



5

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102557/2024

10

**Held on the Cloud Video Platform
on 16 and 17 May 2024**

Employment Judge A Jones

15

Mrs E Richardson

**Claimant
In person**

20

Student Loans Company Ltd

**Respondent
Represented by
Ms McGaff, solicitor**

25

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

30

1. The claimant was unfairly dismissed by reason of redundancy The respondent is ordered to pay to the claimant a contractual redundancy payment in the sum of £8476 together with compensation in the sum of £500 in respect of her loss of statutory rights.
2. The claimant's claim of less favourable treatment because of her fixed-term status fails and is dismissed.

35

Reasons

Introduction

E.T. Z4 (WR)

1. The claimant claimed that she had been unfairly dismissed, that her dismissal was by reason of redundancy and therefore she was entitled to a contractual redundancy payment and that she had been subjected to less favourable treatment because of her fixed term status in that the respondent's redeployment and redundancy policies had not been applied to her. She did not name a comparator in that regard.
2. A joint bundle of documents was produced. The respondent led evidence from four witnesses, Ms Simpson, who had been the claimant's line manager, Mr Baker who was Ms Simpson's line manager, Ms Millikan who was an HR Business Partner and Mr Cassidy who had dealt with the claimant's appeal against her dismissal. The claimant gave evidence on her own account. Both parties made oral submissions at the conclusion of the evidence and the respondent provided a number of authorities in support of their submissions.
3. The claimant provided a schedule of loss and indicated that she was not seeking compensation for loss of earnings in respect of any finding of unfair dismissal as she had not sought alternative employment for a period after the termination of her employment for personal reasons. However, she did seek a redundancy payment if it were established that her dismissal was by reason of redundancy. There was no dispute in relation to the amount of redundancy payment to which the claimant would be entitled if it were established that this was the reason for her dismissal. In addition she sought compensation should she establish she had been less favourably treated because of her fixed term status in that while she accepted she had not looked for alternative employment, had the respondent applied the relevant policies to her, she would have remained in the employment of the respondent for a further period.

30

Issues to determine

4. In discussion with the parties, the Tribunal identified the following issues to be determined:
- i. What was the reason for the claimant's dismissal?
 - ii. Did the respondent follow a fair procedure in dismissing the claimant?
 - iii. If the claimant was dismissed by reason of redundancy, was she entitled to a contractual redundancy payment?
 - iv. Had the claimant been treated less favourably than a comparable permanent employee because she was a fixed term employee in relation to the application of the respondent's redeployment and redundancy policies?

Findings in fact

5. Having considered the evidence, the documents to which reference was made and the submissions of the parties, the Tribunal found the following material facts to have been established.
6. The claimant worked for the respondent as a self-employed consultant between March 2019 and March 2021. Her contract had been extended on a number of occasions during that time. She made a proposal that she be employed as on a fixed term contractual basis in order to continue to carry out work which had been identified by her and her then line manager as necessary to improve processes and procedures.
7. The respondent has a process whereby any requests for new roles or the extension of fixed term contracts must be approved by an Establishment Oversight committee. A pro forma form must be completed setting out details of the role and why it is being requested which is then submitted to the committee for consideration as to whether budget should be allocated to the request.
8. Ms McGhee with whom the claimant had been working in her self-employed capacity filled out a pro forma requesting that the claimant be employed on a fixed term contract for 12 months from 1 April 2021 to 31 March 2022. The proposal stated that "The existing contract for the individual expires at the end of March and we want to convert the role to ftc from 1 April 2021 to

enable continuing and to allow us to progress at pace.” It also stated “An experienced project manager with knowledge about our processes and systems for managing complaints and appeals is required to ensure we can deliver the single stage smoothly across all services and domiciles in both CRU and Appeals. This doesn’t exist within either of these business areas and Project managers elsewhere in the business are already at capacity. Even if the Change Request were approved it would mean a significant delay to starting the work and it would inevitably mean we would lose the skills and experience we have build in the current contractor.”

- 5
- 10 9. The claimant was employed under a contract dated 13 May 2021 which was a fixed term contract for 12 months. The advert for the role stated that the role was “Reporting day-to-day to the Senior customer Relations manager and will deliver significant change to complaints and appeal process.” It went on to set out key responsibilities as being: “Successfully delivering quality projects; develop and manager stakeholder relationship and adding value to the team”.
- 15
- 20 10. The claimant commenced work as an employee on a fixed term basis on 17 May 2021 as a Project Manager assigned to the customer relations department. The contract provided that it was for a fixed period “because of business needs.” It also provided that the respondent may “require you to undertake other suitable duties either in addition to, or instead, of the duties normally assigned to you”.
- 25 11. Ms Simpson commenced work with respondent in August 2020 and became the claimant’s line manager in May 2021.
- 30 12. Ms Simpson filled in a further pro forma requesting that the claimant’s contract be extended by an additional 12 months to 17 May 2023. It stated “Other options considered were the use of internal project managers already within permanent positions, however the length of time it would take for another person to become fully upskilled and knowledgeable about the working practices, roles and systems of the both functions (Appeals and CRU) would negatively impact the delivery of the project.”
13. Ms Simpson completed a third pro forma requesting an extension of the claimant’s fixed term contract from 17 May 2023 until 30 September 2023.

14. The claimant was provided with an update to her terms and conditions from 17 May 2023, at which time her annual salary was £50,865 and she was employed on grade 18. The contract indicated that her employment end date would be 30 September 2023 and also provided that she was entitled to a 12 weeks' notice period.
15. Around July 2023, the claimant put forward a proposal that her role be extended for a further 3 months. She drafted an options paper which made reference to funding being available in the departmental budget. This paper was provided to Ms Simpson who made no comment on it and forwarded it to the divisional planning meeting which was attended by Ms Simpson, Mr Baker, the claimant and Ms Millikan. Mr Baker indicated at that meeting that this matter should be discussed separately. Mr Baker arranged a Teams meeting to discuss the funding paper and indicated to the claimant that he was not prepared to support a further extension to the claimant's contract. His view was that funding would not be approved for the proposal as there were other priorities within the business to which funding was likely to be allocated.
16. At the time of the termination of the claimant's employment there were other proposals outstanding in relation to the improvement of the respondent's process and procedures regarding appeals and complaints, such as the replacement of lotus notes, which had not been advanced due to funding not being available.
17. The respondent operates a redeployment policy which is said to apply to fixed-term employees as well as permanent employees. The policy provides that an employee on a fixed term contract that is due to expire will enter the redeployment process as early as is practicable and at least 4 weeks before the fixed term contract is due to end up to a maximum of 12 weeks before the contract is due to end. The policy provides for a trial period of 4 weeks which can be extended. A redeployment pool is maintained by the respondent's People Support Team. An email is to be sent weekly to any affected employees with details of all new vacancies across the respondent's organisation. Employees are required to flag any suitable

vacancies to their line manager and the line manager is obliged to highlight and discuss any vacancies that may be seen as a viable alternative.

18. The respondent operates a redundancy policy in which if an employee's role is at risk of redundancy, they will enter the redeployment process.

5 19. Separate from the redeployment process, current vacancies within the respondent can be accessed online by all staff.

20. The respondent does not have any process by which to ensure that the redeployment or redundancy policies are applied to employees on fixed-term contracts in practice.

10 21. Where an employee is dismissed by the respondent by reason of redundancy the employee is entitled to a redundancy payment in terms of the Civil Service Compensation Scheme.

15 22. The respondent did not have regard to either its redeployment or redundancy policy in relation to the claimant's position prior to the termination of her employment.

20 23. The claimant arranged a meeting between herself, Ms Simpson and Ms Millikan for 5 September. She was concerned that her contract was coming to an end and there had been no discussion regarding whether there were any options for her to continue in employment with the respondent. She sent an email to them both stating "At a high level, I have concerns that the correct process hasn't been followed re ending my contract". The claimant made reference to the respondent's policies and stated "As I am due to leave SLC in a couple of weeks it is crucial we have this initial chat as soon as possible."

25 24. The meeting took place virtually on Teams. The claimant outlined her concerns and indicated that as she had 2 years' service, her dismissal could be unfair. She also made reference to the respondent's policies and other information she had obtained online. She explained that if she was made redundant with notice other opportunities would be available for her. Ms 30 Millikan indicated that she would consult the respondent's legal team and others regarding the position.

25. Ms Simpson sent Ms Millikan an email later that day outlining her recollection of what was discussed at the meeting. She did not provide the claimant with a copy of that email nor tell her that she had sent it.

26. The claimant then emailed Ms Simpson and Ms Millikan again on 14
5 September asking if there was any update to what had been discussed at the meeting on 6 September. No one had had any discussion with the claimant regarding the termination of her employment in the meantime. No one responded to the claimant's email.

27. The claimant then emailed again on 15 September asking Ms Millikan and
10 Ms Simpson if there was any update. She stated "obviously I want this resolved before I leave on Friday as there are financial implications if my concerns are correct".

28. A further Teams meeting then took place on 19 September between the claimant, Ms Millikan and Ms Simpson. At that meeting the claimant
15 indicated again that she believed she was being dismissed by reason of redundancy. Ms Millikan indicated that she did not have a response to give the claimant regarding what the reason for the termination of her employment would be and that she was having ongoing discussions with the legal department on the matter. The claimant expressed her concern
20 that she had found relevant information online within 10 minutes and could not understand why it was taking so long for the respondent's position to be confirmed. She provided the respondent with the information she had obtained.

29. Ms Simpson sent Ms Millikan an email outlining her recollection of the
25 meeting shortly after and did not copy in the claimant nor tell the claimant that she had sent this email.

30. The claimant then emailed Ms Millikan and Ms Simpson again on 22
September having had no further update from anyone regarding the termination of her employment. She stated "I await SLCs written response
30 detailing why they consider SOSR as being a fair reason for my dismissal."

31. Ms Simpson then arranged a Teams meeting at very short notice for 4.30pm on 20 September with the claimant and Ms Millikan. At that meeting the claimant was informed that the reason for her dismissal was some other

substantial reason. Ms Millikan indicated that a letter would be sent to the claimant setting out the reasons for this in the following week.

5 32. The claimant was dismissed by letter dated 28 September 2023 to take effect from 30 September. She was paid in lieu of 12 weeks' notice. The letter did not set out that the claimant was dismissed for some other substantial reason. Although this had been in the original draft of the letter, it was removed by the legal department.

10 33. The letter stated that "We have considered alternative employment with the Company but we have been unable to find any suitable alternative position for you." No one in the respondent's organisation had ever discussed suitable alternative employment with the claimant. No one discussed with her what roles she might be able to do either on a trial or permanent basis. No one discussed with the claimant what skills and experience she had prior to her fixed-term contract with the respondent.

15 34. There was no consultation with the claimant whatsoever regarding the termination of her employment and whether there were other possible roles for her. The only discussion with the claimant was initiated by the claimant and centred round what reason the respondent was going to give the claimant for the termination of her employment.

20 35. The claimant responded to the letter of dismissal by email of 3 October. She indicated that she wished to appeal against her dismissal on the basis that she believed she had been unfairly dismissed, that she should have been dismissed by reason of redundancy and that no fair process had been followed.

25 36. Mr Cassidy was appointed to deal with the claimant's appeal and he wrote to her by email dated 6 October seeking confirmation of her grounds of appeal and proposing a time for the hearing.

30 37. The claimant responded by email dated 6 October proposing another date for the appeal and indicating that the grounds for her appeal were that she believed she had been unfairly dismissed as the respondent had not followed the correct process in terminating her fixed term contract.

38. An appeal hearing took place on 19 October. The claimant was accompanied by a former colleague and a Ms Cairns from HR assisted Mr Cassidy.

5 39. Following the appeal hearing Mr Cassidy conducted investigations into what had been discussed. He had meetings with Ms Simpson, Mr Baker and Ms Milliken. Although notes were taken of these meetings, these were not provided to the claimant for comment nor was the claimant informed of the meetings or what was discussed at them.

10 40. Mr Cassidy wrote to the claimant by letter dated 26 October upholding the decision 'not to renew your fixed term contract on the basis of some other substantial reason.'

41. The claimant responded by email dated 1 November setting out why she remained of the view that outcome remained unfair.

15 **Observations on the evidence**

42. All witnesses gave evidence in a straightforward manner. In truth there was very little dispute on the facts. The main issue in dispute was whether the claimant had been dismissed because she was redundant or for some other
20 substantial reason. Although the respondent's witnesses did suggest that they had given consideration to other roles the claimant might be able to do, they all accepted that they did not ever discuss this with the claimant nor try to find out what roles she might be interested in. Ms Simpson was of the view that the claimant would not be interested in a permanent Project
25 Manager role with the respondent and expressed this view to Ms Millikan, but this was never discussed with the claimant was based on a conversation Ms Simpson had with the claimant some years before.

Relevant law

Fixed term workers

5 43. In order to determine whether a fixed-term employee has been treated less
favourably, it is necessary to compare the way she has been treated with a
comparable permanent employee (Regulation 3(1) Fixed -Term Employees
(Prevention of Less Favourable Treatment) Regulations 2002 ('the
Regulations')). It is therefore necessary for a claimant to identify an actual
10 comparator who is employed by the same employer, engaged in the same
or broadly similar work and works at the same establishment in order for
Regulation 2 of the Regulations to be satisfied. A claimant is also required
to demonstrate that she has been subjected to less favourable and that the
reason for the less favourable treatment was because she was a fixed term
15 employee.

44. If a claimant is successful in meeting these requirements then it is open to
an employer to justify any less favourable treatment.

Reason for dismissal

20 45. Section 163(2) of the Employment Rights Act 1996 ('ERA') provides that
where an employee has lodged a claim for a redundancy payment, there is
a presumption that the employee has been made redundant and it is for the
respondent to rebut that presumption. It should be noted however that this
presumption is not relevant to the determination of an unfair dismissal case.

25 46. Redundancy is defined in section 139(1) ERA and this definition is
applicable both to a claim for a redundancy payment and a claim of unfair
dismissal.

47. Section 139 provides that "For the purposes of this Act an employee who is
dismissed shall be taken to be dismissed by reason of redundancy if the
30 dismissal is wholly or mainly attributable to – (a) the fact that his employer
has ceased or intends to cease – (i) to carry on the business for the
purposes of which the employee was engaged by him, or (ii) to carry on that
business in the place where the employee was so employed, or (b) the fact

that requires of that 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 the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

5 48. In **Fay v North Yorkshire County Council 1986 ICR 133**, the Court of Appeal endorsed the factors set out by the EAT in the case of **Terry v East Sussex County Council 1976 ICR 536** relevant to determine whether a dismissal arising out of the non-renewal of a fixed term contract amounts to some other substantial reason in terms of section 98(1) ERA. These factors
10 were in summary, whether the contract was adopted for a genuine purpose, that purpose was known to the employee and the employee might reasonably have expected that the contract would not be renewed.

Fairness of dismissal

15 49. Once a reason within the terms of section 98(1) or section 98(2) has been established for an employee's dismissal, it is still necessary for a Tribunal to go on and consider whether the dismissal was reasonable in all the circumstances and in particular have regard to section 98(4) ERA.

Discussion and decision

Less favourable treatment on the basis of fixed term status

25 50. The claimant did not lead any evidence regarding an actual comparator to whom she compared herself in relation to the application of the respondent's policies. Her claim was therefore bound to fail. In any event, the evidence of the respondent was such that the Tribunal was not confident that the policies referred to would have been applied to a permanent member of staff in any event. It did not appear to the Tribunal
30 that the respondent paid particular regard to its policies and procedures given the evidence that it is only now that a process is being put in to place

to ensure that these procedures are applied to permanent staff and that there is no process in place to ensure the application to fixed term staff.

Reason for dismissal

- 5 51. In terms of the claimant's claim for unfair dismissal, the Tribunal came to the conclusion that the reason for the claimant's dismissal was redundancy and not as suggested by the respondent some other substantial reason.
52. The labelling of the reason for the claimant's dismissal as some other substantial reason appeared to the Tribunal to be an ex post facto decision.
- 10 It was not at all clear why it took so long for the respondent to decide what reason it was going to put forward as the reason for the claimant's dismissal. It seemed to the Tribunal that the respondent did not turn its mind to the fact that the claimant was going to be dismissed at all until the claimant raised her concerns.
- 15 53. The Tribunal accepts that simply because the label of some other substantial reason is attached to the reason for dismissal after the decision has been taken does not necessarily mean that this is not the real reason for the dismissal of an employee. However, in the present case, applying the factors set out in **Fay** and **Terry**, the Tribunal formed the view that the
- 20 reason for dismissal was redundancy.
54. The Tribunal took into account the claimant's unchallenged evidence that she had always continued to extend her employment with the respondent whether as consultant or employee until the last occasion on which her proposal was rejected.
- 25 55. In addition, taking into account the job description of the claimant and the evidence regarding her duties, it appeared to the Tribunal that the claimant was simply employed as a project manager. The respondent employed a number of project managers and while the claimant's role was focussed on a particular area, that appeared to the Tribunal to be the essence of project
- 30 work. The claimant was employed to improve processes and procedures in a particular area. She had continued to highlight areas in which processes and procedures could be improved. The respondent suggested that the remaining areas were business as usual areas which would be

implemented by the operational managers. However, there was also evidence regarding various aspects of the improvement process which were put on hold due to funding not being available, such as the use of lotus notes being replaced.

5 56. While the claimant was aware that she had been employed on a fixed term contract, that contract had been extended on a number of occasions and was a continuation of the work she had been doing as a consultant. The Tribunal accepted her evidence that she had always managed to extend her contracts and that she wished to remain employed with the respondent in
10 some capacity.

57. The work the claimant had been doing since she became an employee was not time limited. There were no specific boundaries to the work which was to improve and enhance appeals and complaints processes. That was not a piece of work with a start and an end date but work which was ongoing and
15 continues.

58. The Tribunal therefore formed the view that while the claimant was aware of the fixed term nature of her contract she had a reasonable expectation that the contract might continue to be extended. The work she was carrying out was not time limited or limited in scope. She was not replacing an existing
20 employee who was on leave. When she was dismissed some of the work she was carrying out was to continue, but in the respondent's view it would be taken up by other employees in management positions.

59. Therefore the requirements of the respondent for employees to carry out work of the particular kind carried out by the claimant had diminished and
25 the reason for her dismissal was redundancy and not some other substantial reason.

60. There was no dispute that if the claimant had been dismissed by reason of redundancy she was entitled to a redundancy payment in terms of the Civil Service Scheme of a month for each year of service, which was a total sum
30 of £8,476 gross.

Fairness of dismissal

61. Turning to the question of whether the claimant's dismissal was fair in terms of section 98(4), the Tribunal had no hesitation in finding that the dismissal was unfair for the following reasons:

- 5 i. The respondent did not consult with the claimant regarding her dismissal, and only engaged with her in relation to the termination of her employment at her request, and even then, had to be pressed to discuss matters. Given the resources available to the respondent and its size, the Tribunal found this to be astonishing.
- 10 ii. The respondent did not make any effort to seriously consider alternative employment with the claimant. There was no discussion whatsoever with her regarding possible alternative roles. She was informed that her suggestion that her post be extended for period would not be supported and that was an end of the matter. While the
15 claimant was able to access vacant roles online in the same way as any other employee, that is quite different from engaging with an employee who is to be dismissed to actively consider whether there were any other roles which might be suitable for her even on a trial
20 basis. The respondent did not even trouble itself to discuss with the claimant what her skills and abilities were so could not have been able to identify any alternative employment for her.
- 25 iii. The respondent has a cohort of project managers. There was no consideration given to whether the claimant's role should be considered within the context of other project managers. The possibility that the claimant might have been interested in such a role was dismissed by the respondent on the basis of a conversation with the claimant at the beginning of her employment and without asking her whether she would be interested in such a role.
- 30 iv. The only discussion with the claimant regarding the termination of her employment was at her request and was limited to the respondent deciding what reason would be put forward for her dismissal, rather than whether there were any alternatives to dismissal.

v. No thought was given to applying the respondent's own policies and procedures such as redeployment or redundancy policies to the claimant's position. It appeared that Ms Millikan may have sought to raise a concern with the legal department in this regard, but no action was taken as the focus was on establishing the reason for the claimant's dismissal rather than whether or not it would be fair.

vi. The only meetings with the claimant regarding the termination of her employment were to discuss what the reason was and this process had only been engaged because the claimant raised the issue.

62. No fair process was followed in relation to the dismissal of the claimant and therefore her dismissal is unfair. The claimant was not however seeking compensation for loss of income in this regard. While she would be eligible for a basic award, that sum would be offset against the contractual redundancy payment to which she is entitled. However, she is entitled to an award of £500 in respect of loss of statutory rights.

63. Therefore the respondent is ordered to pay to the claimant a contractual redundancy payment of £8476 and £500 in respect of a loss of statutory rights, being a total sum of £8976

Employment Judge: A Jones
Date of Judgment: 28 May 2024
Entered in register: 28 May 2024
and copied to parties

5