



EMPLOYMENT TRIBUNALS

Claimant: Ms J Meme
Respondent: St Patrick's College Limited

Heard at: London Central **On:** 7, 8 and 9 May 2019

Before: Employment Judge Davidson
Ms S Samek
Mr D Carter

Representation

Claimant: In person
Respondent: Ms R Kennedy of Counsel

RESERVED DECISION - JUDGMENT

It is the majority decision of the tribunal that the claimant's claim for unfair dismissal fails and it is hereby dismissed.

It is the unanimous decision of the tribunal that the claimant's claim for pregnancy discrimination fails and it is hereby dismissed.

REASONS

Issues

1. Following the preliminary hearing on 23 January 2019 before EJ Mason the liability issues had been identified as the following:

Unfair dismissal

- 1.1. What was the reason (or principle reason) for dismissing the claimant? The respondent says the claimant was dismissed for redundancy. The claimant says the reason or principle reason for her dismissal was related to her pregnancy.

1.2. Was the reason for the claimant's dismissal a reason falling under section 98(1)-(2) ERA 1996?

1.3. Did the respondent follow a fair procedure before dismissing the claimant? To include considerations of the selection process, the consultation process and alternative positions.

Pregnancy

1.4. Was the claimant's dismissal unfair pursuant to Regulation 20 of the Maternity and Parental Leave etc. Regulations 1999 (MAPLA) as being on the grounds of her pregnancy?

1.5. At what date did the respondent know that the claimant was pregnant?

1.6. Did the respondent discriminate against the claimant because of her pregnancy by

1.6.1. pressuring her to take part in a video shoot on 17 April 2018?

1.6.2. dismissing her?

1.6.3. in the manner of the dismissal, to include any failure to consider her for, or offer her, alternative positions.

1.7. Has the claimant proved primary facts from which the tribunal could properly and fairly conclude that the difference in treatment was because of her pregnancy?

1.8. If so, what is the respondent's explanation? Does it prove a non-discriminatory reason for any proven treatment?

Evidence

2. The following evidence was before the tribunal:

2.1. The tribunal heard evidence from Klaas van Mierlo (former COO), Tim Rounding (HR Business Partner) and Rod Brazier (Vice Principal) on behalf of the respondent and from the claimant herself and Hasa Ram (former Head of School (Health and Social Care)) on behalf of the claimant.

2.2. There was a bundle of documents running to some 370 pages

2.3. The claimant handed up some documents at the outset of the hearing which the respondent contended were not relevant. We agreed to allow the documents to be before us and we would disregard them if we thought they were not relevant.

2.4. At the outset of the hearing it became apparent that the claimant had not prepared and exchanged a witness statement for herself, only for her witness. The respondent submitted that she should be barred from giving evidence for having breached the relevant order. We took the view that this would be disproportionate and we agreed to use a document drafted by the claimant entitled Statement of Remedy as her witness statement. This document was not, in fact, concerned with remedy but was a statement of her case.

Facts

3. We found the following facts on the balance of probabilities:

Redundancy

- 3.1. The respondent operates a higher educational establishment in London offering vocational skills and training courses. It is part of a wider group, Global University Systems (GUS).
- 3.2. The claimant joined the respondent on 30 September 2013 as a lecturer in the Business School and she was promoted to Programme Manager in March 2016. This increased her salary from £28k to £30k. It was further increased with effect from April 2017 to £34k. She was regarded as a good performer and received an award in 2018.
- 3.3. In 2017 the respondent carried out a strategic review of its structure. At that time there were four schools: Health & Social Care, Technology, Tourism & Hospitality and Business Management. The purpose of the review was to enhance efficiency and effectiveness by reducing layers of management, to achieve higher levels of consistency in student experience as required by regulators by reducing fragmentation and to focus on strength areas and achieve higher enrolment, attendance and retention.
- 3.4. Arising from this, the decision was taken to streamline the structure into two schools, Health+ and Business +. This led to a potential redundancy situation among the Heads of School, Associate Heads of School and Programme Managers. This amounted to 13 positions including the claimant's. The respondent hoped to redeploy those individuals whose positions were made redundant.
- 3.5. A redundancy programme was put together with a consultation period to run from 20 March 2018 to 4 April 2018. All of the affected employees were invited to a first consultation meeting. The claimant was invited by email dated 19 March to attend a meeting on 20 March. In the event, she was not at work on 19 March so only saw the invitation on the day of the meeting. At the time of the meeting she did not object to the short notice.
- 3.6. At the meeting she had the opportunity to make representations and did so, asking various questions about the process and the future programmes after the changes. She was told that the role of Programme Manager would disappear but that new roles were being created which she would be able to apply for. She also queried the incentives for Programme Managers.
- 3.7. A second consultation meeting was scheduled for 29 March 2018. There was a dispute between the parties whether this meeting ever took place. The respondent's case is that the claimant declined to attend, but they make no criticism of her for failing to attend. The claimant said she attended and she gave evidence of details of the meeting to support her contention. We find on the balance of probability, that there was a meeting to deal with the claimant's representation regarding Programme Manager incentives raised at the first consultation meeting which Tim Rounding said he would look into. We find that

he reverted to the claimant with his answer, which the claimant considered the second meeting but which the respondent did not treat as a consultation meeting.

- 3.8. There is no dispute regarding the final meeting which took place on 4 April at which the respondent told the claimant that her position was redundant and that she would work out her notice until 4 July. The respondent went on to confirm that redeployment opportunities would be advertised the following week and that they were hopeful that she would be suitably redeployed within the organisation and guaranteed her an interview for any posts she applied for. The claimant confirmed that the note of the hearing was accurate in relation to these matters but disputed that she was informed of the right to appeal.
- 3.9. The pre-printed notes of the meeting suggest that there had been two previous consultation meetings, but we accept that the respondent failed to amend this to reflect their understanding of the position in the claimant's case. She disputed that the notes were fully accurate as they did not include all the representations she claims to have made and she alleged that the notes were a sham. When she was challenged that the document contained her signature, she said that the fact that it had not been dated was evidence that it was not an accurate document. We find that the document is genuine.
- 3.10. The dismissal was confirmed by letter which included the right to appeal. The claimant that she did not appeal because she had not read the letter in full. She was also under the impression that a redundancy dismissal could not be appealed.
- 3.11. At the same time as this restructure of management was being implemented, the respondent was also addressing the other aspects of the strategic review which included a new approach to teaching methods. These were to be delivered by Experiential Teaching Practitioners (ETPs) and the intention was for all teaching to be done by ETPs although at that time, there were Lecturer posts available (which were less well paid).
- 3.12. On 26 April 2018 the claimant applied for an ETP post. She then found out that other Programme Managers were being redeployed as Lecturers and she queried this. She was told that these individuals were, contractually, Lecturers and had just been carrying out some Programme Manager functions. However, they were not Programme Managers and therefore not part of the restructure and had reverted to their Lecturer roles.
- 3.13. She was not interviewed for the ETP role until 20 June because the Heads of School were objecting to the changes and refusing to cooperate with the interview process. The claimant's interview was conducted by Rod Brazier alone and took place in an office in a part of the building not generally used by the respondent. This meant that the claimant did not have computer access to deliver her prepared presentation to show she had ETP skills. Rod Brazier said that he could see she had a printout of a powerpoint presentation and he was happy for her to present using that. The claimant said she felt pressured into accepting the situation even though she was not able to use the tools she wanted as these required computer access. She accepted that she did not tell Mr Brazier that she had other tools she wanted to use apart from powerpoint and only raised the issue after she found out she was unsuccessful.

- 3.14. On 29 June the respondent informed the claimant that her application for ETP was unsuccessful. Mr Brazier's reasons for not offering her the ETP position were that she only met 3 of the 8 essential criteria and that her method of delivering teaching was regarded as too traditional and she failed to show that she could deliver student-based learning. She was told that, as she had been unsuccessful, her employment would end at the expiry of her notice period on 4 July.
- 3.15. Her last day at work was 3 July when she told her students she had been dismissed and that she was leaving. The students rallied round and organised a petition in support of her.
- 3.16. On 4 July, the claimant was not at work and Tim Rounding sent her an email offering her the option of redeployment as a Lecturer at a salary of £28k or to leave with a redundancy payment and full company maternity payment (without needing to comply with the usual requirements). The email informed her that the Lecturer posts would be disappearing in the next few months as Lecturers upskilled to become ETPs and that she would have an opportunity to train to become an ETP. However, the respondent pointed out that she would have some way to go to achieve the required level.
- 3.17. She declined the redeployment for a number of reasons including the drop in salary to £28k (which was the lowest possible salary) and the prospect of others who had been lower paid than being paid more than her, the fact that the position had not been offered earlier and the fact that she perceived it was a response to the petition by the students. She said that she would have accepted if they had offered it to her on 29 June when she was told she had been unsuccessful for the ETP role.
- 3.18. The claimant confirmed she did not apply for any other roles within GUS.

Pregnancy

- 3.19. The claimant found out she was pregnant in about January 2018. She claims to have informed her line manager Abu in February 2018. He then left. She then told her new manager, Ron, but did not tell HR or make a formal notification of her pregnancy until 31 May. She used the respondent's HR mail facility and received an acknowledgement. Mr Rounding says he had not personally been informed until the claimant mentioned it in a meeting on 28 June. We find that she did tell her managers but that they did not forward the information to the executive team and that the individuals conducting the redundancy consultation were not aware of it. She says that Rod must have been aware in June, because she was showing but he says that he was not aware. We do not know whether Rod suspected she was pregnant but we are satisfied that he had no formal knowledge.
- 3.20. It is part of the claimant's case that she was forced to take part in a video on 17 April. There does not appear to be any such incident on that date and the claimant states that this is a mistake and she meant 17 May. On 17 May, she was asked by her manager Ron to be in a video and was told it would not look good if she refused. She took part in a video recording session on 25 May but complained that there was a lack of resources. It was a hot day and she felt unwell by the end.

She went to hospital to be checked over but was discharged and took no time off work.

Law

4. The relevant law is as follows:

Unfair dismissal

- 4.1. It is for an employer to show what the reason for dismissal is. Redundancy is a potentially fair reason.
- 4.2. If redundancy is the reason for dismissal, the employer must act reasonably by selecting fairly, carrying out a consultation process and offering alternative employment if available.

Pregnancy discrimination

- 4.3. It is automatically unfair to dismiss woman on the grounds that she is pregnant.
- 4.4. It is discriminatory to treat a woman unfavourably because she is pregnant or because of illness suffered as a result of the pregnancy (Section 18 Equality Act 2010).
- 4.5. If there are facts from which the tribunal could decide in the absence of any other explanation that a person contravened the discrimination provisions, the tribunal must hold that there has been a contravention unless that person can show that they have not contravened the provision

Determination of the Issues

5. We determine the issues as follows:

- 5.1. We find that the reason for the claimant's dismissal was redundancy. Her role was part of a wider restructuring programme which affected 13 individuals. We accept that the respondent carried out the restructure as part of its strategic review and that this involved placing a number of roles at risk of redundancy, including the claimant's. We are conscious that it is not the role of the tribunal to critique the commercial decisions of the respondent, only to examine whether the stated reason is the true reason. We find that it is.
- 5.2. This is a reason falling within section 98 ERA 1996.
- 5.3. We must then go on to consider whether the respondent followed a fair procedure.
- 5.4. In relation to the selection process, we find that the respondent included all employees in particular roles within the pool, from the schools which were continuing and the schools which were being eliminated because all the posts were being eliminated in the new structure. The claimant makes no criticism of the pool and we find that it was a fair selection.

- 5.5. In relation to the consultation process, we are satisfied that a consultation process took place and the claimant was able to make representations. We find that she did make representations which were considered by the respondent. There is a dispute of fact regarding the 'second consultation meeting' and whether it took place. We find that there was a meeting at which the respondent gave a response to the representation the claimant had made at the first consultation meeting about Programme Manager incentives. The respondent did not regard this as a consultation meeting. The claimant makes no complaint about the adequacy of the consultation process and we find that it was a fair process.
- 5.6. In relation to the obligation to offer alternative employment, the majority of the tribunal finds that the respondent did comply with its obligation by offering the Lecturer role on the claimant's last day of employment. The tribunal is critical of the respondent for not doing this at an earlier stage, in particular it could have been offered immediately after she had been turned down for the ETP role. The respondent accepts that the position was not offered because they thought it unlikely the claimant would accept a lower ranked position at a lower salary. Although the respondent has made this concession, we find it more likely that it did not cross their mind to make the offer and the offer was only made when the claimant raised it during a brief meeting with Rod on her last day at work, 3 July. The period between the unsuccessful outcome of the ETP interview and the end of the notice period was not very long but it was long enough for the respondent to have notified the claimant that there were lecturer roles available. We have considered whether it was reasonable to offer the role at a salary of £28k and the majority of the tribunal finds that it was open to the respondent to offer the role at the salary they were willing to pay as it was alternative employment and could be offered on the appropriate terms. The majority attaches no criticism of the claimant for rejecting the offer, particularly as it was offered in a half-hearted manner.
- 5.7. The minority of the tribunal finds that the offer of alternative employment was 'too little too late' and the timing, salary and terms of the offer rendered it an inadequate offer and in breach of the respondent's obligation to offer alternative employment if available.
- 5.8. We find that the claimant's dismissal was not unfair under Regulation 20 of MAPLA Regulations as the reason for the dismissal was redundancy, not the claimant's pregnancy.
- 5.9. We find unanimously that the claimant informed her manager, Abu, in February about her pregnancy but that he did not pass on the information. We find that she informed her new manager, Ron, in March or April but he did not pass on the information. We find it was necessary for her immediate manager to know in order to give her appropriate shifts but it was not necessary for the manager to pass the information to the senior executive team as it was not something that concerned them.
- 5.10. We find that she formally told HR on 31 May 2018 however, this was not passed to Mr Rounding or the other members of the executive team. They only became aware when the claimant told them on 28 June 2018.

- 5.11. The claimant has said that it was obvious she was pregnant as she was showing. Although we find that the individuals may have suspected, although it is also possible that they had not noticed, we find it unlikely that they would have said anything until told of the pregnancy by the claimant.
- 5.12. In any event, we find that none of the decision makers knew of the pregnancy at the time of the redundancy consultation and it is possible that Ron had not yet been told.
- 5.13. Dealing with the allegations of pregnancy discrimination the unanimous decision of the tribunal is that there was no video shoot on 17 April. The claimant now suggests that it is a typo and it should be 17 May. We are satisfied that it is not a typo but it is possible that the claimant was confused about dates when she specified 17 April at the case management discussion. We can see no evidence of pressure to shoot a video on 17 May. There was a video filmed on 25 May which the claimant was invited to participate in. She was told it would help her career if she contributed. However, she did so voluntarily. She then felt unwell but has not said that she was forced to continue after feeling unwell. We do not find this allegation to be substantiated.
- 5.14. We have found that the dismissal was by reason of redundancy. We do not find that her pregnancy was a factor. At the time that notice of termination was given, the respondent was not aware of her pregnancy.
- 5.15. Although the tribunal has been critical of the arrangements for considering the claimant for alternative positions, we do not find that this was related to her pregnancy.
6. Conclusion
- 6.1. The claimant's complaint of unfair dismissal is dismissed by a majority decision.
- 6.2. The claimant's complaint of pregnancy discrimination is dismissed by a unanimous decision.

Employment Judge Davidson
15 May 2019

JUDGMENT & REASONS SENT TO THE PARTIES ON

17 May 2019

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FOR THE TRIBUNAL OFFICE