



EMPLOYMENT TRIBUNALS

Claimant

Miss J L Barends

v

Respondent

Adlams Solicitors

Heard at: Bury St Edmunds (by CVP)

On: 24 January 2022

Before: Employment Judge R Wood

Appearances

For the Claimant: In person

For the Respondent: Mr Buckle, 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 other members of staff within the respondent organisation, and that she was unpopular, as being the real motivation for the dismissal.
2. On behalf of the Respondent, Mr Buckle argued that it was a genuine redundancy situation, made necessary by impact of the pandemic on the Respondent's conveyancing work. The Respondent submitted that it had adopted a fair procedure which was, in essence, to invite those selected in the pool of those at risk of redundancy (i.e. all three members of the staff in the conveyancing department (excluding Deborah Coombs, the conveyancing partner) to apply for a new position, namely full time conveyancing assistant. In failing to apply for the new post, the Claimant had refused to engage reasonably in the process. It was this which had

resulted in her dismissal. In the alternative, Mr Buckle submitted that the dismissal was fair by reason of the need to restructure the business.

Procedure, Documents and Evidence Heard

3. The Hearing took place on 24 January 2022. I heard evidence from Miss Erika Whitfield (partner), Mr Paul Lowther (partner) and Miss Deborah Coombs (conveyancing partner) of the Respondent, as well as from Mrs Jean Barends, the Claimant. I also had an agreed Main Bundle of documents which comprises 80 pages (“B”), and a supplemental bundle which was made up of documents specifically requested by the Mrs Barends, and which comprises 88 pages (“SB”).
4. 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.
5. I first heard evidence from Miss Whitfield. She adopted the contents of her witness statement which is dated 3 August 2021. In it, she confirmed that she had conduct of the consultation process which resulted in the dismissal of the Claimant. She explained that during the first Covid lockdown, the housing industry had shut down. The impact that this had on the conveyancing activity within her firm resulted in a review of the resources and skills required in the conveyancing team. In addition to Miss Coombs, the conveyancing partner, and the Claimant, the department consisted of the Claimant, Miss Nicola Pressland and Miss Louise Pond. They all attended a meeting on 23 June 2020 to discuss the situation [B34]. The Claimant was provided with various job descriptions: for the proposed new role of conveyancing assistant (“NCA”); for a family department paralegal; and for an afternoon receptionist [B30]. The Claimant was formerly put on notice of the risk of redundancy.
6. It was proposed that there would be one full time NCA within the department, to replace the three part time employees. It was anticipated that this would save on costs by reducing the overall headcount. Miss Whitfield suggested that the NCA role was significantly different from the Claimant’s existing role. By reference to the job description, it was submitted that the Claimant had not carried out the roles numbered (vi), (xi) or (xii) on the job description, and had only been responsible in part for duties under (x). Whilst it was accepted that the balance of responsibilities of the new role were ones that he had previously been undertaken by the Claimant, the additional elements constituted a predominant part of the new role in terms of time spent, as well as requiring different skills and abilities, making the remit significantly wider than the Claimant previous duties.
7. At the conclusion of the process, the Claimant’s role was made redundant and she agreed to trial the post of afternoon receptionist which she started on 13 July 2020. It was agreed that if the role was unsuitable, then she would be able to trial the NCA role, and/or still be entitled to redundancy pay [B44].

8. At the end of the trial, the Claimant indicated that she did not wish to take the post on a permanent basis [B46], nor did she wish to apply for the NCA role. On 10 August 2020, the Respondent wrote to the Claimant inviting her to discuss the NCA role further [52]. However, she declined a meeting and submitted an appeal against her dismissal on 3 September 2020 [59]. However, she refused to attend the appeal hearing, which was considered in her absence. The decision was confirmed and the Claimant's employment came to an end on 30 October 2020 after a 12 weeks' notice period which she was not required to work.
9. It was suggested by the firm that the Claimant possessed the requisite skills and abilities for the new role. She has been employed by the firm since 2001, and her strengths were well recognised. The firm was prepared to trial the Claimant for the new role, but she chose not to avail herself of the opportunity.
10. Miss Whitfield denied the allegations of bullying made against her by the Claimant. She made the point that the Claimant had never invoked the grievance procedure or otherwise raised such issues prior to the consultation process. The Respondent had been unable to discuss it further with the Claimant because she refused to attend further meetings.
11. She confirmed that Nicola Pressland was appointed as part time conveyancing assistant on 22 September 2020. This differed from her previous position which had been school term time only. A change in economic circumstances for the firm, brought about by the government's unexpected announcement of the a holiday from the stamp duty land tax, combined with estate agencies being permitted to re-open, removal firms being allowed to operate, and conveyancing work therefore resuming, led to the firm being in a position to positively review the resource levels in the conveyancing department. Miss Pond returned briefly at the end of 2020 to train the successful applicant of the NCA role.
12. Miss Whitfield answered questions. Mr Buckle asked her about the Claimant's job title. She clarified that she had been employed as a legal secretary in 2001, and that this title had not change since [B83]. She explained that the appendix to the contract of employment was put there to assist the Tribunal. It was a copy of the grievance procedure which was to be found in the staff handbook, which was regularly updated.
13. Mrs Barends asked her about the alleged incident in 2017/18, when it was suggested that she had been reprimanded for being indiscrete about an email concerning a merger. She recalled speaking to the Claimant about it, but denied calling her a liar. She could not point to evidence of an agreement to the effect that the Claimant would not work her notice.
14. Miss Whitfield accepted that the Claimant had spoken to her about wishing to trial the NCA role, but that she was having a busy day and had promised to get back to her. She accepted that she had not spoken to her again. She

made the point that Mrs Barends could have raised it again. It was Miss Whitfield's view that she had cut her nose off to spite her face by walking away from the receptionist role in a pandemic. She thought that Mrs Barends tended to take an emotional view of matters.

15. She was asked about the clothing allowance offered to the Claimant as part of the reception role. She confirmed that no-one had been offered a clothing allowance, not even other receptionists. The firm was concerned that the Claimant might dress inappropriately, in the light of her previous dressing habits.
16. Mr Lowther then gave evidence. He adopted the contents of his witness statement dated 4 August 2021, and confirmed that they were true. He is a partner at the Respondent firm and had conduct of the appeal process regarding the Claimant's redundancy consultation. He had not previously been involved. He considered the Claimant's appeal and confirmed the decision in a letter dated 22 September 2020 [B67].
17. He too answered questions put by Mrs Barends. She referred him to B52 which appeared to have a reference which mentioned "EW" i.e. Miss Whitfield. He suggested that the letter may have been pp'd by her, but that he took full ownership of the letter. He might have been working from home at the time. Again, he was asked about the letter at page B70, which was similarly referenced. Mr Lowther could not fully explain this but stressed that it was quite clearly his letter. He did not attach a huge significance to the references on letters.
18. Later in the hearing, Mr Lowther returned, at my request, with information about Miss Pressland, and Miss Keightley who had been the successful applicant for the NCA role. Miss Pressland had been re-appointed informally from 22 September 2020, and then on 9 October 2020 she had been put on a formal contract with a minimum 7 hours a week with a view to scaling up as required. He could not say how many hours she worked in practice. Miss Keightley (previously an estate agent) had been appointed on 22 October 2020.
19. I then heard from Miss Coombs whose statement is dated 4 August 2021. She adopted the contents which she stated were true. She denied that she had been rude to the Claimant, or had screamed at her, as alleged, when it was suggested by the Claimant that she had approached Miss Coombs about trailing the NCA role. It was also denied that she had told her not to bother to apply as she would not be considered. She stressed that the Claimant had been entitled to trial for the role and would have been permitted to apply. She accepted she had spoken to the Claimant about the new role, and that she had mentioned the differences between the positions. In doing so, she had not suggested that she was not capable of successfully performing the new elements of the role.
20. When asked questions by Mrs Barends, she accepted that they had often exchanged texts on a colleague and friend basis. She clarified that she was

a salaried partner and was therefore not in a position to make decisions about the redundancy process. She was only consulted as it was her department. She had not made the Claimant redundant. She left the firm on 20 October 2020. She denied having the conversation set out in paragraph 5(a) of the Claimant's witness statement. Miss Coombs confirmed that she was entitled to fill the new role. It had been her personal view that the Claimant would not have coped with it, as it was likely to be pressurised.

21. I then heard evidence from Mrs Barends. She relied upon her witness statement dated 9 August 2021. In July 2020, she had agreed to trial the receptionist position on the understanding that if it was not suitable, that she could trial the NCA role afterwards. She stated that she really needed to work for financial reasons. She felt that the offer of a clothing allowance tended to insinuate something about her previous attire, which caused her to feel humiliated. She pointed to the fact that a partner in the firm dressed very untidily. She had worked on reception previously at the firm. She had hoped to incorporate some aspects of her old role into the reception position, so as to assist the Respondent.
22. On the Monday of her second week on reception, the Claimant approached Miss Whitfield, and indicated that she did not wish to take on the reception role, and wished to trial the NCA position. It was suggested that she denied all knowledge of this, but said she would look into it. However, she never got back to the Claimant. In the meantime, the Claimant approach Miss Coombs, in effect her line manager. The Claimant stated that she was shouted at by Miss Coombs, suggesting that she was not qualified enough to trial the position. It was suggested that she had stated that she wanted someone like Jamie Green or Gabrielle Smith, two trainee solicitors who had worked for her previously. The Claimant was told not to waste her time applying.
23. The Claimant therefore withdraw her application, as she put it. She went on to state that it did not matter how many times after this conversation that she was told by Adlams that she could trial this position, they knew it was an impossible situation. In effect, her view was that she was bound to fail the trial by reason of Miss Coombs' attitude towards her, and that this would be degrading and upsetting for her. The Claimant was convinced that the decision as to who to recruit to the new role was Miss Coombs'.
24. Referring to the letter of 10 August 2020, she stated that she was insulted that the salary offered her for the period of the trial was her current salary which was below the stated wage bracket for the position. It was explained to her that it was usual practice to do this when an internal employee trialed a new role, and that the position would be reviewed if the trial was successful.
25. Mrs Barends denied that she had agreed not to work out her notice period, and was never given the opportunity to do so. She had not attended her appeal meeting because she could not afford to take someone with her, and

the thought of being in the same room as Adlams' partner fills her with dread. She also maintained that Mr Lowther was not independent of the redundancy process because he had written her a letter dated 10 August 2020. Further, she queried why Miss Whitfield's reference was on the appeal decision letter dated 22 September 2020, if it was being conducted by Mr Lowther.

26. The Claimant also made reference to an alleged incident of bullying. So far as I can tell, it appears to have taken place in 2017/18. In essence, there was a proposed merger/takeover of a rival firm by the Respondent. Some sensitive correspondence was mistakenly circulated within the firm. The Claimant was accused by Miss Whitfield as being implicated in the circulation of rumours associated with the content of the correspondence. It was suggested by Mrs Barends that she was accused of being "nothing but a liar" when she denied being involved. Mrs Barends describes herself as being devastated and in tears. She told Mr Lowther about it the following day, but he did nothing about it. This was not put to Mr Lowther at the hearing.
27. Mrs Barends noted that despite mentioning the conversation with Miss Coombs in her appeal letter, Mr Lowther did not specifically refer to this in his letter dated 10 August 2020, or in subsequent correspondence.
28. Mrs Barends was cross-examined by Mr Buckle on behalf of the Respondent. She stated that the conveyancing department was made up of two fee earners, Miss Coombs and Miss Amanda Atkinson. The support staff were herself, Miss Pressland and Miss Pond. Miss Pressland was a secretary in the commercial department who helped out with conveyancing. She accepted that Covid had been a disaster for all conveyancing and that all but Miss Coombs had been furloughed. When referred to B34, she said she presumed that it was a genuine redundancy situation. She also accepted that she could see the merit in trialing the NCA role, and that she would have needed some training.
29. She had not raised the issue of the clothing allowance at the time. She had never wanted the reception job, as it was boring. She had only done it because she had hoped to add other duties to the role. She would have preferred a part time job, in the afternoon. She stated that she had really enjoyed working as an assistant to Miss Coombs. She said it was Miss Whitfield that had it in for her, not Adlams.
30. She agreed that in 2016, the fee earner she had worked for had been made redundant, and that this had given the firm the opportunity to dismiss her if it had wanted. Instead, she had been moved back to the St Neot's office.
31. She had not attended her appeal meeting because she did not want to meet Miss Whitfield. She would have found it really stressful. She stated that she would not have gone through all of this if she had not been telling the truth.

32. I then heard submissions. Mrs Barend didn't want to add anything. I assured her that it was not necessary in the circumstances, and that I felt she had explained her case in thorough terms during the hearing. Mr Buckle said there was a genuine redundancy, and that Mrs Barends did not seem to take issue with this proposition. He submitted that there had been a reasonable search for alternative positions. She had been dismissed because she didn't want to trial for the NCA role, and had rejected the reception post. By late October, he submitted that the Respondent could not reasonably be expected to continue to offer new positions, given her attitude to date. He invited me to accept Miss Coombs' evidence as to the alleged conversation between her and the Claimant in July 2020. Mr Buckle also suggested that the alleged incident in 2017/18 involving Miss Whitfield was not relevant. It was years ago, and it had not prevented her from being offered two positions during the process.
33. At the conclusion of the Hearing, I reserved my decision.

Legal Framework

34. 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.

.....”

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.”

35. In broad terms, there are three main questions to be addressed in this type of claim:
- (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?
36. 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.
37. 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

38. In arriving at my findings of fact and reasons in this case, I have been careful to consider all matters in the round, rather than to look at any one issue in isolation of others. I have approached my decision by reference to the three questions I posed above.
- (i) *Did a genuine Redundancy situation arise?*

39. In the context of this case, it is for the Respondent to prove that there was a fair dismissal of Miss Scott (Mrs Barends?) on the grounds of redundancy. It must do so on a balance of probabilities.
40. I find that there was a redundancy situation. I come to this conclusion not least because it seemed that Mrs Barends herself did not take issue with it. In other words, it did not appear that she was suggesting that the whole scenario had been concocted just to remove her from the business. In cross examination, she agreed that the pandemic, and the restrictions that were associated with it, had been a disaster for the housing sectors, and in particular, the conveyancing activities of firms of solicitors like the Respondent. I find that all but Miss Coombs within the conveyancing department were furloughed during the first Covid lockdown. I also find that the matters set out in the letter of 23 June 2020 [B34] were a genuine summary of the situation the firm found itself in, and that the desire to re-organise the conveyancing department in order to save costs and focus resources was a justified and genuine exercise. There has been a clear diminution in the work which the Claimant had previously undertaken, and the proposed restructuring was a response to this.
41. I also find that it was the genuine proposal that the three part time support staff within the department were to be made redundancy to be replaced with one full time member of staff, namely a new conveyancing assistant. This was the intention as of June 2020. As I will touch upon later, there was a change to this plan, but this did not come about until September/October 2020.
42. For the avoidance of doubt, I also find that the new role was significantly different to the Claimant's old position. I should add at this stage that there was some contention as to the appropriate label to attach to the Claimant's previous role. In her claim form, she describes herself as a conveyancing assistant. The Response was silent on this issue. An examination of the Claimant's contract of employment from 16 October 2003 [SB83] reveals that she was employed as a legal secretary. There didn't seem to be any dispute that her contractual job title had remained unchanged since that date.
43. I find that nothing really rests on this. The Respondent did not dispute that the Claimant in fact worked as a conveyancing assistant. I find that the balance of the duties expected of the NCA were those she had performed previously. The difference was that the Claimant had not previously liaised with estate agents, solicitors, lenders and mortgage advisors, and provided updates as required; prepared legal forms; prepared files for completion; or prepared applications and submission of registrations with the Land Registry (or at least not to the required level and volume). The additional elements constituted a predominant part of the new role in terms of time spent, as well as requiring different skills and abilities, making the remit significantly wider than the Claimant's previous duties. The Claimant accepted that she would have required training if she had successfully trialed for the new post.

44. I am satisfied that this was a genuine situation which fell squarely within the scope of s.139(1) of ERA 1996. In other words, it was a classic redundancy situation.
- (ii) *Was Mrs Barends dismissed because of the redundancy situation?*
45. Mrs Barends' argument is that she was not dismissed because of the situation I have outlined above, but as a result of other, more sinister, factors. Consequently, she states that she was treated unfairly, and was, in effect, barred from trialing the NCA role.
46. I am afraid that in this context, I found that there was some substance to Miss Whitfield's observations as to Mrs Barends general character when she stated that she tended to take an emotional view of matters. This is not to say that I take the view that she attempted to deceive me in a deliberate fashion. However, it is my conclusion that she has a tendency to perceive events through an emotionally sensitive prism. As a result, it is my view that her account of certain events, and their interpretation, has to be treated cautiously.
47. By way of example, there is the suggestion that she was insulted by the Respondent when she was offered a clothing allowance when trialing the receptionist post. I find that this was offered because the Respondent was not confident that Mrs Barends would otherwise select appropriate clothing for her working day. No-one else had been offered an allowance. It was clear that there were specific concerns about her previous dress sense. However, to interpret this as part of some broader attempt to dissuade her from applying for alternative positions, or as illustrative of a general attitude towards her was, in my view, unreasonable and unduly sensitive.
48. I turn next to the alleged bullying of the Claimant by Miss Whitfield in 2017/18. I find that there was a discussion involving the two about a 'leaked' email relating to a merger/takeover. I find that there was probably a fairly robust discussion about the incident, although I do not accept that the Claimant was called a liar, or that she was in tears afterwards. She may well have spoken to Mr Lowther afterwards, although this was not put to him at the hearing.
49. In any event, I cannot place the same significance upon this event as the Claimant seeks to do. I bear in mind that it happened 2-3 years before the redundancy situation. It appears not to have been mentioned since. Neither does there appear to have been any other bullying since then, and prior to the consultation process. Mrs Barends did not raise it as a formal grievance. Indeed, Mrs Barends has never raised a grievance against her former employer. There was some discussion regarding the grievance procedure, which had been added to the end of the Claimant's contract of employment at SB87. It was Mrs Barends view that this had been added to her contract by the Respondent as an attempt to deliberately mislead the Tribunal. This is a serious allegation, and should not be made lightly. In my view, it was a

disproportionate response, from a well intention Claimant who was not always able to keep matters in their proper perspective.

50. In my view all this indicates that events in 2017/18 were not a significant issue at the time, and were not regarded as bullying. I did not accept that it is indicative of a wider malaise within the relationship between the Claimant and the Respondent. I note that Mrs Barends stated in evidence to me that she enjoyed working for Miss Coombs, and that she agreed that the firm had kept her on in 2016, when she might readily have been dismissed in the grounds of redundancy.
51. I then turn to the crucial discussion which is said to have taken place between the Claimant and Miss Coombs in July 2020. This is an important part of the case, not only because Mrs Barends says it was upsetting, but because she states it was the point at which she decided not to trial for the NCA role. In essence, she subsequently refused to cooperate with the process at all from that point onwards.
52. I find that there was a discussion between Mrs Barends and Miss Coombs. I was not at all convinced by Miss Coombs' slightly vague recollection of the conversation. In my view, it is likely that Miss Coombs expressed her reservations about the Claimant assuming the new role. It was my impression of both Miss Coombs' and Miss Whitfield's evidence that they both thought she was better suited to the receptionist role. Whether this is true or not, it is not difficult to see how Mrs Barends could have picked up on these views. However, I do not accept that Miss Coombs was rude or that she shouted at the Claimant. I bear in mind that the two were friends, and clearly had respect for each other up until this point at least.
53. Miss Coombs may well have expressed her desire to have someone more legally qualified in the post, but again I do not accept that the Claimant was told it was a waste of time to apply for the new role, not least because there was no question of Mrs Barends being required to apply. It had been made clear to her that she should be given the post upon successful completion of the trial. One can easily see how the Claimant may have interpreted the meeting in a negative fashion. It is difficult to be too critical of an employee who reacts emotionally in the circumstances of being in a redundancy situation having been with an employer for 20 years. I accept that the onus is on the employer to treat staff at risk with empathy and care.
54. I think this was an unfortunate aspect of the consultation process, to which I will return below. However, I do not agree that it was an indication of the motivation behind, or the reason for, the Claimant's dismissal. I find that Miss Coombs was not the person who would be making the decision about who was taken on in the new role. I find that as a salaried partner of the conveyancing department, she would be consulted. However, I accept that the final decision would be made by equity partners, of which Mr Lowther was one. The meeting involving Miss Coombs, or the views which she expressed (either expressly or implicit) were not those of the firm in general.

I find that Mr Lowther went to some lengths to correct this inaccurate impression, as I will set out below.

55. The thread running through the bundles of documents in this case is that this was a genuine redundancy situation, and that the reason for the Claimant's dismissal was redundancy. As I will return to in a moment, the Respondent went to some lengths to find alternative employment, and to facilitate her continuing employment with the firm. I find that she was a respected member of staff, and had skills and experience which were highly regarded by management. This in part, explains why she was employed for 20 years, and why her duties had far exceeded her original job title.
56. 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?

57. 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. By 23 June 2020 at the latest, Mrs Barends 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.
58. 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 engage in the trial process for the NCA role, or the reception post. Those placed in the 'at risk' pool had, in my view, been fairly and reasonably selected, being the support staff in the relevant department, namely conveyancing.
59. However, as I have indicated above, I take the view that there were flaws with the consultation process. In particular, I refer to the exchange between the Claimant and Miss Coombs. In my judgement, the conversation could have been handled much better by Miss Coombs. It was unwise for her to have expressed her view, to the extent that she did, that she preferred to have someone with more experience. However, it is my judgement that in thereafter refusing to trial for the NCA post, and in failing to co-operate any further with the process, that the Claimant's reaction to this exchange was disproportionate and unreasonable. I am afraid it was a characteristically emotive reaction from the Claimant, albeit that can readily extend her some latitude in such difficult circumstances.
60. Even if I am wrong about this, and the conversation between Mrs Barends and Miss Coombs rendered the dismissal potentially unfair, I would have found that the subsequent intervention of Mr Lowther at the appeal stage would have corrected the unfairness. Mrs Barends having raised the discussion as an issue in her appeal letter, Mr Lowther sought to reassure the Claimant in his letter of 10 August 2020 [B52]. He apologised for the "confusion" regarding her intention to be considered for the new role. He

continued “*We would like to invite you to come in to discuss how the old and new conveyancing roles differ, and subject to your agreement to the duties and responsibilities of the new role, would then be pleased to offer the role of Conveyancing Assistant....*”. This was to be subject to the 4 week trial period, during which either the Claimant or the firm could have decided that the role was not suitable. In my view, this is a clear reassertion (if one were needed) that she is qualified to trial the role, and was being invited to do so by a senior salaried partner of the firm. In my view, it corrected the impression given by Miss Coombs, either accurate or otherwise, that she should not bother with the trial, and that it would be a waste of time.

61. I note that the Claimant took issue with Mr Lowther’s use of the word “confusion”. I accept that there was no confusion arising out of the conversation that she recounted in her appeal letter. It was, in my view, an inappropriate use of a euphemism by Mr Lowther. I have no doubt that he was referring to the alleged conversation with Miss Coombs, and that he was trying to correct an impression given to the Claimant. He was attempting to pour oil on troubled waters. If Mrs Barends had taken a moment to step back and look at this letter reasonably for what it was, she would have seen this. I have no doubt that it was a genuine and well-intended attempt to get the Claimant to re-engage with the process. If the Claimant had taken a reasonable approach, she would have at the very least gone into the meeting with Mr Lowther, when he could, if necessary, have provided a direct and explicit explanation for the conversation with Miss Coombs.
62. I find that Mr Lowther would also have satisfied her that she should trial for the new role, and that it was in her interests to do so. I find that the position remained vacant, and that there were no other applicants. I find that the comment made by Mr Lowther in his letter dated 25 August 2020 that “*I am sorry that you feel the firm has not intended for you to apply for the position of Conveyancing Assistant. I would like you to confirm that this is not the case and that your experience in the team should place you in a strong position to undertake the new role*” was genuine. The Claimant was unreasonable in not engaging with Mr Lowther. I find that she was wrong to assume that Miss Coombs was the one likely to make the decision about who was taken on in the new role. I accept that as a salaried partner, she would be consulted, but would not have the final say, especially in the light of events in this case. I find that Mrs Barends was in a strong position to be appointed in the new role, and had she looked at the situation objectively and calmly, she would have appreciated this.
63. It is my view that her refusal to participate in the selection process from that point onwards was the consequence of her inability to look at the broader picture. She was too inflexible when it came to her decision not to participate in the consultation process, and in particular the appeal. She should have attended the appeal hearing. The reasons she gave for not doing so were inadequate. If she had been worried about the attendance of Miss Whitfield, then she could have sought assurances from Mr Lowther that she not be there. Alternatively, she could have suggested a remote meeting. This

resulted in her unreasonably refusing to apply for the new post when, in all likelihood, she would have been successful. The fact that a relatively unqualified former estate agent was eventually appointed rather supports that proposition.

64. I also find that the Respondent offered all available alternative positions to Mrs Barends. I accept that she had good reason not to take on the part time family department paralegal post. She rejected the role of receptionist having trialed it for a few weeks. I found her reasoning difficult to follow in the circumstances. However, it was her choice. There has been no suggestion from Mrs Barends, either at the time, or subsequently, that there were any other possible alternative roles which were not offered, save for the suggestion that she should have been offered the position that Miss Pressland occupied from late September/early October 2020. I am afraid I do not agree with the Claimant in this regard. This was some way down the line in terms of her process. She was in the appeal stages as early as 10 August 2020. She had been given notice on 21 September and was no longer at work. By then she had made it clear that she no longer wished to engage in the process at all, and had repeatedly refused to be considered for an alternative post.
65. I can see the argument put by Mrs Barends that notwithstanding the above matters, that the Respondent ought to have contacted her about the part time conveyancing post before it was offered to Miss Pressland. I think I might have done so, had it been me. However, this is not the test I should apply. Was the failure to do so outside the band of decisions that a reasonable employer might take. In my view, the answer here is no; it was reasonable for the new post not to have been offered, given the Claimant's attitude towards the process and the Respondent. In any event, I am satisfied that it would have made no difference. I find that the post accepted by Miss Pressland was for a minimum of 7 hours a week. This fell well short of the 4 day week she had been working previously. I have little doubt that if it had been offered, she would have rejected it, for all the reasons touched upon above.
66. 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. In other words, the Claimant was fairly dismissed.
67. The claim is therefore dismissed.

R Wood
21 February 2022

Employment Judge R Wood

Sent to the parties on: ...5.3.2022.....

.....GDJ.....
For the Tribunal Office