [UKEAT/0314/10/LA])

Findings and Reasons

(i) *Did a genuine Redundancy situation arise?*

- 35. In the context of this case, it is for the Respondent to prove that there was a fair dismissal of Miss Scott on the grounds of redundancy. It must do so on a balance of probabilities.
- 36. I find that Mr Hazelden was a credible witness, particularly on the general state of the business during the course of the 2020. I accept that the pandemic had been the catalyst for a significant reduction in the Respondent’s work. More specifically, I accept that the number of contracts held by the company had declined from 115 sites in the period just prior to 23 March 2020, to zero within a few weeks of the commencement of the pandemic. In addition, 99% of staff were placed on furlough, including Miss Scott.
- 37. The Respondent was in the business of providing bespoke on site reception and marketing teams for commercial property developers. Once a contract was lost, there was no work at all in terms of that particular site. I accept that as time passed, some of that work was recovered. However, I find that the high point in 2020 was 86 contracts. The turnover of the Respondent in 2019 had been £5,457,184. In 2020, this had reduced to £2,714,399 (at best). This represents a very significant reduction work indeed.
- 38. The Claimant’s role was site core coordinator. I find that, as the job title suggests, the main focus of this role was coordinating cover over 85 sites

on a national basis. Miss Scott was expected to provide some personal cover, but the emphasis was on organising and scheduling cover of other members of staff when they were ill and on annual leave. I find that this placed the Claimant in a vulnerable position in the light of the impact of the pandemic on the turnover of the business.

39. I also accept that the introduction of the PARiM software by the Respondent incorporated significant efficiencies of time and money into the process of scheduling cover staff at the Respondent's sites. Indeed, when Miss Scott was asked about the net effect of the pandemic and the new software, she seemed to agree that it would mean a reduction in the need for the sort of work that she had been doing as part of the SSC role. Certainly she accepted that there was less work, over fewer sites, with fewer staff to organise. This work represented the core of the duties she had been employed to do. This is precisely the kind of scenario which is anticipated by section 139(1) of ERA 1996. In other words, it is classic redundancy situation.

(ii) *Was Miss Scott dismissed because of the redundancy situation?*

40. Miss Scott's primary argument in this case was that the Respondent had not dismissed her because of a redundancy situation, but had simply used it as a subterfuge to hide the real reason for the dismissal, namely that she had a poor working relationship with Mr Hazelden, and that the company wished to push her out of the organisation.
41. I am afraid I was not at all convinced by Miss Scott's arguments in this regard. I find her suggestions that she was bullied by Mr Hazelden to be vague and unconvincing. There is no mention of ill treatment during the redundancy process itself. She alleges that she was humiliated or brought to tears by Mr Hazelden's behaviour towards her. However, she has failed to provide any specific occasions when this kind of treatment occurred. Neither has she given any particulars of the context of any exchanges. Miss Scott also confirmed that she had never made any complaint about Mr Hazelden whilst employed by the company.
42. Miss Scott's criticism of Mr Hazelden's behaviour are difficult to reconcile with the suggestion at the end of paragraph 1 of her witness statement that "*I loved my job and had worked there very happily until I was dismissed on 2nd November 2020*". This is wholly inconsistent with the allegation that her manager regularly shouted and screamed at he until she cried. I also note that she did not take on the alternative part roles she was offered, not because of the bullying she alleges she received, but because the roles were part time and / or temporary and that the travel required was too great. She also stated that if she had been offered the role of ECM, that she would have taken it.
43. I accept the testimony of Mr Hazelden as to the genuine reason for the dismissal, not least because it is corroborated by the content of the

correspondence which was generated by the redundancy process and the lead up to it. Starting in July 2020, and working through August, September, October and then the first few days of November, Miss Scott had numerous discussions, whether in person, or by email / letter, during which it was maintained by the respondent that Miss Scott was given an overview of the business situation that the company found itself, similar to that set out at page 122 of the Bundle (the first bullet point list) (which is a letter from Mr Hazelden to the Claimant dated 2 October 2020). I find that at least from 30 September 2020, it was apparent to the Claimant that as a result of these matters, her position was at risk. I find that she was being told this, a message which was repeated on several occasions, mainly by Mr Hazelden himself. In my judgement, this was the genuine reason for the dismissal when it occurred on 2 November 2020. It was the reason given on a consistent and clear basis by the Respondent.

44. I accept that in July, Miss Scott was told by Mr Hazelden that she would be returning to her full time role in September at the earliest (or words to this effect). It is unlikely that he would have promised Miss Scott a return in September given the inherent uncertainty of the Covid-19 situation.
45. I also accept that there was a significant difference between the SSC role and new RCM role. The job description of the new role (the final version) is clearly in different terms to the SSC role. There are, of course, similarities. However, I accept that there is a clear change of emphasis as I have already described. I can see nothing sinister in the fact that the new job description evolved during the course of the redundancy process. I do not find that this is evidence of some other reason for the dismissal. Neither do I find that there is anything sinister in the error that was made as to the size of the pool of those at risk of redundancy. As it was, I am satisfied that it was a genuine error, which made no difference to the outcome of the process. As Miss Scott said herself in answer to my questions, she would probably not have applied even if she had known she was competing against 9 other people, rather than 19.
46. What Miss Scott seemed to find difficult to comprehend was that the changes implemented by the Respondent went beyond simply replacing her old job for the new role. Also in the 'at risk' pool was one other SSC employee and 8 site cover ambassadors. These were the staff who were retained on the permanent payroll by the respondent to provide cover when needed. I accept the evidence of Mr Hazelden that what was intended was to make these roles redundant also and to move to an ad hoc system of staff cover. This left 3 RCM's to do the work of 2 SSC's and 8 SCA's. When looked at in this way, one can readily see how the emphasis of the new role involved more cover than had previously been the case for the old SSC's.
47. In my view, the change was even more fundamental. The three RCM's were to be managerial positions. Miss Scott's role had not been managerial. Indeed, she had complained in her witness statement that Mrs Hazelden had suggested she would never achieve a managerial role. Moreover, each RCM was to take responsibility for 25 - 30 sites, on a regional basis, rather

than 85 sites on a national basis. In my judgement, Miss Scott had failed to look at the situation in the round but had obsessed on a narrow aspect of the process. This was not simply window dressing. As she put it, the RCM was not a gloried SSC role. It was a significant change, brought about by the large reduction in the need for cover staff on sites, and their organisation. Post her dismissal, there was no-one doing her old job, as she put it. It was a different job, in the context of a newly structured organisation. This is at the crux of the case.

48. Accordingly, I am satisfied that the redundancy was genuine and that it was the reason for the dismissal.

(iii) *Did the LAH Property Marketing Limited act reasonably in the circumstances?*

49. In my view, the Respondent did act reasonably in the circumstances. There was, in my view, a lengthy redundancy process, which was preceded by other discussions about the general health of the business and what impact it might have. The correspondence is full of examples of the Respondent attempting to set out a business overview. By 30 September 2020 at the latest, Miss Scott was aware that her job was at risk, amongst others. The extent of the warning in this case was reasonable. There was ample opportunity for the Claimant to engage in the process and to make any appropriate suggestions.
50. In terms of the selection process, I find that it was reasonable in the context of this case to require all those at risk to apply for the three new posts. Those placed in the 'at risk' pool had, in my view, been fairly and reasonably selected. In my judgement, it was appropriate and reasonable for those currently occupying the 10 roles to be made redundant to all subject themselves to the selection process for the three RCM roles. I am satisfied that the Respondent would have implemented a fair interview process.
51. It is significant in this case that Miss Scott chose not to apply for the new roles. I note that Mr Hazelden persevered in trying to persuade her to engage with the process. I find that he extended the deadline for making an application for one of the RCM roles on a least one occasion in order to accommodate Miss Scott. He need not have done this. I accept that the company regarded the Claimant as possibly being in the strongest position to make a successful application. In the circumstances, it is a little difficult to understand why she did not make such an application. As I have already stated, I was not at all persuaded that Miss Scott had been the victim of bullying at the hands of Mr Hazelden, or anyone else for that matter.
52. It is my view that her refusal to participate in the selection process was the consequences of her inability to take a step back and to look at the broader picture. She became preoccupied with looking at job descriptions, rather than acknowledging the wider changes that had taken place to the business as a result of the pandemic. She was too inflexible when it came to her

decision not to participating in the consultation process. This resulted in her unreasonably refusing to apply for the new post when, in all likelihood, she would have been successful.

53. I do not accept that the 'deck was stacked against her' in any way. She did not suggest this at the time of the consultation. Neither did she raise a grievance or complain about the process that was adopted. It is my view that the suggestion that Mr Hazelden was opposed to her presence within the company and bullied her, was something of an afterthought on the part of the Claimant.
54. I also find that the Respondent offered all available alternative positions to Miss Scott. I accept that she had good reason not to take on the part time roles, especially those which might have been only temporary positions to cover for maternity leave. However, there has been no suggestion from Miss Scott, either at the time, or subsequently, that there were any other possible alternatives roles which were not offered.
55. In summary, it is my judgement that the Claimant was dismissed on the grounds of redundancy and that the process that the Respondent adopted was reasonable and fair in the circumstances. On other words, the Claimant was fairly dismissed.
56. The claim is therefore dismissed.

24 January 2022

Employment Judge R Wood

Sent to the parties on:

26 January 2022

For the Tribunal Office