EMPLOYMENT TRIBUNALS

Claimant: **Mrs McKenna O'Meara**

Respondent: **Grid Smarter Cities Limited**

Case number: **2501290/2023**

Heard at: **Newcastle Employment Tribunal** **Between: 12th and 15th March 2024**

Before: **Employment Judge McGregor**

By: **Remote hearing**

Representation

Claimant: **In person**

Respondent: **Counsel, Mr Murdin**

JUDGMENT

1. The Claimant's claim for unfair dismissal is well founded. The Claimant was unfairly dismissed.

2. There is a 70% chance that the Claimant would have been fairly dismissed in any event.

3. The issue of the amounts payable shall be adjourned for negotiation and agreement, to take place between the parties.

4. Should the amount payable be agreed between the parties, the parties must contact the Tribunal and confirm as such, within the next 28 days.

5. Should the parties be unable to agree the amounts payable, the parties must, within 28 days, provide their available dates to attend a remedy hearing upon the first available date for all parties, after 28 days.

6. If required, the matter shall be listed for a remedy hearing, on the first available date for all parties after 28 days, with a time estimate of 3 hours, before Employment Judge McGregor.

7. At any subsequent hearing, the Claimant shall continue to have the benefit of measures ordered at the final hearing namely:

7.1 A break in proceedings, every 45 minutes, and as reasonably requested by the Claimant.

7.2 Any question put shall refer to a single point and compound questions shall be avoided.

7.3 The Claimant shall be allowed additional time to write down questions before answering.

REASONS

1. Mrs O'Meara ("the Claimant"), was employed by Grid Smarter Cities Limited ("the Respondent"), as a Project Manager and Operations lead, between the 10th August 2020 and the 14th December 2022. It was agreed that the Claimant was dismissed on the 14th December 2022.

The Issues

2.The issues to be determined were as follows:

2.1 What was the reason, or if more than one, the principal reason, for the Claimant's dismissal?

2.2 If the reason was redundancy, did the Respondent act reasonably within the meaning of s98(4) of the Employment Rights Act 1996?

2.3 If not, then is there a chance the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason? If so then should the Claimant's compensation be reduced and by how much?

3. Whilst the Claimant had raised concerns about disability discrimination, equal pay and whistleblowing detriment in pre- action correspondence to the Respondent,
the Claimant does not raise such claims in these proceedings.

The Hearing

4. The matter was originally listed for a three-day final hearing on the 4th December 2023. On that date the case was adjourned, and case management directions were made. It was identified that the Claimant has Attention Deficit Hyperactive Disorder

("ADHD") and an Autistic Spectrum Condition ("ASC"). By reason of those conditions, I was invited by the Claimant, to consider measures that could be put in place in order to effect her participation as a party to the proceedings, in accordance with the overriding objective of the Employment Tribunal Rules of Procedure 2013 ("the rules"), to deal with cases fairly and justly.

5. On the 6th March 2024, in anticipation of this hearing, the Claimant emailed the Tribunal and requested a number of measures be considered. I considered the Equal Treatment Bench Book and the "Presidential Guidance: Vulnerable parties and witnesses in Employment Tribunal proceedings", guidance. At the start of the hearing, I discussed ground rules with both parties and orders were made as reflected in paragraphs 7.1-7.3 of the judgment section of this document. Further, the Claimant was invited to inform me of any additional breaks required, and indeed on occasions requests were made and granted for additional time to break or complete tasks.

6. The Claimant appeared as a litigant in person. Mr Murdin of counsel represented the Respondent. The hearing lasted for 3 days and during this time, I heard evidence from the Respondent representative Julian Wrigley, Chief Operating Officer of Grid Smarter Cities Limited, Monique Ewart of Professional People Management Ltd, witness for the Claimant, Mark Smith, and the Claimant.

7. I had a bundle of 393 pages. I was asked to allow the admission of additional evidence by the Claimant, and I allowed the admission of this information as follows:

7.1 Day one – admission of Addition A – pages 394-401

7.2 Day two - admission of Addition B – pages 402 – 479

8. I treated the latter documents admitted with due caution, as they had been admitted after Julien Wrigley had given evidence and he had not been invited to comment upon their contents, I considered this when deciding the weight that I could attach to the evidence in these documents.

9. Having heard and considered the evidence in the case, I delivered judgment on the afternoon of day three. There was insufficient time for me to go on and consider remedy and instead, I decided that the issue of remedy would be adjourned for the parties to try to reach a negotiated settlement. At the end of the hearing, the Claimant requested my written reasons.

Finding of facts

Background to the redundancy

10. I am not obliged to rehearse all of the evidence heard and I shall not do so. I based my judgment, and the reasons as follows, upon the relevant, salient parts of the evidence considered.

11. The Respondent company was referred to as a "startup" company, employing around 25 people in relation to projects relating to city planning for vehicle use. The Grid Smarter Cities Business Plan 2022 ("the business plan") was provided in the evidence bundle (p 54-p174) and is a glossy document demonstrating a business plan with ambitions for the future.

12. The Claimant was employed by them, originally as a project manager on the 10th August 2020. Her responsibilities included developing and expanding project management within the company. The expectation was to expand the number of project managers within the business, drawing on the skills and experience of the Claimant to

do so. Throughout the case, it was notable that the Claimant was very well regarded in her field and was taken onboard by the company, partly because of her positive reputation. Multiple projects were being embarked upon. In that context, the Claimant was moved into the role of "Operations Lead". It was anticipated she would take on the management of subsequently recruited project managers.

13. The Claimant sought to demonstrate that, she had never actually taken on that role and, in reality, she remained a project manager because she continued carrying out significant amount of project management tasks. The role of Operations Lead appears to have commenced around June 2021. On the 25th March 2022, the Claimant emailed Julian Wrigley, asking whether she should use the title, "Operations Lead and Head of Project Management", or just "Operations Lead". The response is that she should use the "Operations Lead" title.

14. The business plan refers to the Claimant's role as follows:

"Operations Lead

McKenna is a Prince 2 qualified project manager with substantial experience of leading customer facing technology-based programmes. She is experienced in multi-disciplinary project management and has been instrumental in complex deployments involving multiple stakeholders and technology."

15. There is no written job description defining the Claimant's role. Julian Wrigley, in evidence, described that the description given in the business plan was not meant to be as such, that the role was a" fluid" one. I found that the Claimant had moved from the Project Management role and was employed as Operations Lead from June 2021, party responsible for managing other project managers. As part of the promotion to Operations Lead, the Claimant became a member of the Senior Management Team. Managers, including senior managers will often be asked to step into the tasks of those people who they manage.

16. Upon her employment, the Claimant was initially managed by Mark Smith until June 2021. Mark Smith appeared as a witness for the Claimant and described that upon her appointment, the Claimant approached him and informed him that she has ADHD and ASC and required some reasonable adjustments within her work. Mr Smith confirmed in evidence that the Claimant requested adjustments including, for example, on occasions, she may wish to record meetings with Mr Smith. He stated that the Claimant never made use of this adjustment. The evidence revealed that the Claimant is stoic and able. There were open lines of communication between Mark Smith and the Claimant. There was limited requirement for reasonable adjustments to be made. The Claimant was a professional, high performing member of staff. Mark Smith described the efforts he went to facilitate the needs of the Claimant as a result of an office move. He set out to ensure the position of her desk was such to prevent over-stimulation, as an effect of ADHD. Mark Smith did not make any written record of adjustments required by the Claimant.

17. Julian Wrigley took over the line management of the Claimant after June 2021. The Claimant did not directly approach Mr Wrigley about needing reasonable adjustments until a meeting with him face to face in late summer 2022. The Claimant did not suggest she had made a direct approach about adjustments related to her disability prior to this. The Claimant states that Julian Wrigley should have known because Mark Smith told him that she required adjustments. I found Mark Smith to be a credible witness who indicated that he had mentioned adjustments to Julian Wrigley and Neil Herron (the

company Chief Executive Officer). I found him credible when he indicated that he had told them about the Claimant potentially requiring adjustments. His recollection was clear and compelling when he described to me that the conversation took place in a specific meeting room.

18. Following the departure of Mark Smith, the Claimant had regular one to one meetings with Julian Wrigley. I was satisfied that the Claimant did not ask for any reasonable adjustments or assistance with her work, until summer 2022. In cross examination, Julian Wrigley accepted that he was aware that the Claimant was struggling, he denied that this was because of needing adjustments and stated that his belief was that the Claimant was struggling because she did not have much to do. I was satisfied that the Claimant had raised that she wished to have clarification of her role and responsibilities, but the amount of work was dwindling in her role as Operations Lead.

19. I found that specific examples of adjustments made for people, demonstrated a culture at the Respondent company that was a positive, inclusive culture, offering reasonable adjustments to those who needed them.

21. In summer 2022, the Claimant made complaints about the behaviour of a co-worker Toby Hiles. The complaints related to his inappropriate behaviour and alleged sexism towards her. The tribunal was told of a particular incident at that time when a meeting took place that had to be abandoned by Julian Wrigley due to Mr Hiles behaviour towards the Claimant. Toby Hile's behaviour was investigated, and he was made subject to a formal warning, his second warning. In evidence, witness Julian Wrigley referred to this meeting, the inappropriate nature of Mr Hiles' raised voice and described that action was taken against him. It was suggested by the Claimant, that this complaint against Mr Hiles formed part of the motivation of the Respondent to push the Claimant out of the company. This was denied. There was no evidence beyond the Claimant's say so that this was the case. The Toby Hiles incident was never referred to in conversation or correspondence with the Claimant, following the matter's resolution. I was satisfied from the evidence, that the company had dealt with the Toby Hiles complaint and drawn a line under it. The Claimant suggested that I must put this into the wider context of the other issues when considering whether the outcome of the redundancy process had been pre-determined.

22. Having moved into the Operations Lead role, the Claimant embarked upon the backfilling of her previous role of Project Manager. The business at that time was anticipating employing a number of further project managers as multiple projects were due to begin. Those projects needed a Project Manager, and it was anticipated that the Claimant's role would include the line managing of the Project Managers. I was satisfied that the Claimant consulted with Julian Wrigley about who should be employed into the role. Mr Wrigley was vague in his recollection of the details of his input into this piece of work. He was present at the first interview of the successful candidate, Chris Deakin. The Claimant played an active role in the employment of Chris Deakin into her former role. I found that there was no evidence that Chris Deakin was employed as a means of manufacturing the redundancy situation to force the Claimant out. The Claimant did not maintain the stance that she was told to employ a male into the role, indeed she agreed this was in error and it was Chris Deakin as opposed to a "male" specifically that she was told to offer the role to, after a fair recruitment process had taken place.

23. The Claimant's evidence was that she remained heavily involved in the project management role, continuing to conduct work on the "Kerb Dock" project. The Respondent indicated that Chris Deakin was a very experienced Project Manager and became quickly integrated into his own role, with little assistance from the Claimant. This was Chris Deakin's only project. The Respondent stated that he settled into the role and began forming customer relationships very quickly. I was satisfied that the Claimant, as Chris Deakin's manager, continued to have an input into the project management work being done by Chris Deakin, but was doing so as Operations Lead and assisted in settling Chris Deakin into his role.

24. There had been discussions about the Claimant receiving a pay rise within her Operations Lead role. The Claimant did not push her employers for this and the situation around redundancy arose before this was discussed further.

The redundancy procedure

25. On the 17th October 2022, Julian Wrigley and Neil Herron, began consultations with Monique Ewart of Professional People Management Limited, an independent Human Resources company, about redundancy. They had identified that two roles were "at risk". Those roles were the Branding and Communications Designer and the Claimant's role as Operations Lead. I was satisfied that the respondent witness Julian Wrigley remained consistent in his evidence, that the reason that these roles were chosen, was due to a need to re-structure the business following a recent investment round. As a software design business, having recently taken on board a round of investment, they needed to recruit software developers. There was less need for back-office roles and designers. Julian Wrigley described that the company has recently gone through the same exercise, considering a further eight positions for redundancy. It remains the case that there is only one Project Manager and no Operations Lead.

26. Julian Wrigley and Neil Herron were to be assisted by a document called the "Grid Redundancy Process" (pages 175-177). The document was meant as a guide for the managers conducting the process. Julian Wrigley had sight of this document before he conducted an initial meeting with the Claimant, on the 7th of November 2022. The Claimant was invited to this as an informal, initial, at-risk meeting. The Claimant believed that she was going to a one-to-one meeting with her line manager. Instead at the meeting she was met by her line manager Julian Wrigley and the chief executive officer Neil Heron. She described she immediately felt nervous about the presence of these senior managers.

27. At the meeting, the Claimant was informed by Julian Wrigley that,

"So just to let you know that you are at risk of redundancy… we are under pressure from investors to actually restructure the business…".

In what has subsequently been described as misspeaking by Julian Wrigley, he told the Claimant that,

"Fridays meeting is a formal meeting where we will say this again, and we'll give you a date for your last date of redundancy."

28. They discussed the consultancy process at the meeting. Proposed changes to the structure of business were communicated to the Claimant. The Claimant was told that she would receive a letter about the first formal meeting in the process. She was told she

could bring a friend or colleague and was offered time off, if needed, to look around for other job opportunities.

29. The Claimant recorded this meeting, without those present being aware. The indication that she would be given her “last date”, weighed heavily on her mind and had an impact upon the procedure that followed. The Respondents sought to persuade me that the minor error of referring to the last date on Friday, was subsequently corrected sufficiently and the Claimant was mistaken in her belief. I found it reasonable that because of what had been said, the Claimant assumed that the process was a fait accompli. The Claimant believed that her employers had made their mind up about what the outcome of the procedure would be, because she had been told that she would get her “last date” at the next meeting on Friday.

30. Prior to the next meeting taking place, the Claimant contacted ACAS for advice and on the 10th of November 2022 she raised a formal grievance by letter (222-224). In that letter the Claimant raised the following issues:

“*a) lack of meaningful reason for redundancy and lack of meaningful consultation.*

b) discriminatory behaviour based upon:

i) gender in relation to the Toby Hiles complaint

ii) disability discrimination in relation to a lack of reasonable adjustments having been made.”

31. The grievance letter was received by Monique Ewart and the allegation that Julian Wrigley had told the Claimant that a last date would be given at the meeting on the 7th of November, was put to Mr Wrigley, who denied saying it. Monique Ewart and the Respondent’s senior managers agreed that the grievance process would be absorbed into the redundancy process. The decision was taken that the grievance matters related purely to the redundancy process. This was a mistake on the part of the Respondent. By raising the grievance, the Claimant reasonably expected that the Respondent would deal with those grievances as per the companies grievance procedure (p50), which states that:

“1. You must put your grievance in writing and send a copy to your manager. If the grievance concerns your manager, then raise it with a different manager.

2. You will be invited to attend a meeting to discuss the grievance. You have the right to be accompanied at the meeting by a trade union representative or a fellow employee.

3. After the meeting you will be informed of the decision taken in response to the grievance.

4. You will be given the right of appeal against the decision. You have the right to be accompanied to the appeal meeting by a trade union representative or a fellow employee.”

32. The grievance letter written by the Claimant, refers to her having learning disabilities. It does not go on further to define the precise nature of the conditions. The letter talks about adjustments and support to her needs that the Claimant should have been provided in the workplace. There was no request for reasonable adjustments or support needs to be put into place within the redundancy process, however the indication that

she had additional needs was given no consideration by the Respondent. Adjustments should have been considered, such as regular breaks and recording of the meetings. They were not considered and instead the Respondent's subsequent actions in relation to the grievances were to minimise them, treat them as an inconvenience and demonstrative of the Claimant being difficult.

33. The "last date" denial, had a significant impact upon the way that following meetings were conducted. A first meeting took place on the 18th of November and the Claimant was informed that the grievance would be dealt with during the redundancy process. Monique Ewart led a meeting on the 22nd of November and referred to the grievance letter and the, "serious allegations" which she stated had been made about Julian Wrigley and Neil Heron. The Claimant was told that they denied the, "last date" comment was made.

34. Monique Ewart made it clear that she disagreed with the course of action taken by the Claimant in submitting a grievance letter and told the Claimant,

"the things you said we later have investigated and looked into and are completely untrue."

In cross examination, Monique Ewart indicated that by, "investigation", she meant that she had asked Julian Wrigley whether he had made the comment. He denied that he had, that was the end of the investigation. Monique Ewart was a credible witness who stated that an investigation would usually involve speaking to the other party involved, corroborating if something had or had not happened. The Claimant was not asked her version of events. Had she been spoken to, following the submission of her grievance and a proper investigation made to the admitted standards of Monique Ewart, it may have been established that the Claimant had recorded the meeting, and that there was direct evidence of what was said.

35. This misapprehension on the part of Monique Ewart, then led her to fall into error further, stating to the Claimant in the meeting that,

"you have been quite disingenuous with the whole process".

The transcript of the meeting (p282) demonstrates how shocked the Claimant was by this. She was, as has now been admitted by the Respondent, telling the truth. The meeting became heated and the Claimant was called a "liar", by Monique Ewart, something that she has subsequently reflected upon as inappropriate.

36. Relations between the Claimant and Monique Ewart deteriorated and Monique Ewart described that the Claimant began to interrupt and become "aggressive". The Claimant denied this. In cross examination Monique Ewart agreed her own behaviour at this point may have been inappropriate and she regretted her actions. As an experienced HR adviser, Monique Ewart should have taken a step back and considered whether she continued to be an appropriate person to conduct consultation meetings with the Claimant to ensure they were effective with proper consideration of options, including other options beside her redundancy.

37. The same parties attended a meeting on the 28th November. The Claimant asked why she could not return to her project management role. Julian Wrigley admitted in his evidence, that they had already based their decision not to consider the Claimant's return to her old role, upon assumptions made about her. They assumed that she would not travel to an work in London. Julian Wrigley described the Claimant had been reluctant to leave her home and had attended in-person meetings, due to her dog's care needs. The requirement of the project management role was 3 days in London. The

Claimant gave examples of when she had gone to London for work. She further gave evidence that she would have considered working in London. She was not given the option to put this forward, as unfair assumptions about her had already been made.

38. On the 7th December, a final meeting took place. The Claimant was offered a newly created, administrative role, for one to two days a week. Having been provided no specific details about the job including her hours or salary, the Claimant left the meeting in the dark about essential matters. The Respondent found it appropriate to put the responsibility onto the Claimant to consider the offer of this employment, and indicate a willingness to accept this before further details were provided. It was not made clear to her in the meeting or subsequent correspondence that she could have another meeting to discuss this further. The Claimant reasonably believed she must indicate her decision, before she would be offered another meeting.

39. The Claimant emailed and stated that "at present", she is unable to accept the offer and, referred to the outstanding grievance procedure as follows,

"until relative action is complete, I would find it difficult to consider an offer in change of employment."

The tone of the Claimant's email demonstrates a request for additional information, as opposed to a firm decline of the offer of redeployment. The earlier misconceptions of the Claimant being difficult, caused by the assumption that she was a liar led the Respondent to the conclusion that the Claimant was being difficult. They issued a letter on 14th December confirming termination of her employment by reason of redundancy.

40. There was an appeal process, and an appeal was raised on the 21st December. The Respondent referred me to the contents of that appeal document (p333), to demonstrate that in reality, the Claimant did not really believe in the sham redundancy situation, that she now puts before the tribunal. I found that as the email refers clearly to the grievance letter, the Claimant had raised these issues as her genuine concerns. The Respondent company decided to merge the redundancy and grievance procedure, they should have therefore been considering that the grievance letter did contain the Claimant's complaints about the redundancy situation.

The Relevant Law

41. Section 98 of the Employment Rights Act 1996 (the ERA) states:

> "(1) In determining for the purposes 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 dismissal
>
> (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 is… that the employee is redundant."

42. Redundancy is defined in section 139 ERA which says dismissal shall be taken to be by reason of redundancy if it is wholly or mainly attributable to the fact the requirements of the business for employees to carry out work of a particular kind, either generally or in the particular place, have ceased or diminished or are expected to cease or diminish permanently or temporarily, for whatever reason. The "for whatever reason" part comes from section 139(6) ERA and means an employer need not justify objectively a commercial decision to respond to economic circumstances by reducing the number of employees.

43. In Safeway Stores-v-Burrell (affirmed by Murray-v-Foyle Meats) it was held that if there

was (a) a dismissal and (b) a "redundancy situation" (i.e. a set of facts falling within the ambit of section 139 ERA) the only remaining question under section 98(1) ERA is whether (b) was the reason or if more than one, the principal reason for the happening of (a).

44. Section 98(4) ERA says:

> (4) "Where an employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)
>
> (a) depends on whether in all the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case."

45. In Langston v Cranfield University the EAT confirmed the Tribunal must look at all ways in which a dismissal by reason of redundancy may be unfair. Dismissal by reason of redundancy may be unfair if there was:

(a) inadequate warning/consultation
(b) unfair selection and
(c) insufficient effort to find alternatives.

Fair consultation was considered in R v British Coal Corporation ex parte Price, in which fair consultation was defined as (a) discussion while proposals are still at a formative stage (b) adequate information on which to respond (c) adequate time in which to respond and (d) conscientious consideration of the response.

46. As for fair selection, British Aerospace v Green held that provided an employer sets up a selection method which can reasonably be described as fair and applies it without any overt sign of bias which would mar its fairness, it will have done what the law requires. Taymech v Ryan says in choosing pools for selection it is primarily a matter for the employer, who has a broad measure of discretion. A fair pool selection is not necessarily limited to those employees doing the same or similar work. Employers may be expected to include in the pool those employees whose work is interchangeable. There may be cases where it is reasonable not to develop a pool. It should not be automatically assumed that if a particular post is deleted, the post holder is the one to go, but in some situations that is the only obvious candidate.

47. In Capital Hartshead Ltd v Byard [2012] IRLR 814, the following guidance is given:

> 47.1. It is not the function of the Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted.
> 47.2. The range of reasonable responses test applies to the selection of the pool from which the redundancies were to be drawn.
> 47.3. There is no legal requirement that the pool should be limited to employees doing the same or similar work.
> 47.4. The question of how the pool should be defined is primarily a matter for the employer to determine.
> 47.5. The Tribunal should consider with care the reasoning in deciding if the employer has genuinely applied its mind.
> 47.6. It is difficult to challenge if the employer has genuinely applied its mind to the problem.

48. In relation to efforts made to find alternative employment, Quinton Hazel 30 Limited v Earl, at para 7, is authority for the proposition that the employer is not required to make exhaustive searches or efforts in this regard but rather only that which would be reasonable for the particular organisation. In Thomas and Betts Manufacturing Co v Harding the Court of Appeal ruled that an employer should do what it can so far as is reasonable to
seek alternative work. Moreover, the EAT confirmed Fisher v Hoopoe Finance Ltd that an employer's responsibility extends to also providing information about the financial prospects of any vacant alternative positions.

49. In Polkey v AE Dayton it was determined that if a Claimant is entitled to compensation for unfair dismissal, their compensation can be reduced or limited to reflect the chance that the Claimant would have been dismissed in any event and that any procedural errors accordingly made no difference to the outcome. Therefore, procedural unfairness will make a redundancy dismissal unfair, but the question of whether the employee would have been dismissed even if a fair procedure has been followed will be relevant to the question of compensation payable to the Claimant.

50. There is relevant guidance on how to approach this issue in Software 2000 Ltd v Andrews and ors and confirmed the Tribunal must recognise that it should have regard to any material and reliable evidence which might assist it in fixing just compensation, even if there are limits to the extent to which it can confidently predict what might have been; and it must appreciate that a degree of uncertainty is an inevitable feature of the exercise. The mere fact that an element of speculation is involved is not a reason for refusing to have regard to the evidence.

Conclusions

What was the reason for dismissal?

51. The Claimant sought to persuade the Tribunal that the reason was not the potentially fair reason of redundancy, but that in effect the Respondent company wanted rid of her because she had raised the Toby Hiles complaint and requested reasonable adjustments. The Claimant relies upon the circumstantial evidence and background to the case, as evidence from which I can infer this. The burden of proof rests upon the Respondent to show me that this was a genuine redundancy situation.

52. Dealing firstly with the Toby Hiles complaint, this was investigated. I was satisfied by the evidence of Julian Wrigley that Mr Hiles had been in trouble previously and he received a warning for his conduct on both occasions. Julian Wrigley agreed that M Hiles had behaved inappropriately towards the Claimant. The Claimant suggested that the timing of the redundancy, a few months after she had made the complaint, is such a coincidence, that it cannot be ignored. I found that there was no evidence of anyone referring back to her complaint, she was not being punished for her actions of making a genuine and well-founded complaint about a senior member of staff.

53. Turning to the lack of reasonable adjustments made for the Claimant, I found Mark Smith to be a very balanced and credible witness. He had worked to ensure that the Claimant had the reasonable adjustments that she needed to work at the company. I found that there was evidence of a positive culture of inclusivity at the company. The Claimant herself had assisted in putting in place reasonable adjustments for a person with a hearing impediment who required video conferencing facilities.

54. I found that Mark Smith had referred to Julian Wrigley that the Claimant required reasonable adjustments. Mr Smith was a little vague when asked whether he had mentioned the Claimant's needs more than once to Julian Wrigley. The requirement was

not written down and the Claimant had not made any direct request for reasonable adjustments to Julian Wrigley until a specific meeting in September 2022. The Claimant was a strong performer in the team, and I found it reasonable that her stoicism led to her simply getting on with things, until needing assistance in September 22. The Claimant was asking for assistance and guidance around what was expected of her in her role. There were no demands for adjustments that would have placed any financial or other burden on the company. It was not suggested that any specific adjustments, above and beyond clarification of the role, were demanded or refused. I heard a number of examples of reasonable adjustments made for people at the company, and I found it would be inconsistent with the positive culture promoted at the company, to find that a request for adjustments was a reason for redundancy.

55. Julian Wrigley gave evidence about the specific demands of the company, made by the investors. The Claimant, when being initially told that she was to be included in the redundancy process, stated that it was always a risk of a "startup" company. Whilst I pay little evidential regard to such a comment made in a stressful meeting for the Claimant, it does show some insight into the risk carried by such a young company. The Respondent has been consistent that there were multiple projects that did not materialise as and when they were expected to. The Claimant was moved to the role of Operations Lead when it was expected she would manage multiple Project Managers. The need for the Project Managers and therefore the scope of the Claimant's role lessened. The Respondent consulted with HR advisers about the process. I am satisfied that the Respondent has shown that pressure from investors to rationalise and restructure the business led to a true redundancy situation. Therefore, I am satisfied that the reason for redundancy was the potentially fair reason of redundancy.

56. As I have found that the reason for redundancy was redundancy, I must go on to consider whether the redundancy dismissal was fair.

Was the redundancy dismissal unfair?

Selection

57. The Claimant alleges that she was pre-selected, and the Respondents then carried out a procedure that was a tick-box exercise. Selection is primarily a matter for the employer who has broad discretion in choosing pools for selection. The Claimant sought to establish that Chris Deakin, doing her former Project Manager role, should also have been considered for redundancy. I found that there were some crossover responsibilities between the Operations Lead and Project Manager Chris Deakin. However, I could not find that this went beyond what would reasonably be expected of a manager, assisting a new colleague to settle into their role. I found that was the limited extent of the Claimant's continuation with involvement on the Kerb Dock project and therefore the Project Manager role. I also found it reasonable that Chris Deakin, a highly qualified Project Manager, had quickly absorbed the needs of his new role and developed working relationships with clients, such that the Respondent's commercial operations could be effected by his being removed from the Project Manager role. I did not find that the Respondent's selected the Operations Lead because the Claimant was in that role. Instead, I found that the Respondent had applied their mind to which positions were no longer needed. They had to make changes for the sake of the business need.

57. The Operations Lead was not the only role that was identified. There is no evidence that the other role of Branding and Communications Designer was unfairly selected due to anything other than business need. The Operations Lead role does not exist at the company now and the lack of Project Managers at the company has left little scope within the role. The Claimant accepted that her workload had reduced. I am therefore satisfied that the Claimant was employed as Operations Lead, not project manager and that role was fairly selected to be included in the redundancy process.

Consultation process

58. The Respondent recognises that there were problems with the consultation process, but states that they were minor, such that they did not affect the process. The Respondent highlights that there were four consultation meetings. The Respondent company is a small operation that employed around 25 people. It does not have its own HR department, instead they look externally for these services. This was the first time a redundancy process had been undertaken by them.

59.The Claimant alleges a lack of meaningful, adequate consultation. The Claimant alleges that because it was a pre-determined outcome, the consultation was not genuine and in any event was flawed. The document given to Julian Wrigley and Neil Heron described that the process, needs to be, "genuine and meaningful." I am satisfied that there were a number of errors that arose within the consultation procedure that followed the Claimant having been identified as at risk of redundancy.

60. The first significant error was the comments made by Julian Wrigley at the informal meeting on 7th November 2022, that the Claimant would get a final date at the next meeting, Julian Wrigley should not have said this, and he accepted as such in cross examination. There is no reference in the consultation document to telling a person that they will get a final date at the first formal meeting. I am satisfied that this was a genuine error on the part of Mr Wrigley who had not been involved in the redundancy process previously. In the grounds of resistance for this matter, Mr Wrigley doubled down on his denial. He has moved away from this position, when confronted with the overwhelming evidence within the transcript of the meeting.

61. The comment alone, may have been surmountable as an error, had it not tainted the consultations that followed when the Claimant was accused of lying about what she had been told. The Claimant was not asked to provide her account of the meeting, before one side of the story was established from Mr Wrigley and Mr Heron in what was described to the Claimant as an "investigation", that, it was admitted, fell well short of the type of investigation that would be expected, a grievance having been raised about the issue. There was a recording of that meeting, which may have been revealed, had the Claimant been asked to put forward her own version. I found that Monique Ewart began consultation with the Claimant on the basis of a false preconception, that she was a liar, and she was being difficult, having immediately raised a grievance.

62. The Respondents failed to deal adequately with the Claimant's grievance. Their own procedures set out the requirements for a formal grievance procedure. The Claimant had set out valid concerns that should have been dealt with, and concluded, separately under the grievance procedure. Handling of the grievance procedure, in accordance with the policy, fell short in the following ways:

1) failure to hold a separate grievance meeting.
2) failure to inform the Claimant as to the outcome of the grievance procedure
3) failure to allow an appeal hearing in relation to the grievance procedure.

Instead, as can be seen in the Claimant's email of the 12th of December, the Claimant reasonably believed that the grievance process remained without conclusion. It was an error to roll the grievance procedure into the redundancy procedure. This led to confusion for the Claimant.

63. I further found that in considering the grievance letter of the 10th of November, the Respondents had notice that the Claimant has learning disabilities. It would have been reasonable to expect that some enquiry should be made of the Claimant, at the start of the meeting, to determine whether her disabilities may require some adjustments to be put into place, or how those disabilities may effect her behaviour, under the stress and

pressures of such a difficult meeting. There were no enquiries made of the Claimant about that or at subsequent meetings. Monique Ewart is part of a company brought in for their expertise in dealing with people during such a process. It would have been reasonable for Miss Ewart to have used her expertise to request additional information about her needs. Instead, in the meeting on the 18th of November, Mrs Ewart behaved in an accusatory and defensive manner. Her poor behaviour bred the poor behaviour of the Claimant. It was entirely understandable that the Claimant reacted negatively to the false accusation that she was lying.

64. Having had the verbal disagreement with the Claimant during that meeting, Mrs Ewart should have stepped back and thought about whether she was the right person to conduct future meetings. The Claimant, expected to engage in "genuine and meaningful" consultation, should have been allowed to provide her views about this. It is my view that the Claimant's perceived lack of co-operation was misconceived and led to negative assumptions and inferences about her willingness to engage in the procedure.

Failure to consider alternatives

65. If an employee is selected for redundancy, a reasonable employer takes steps to find alternatives such as redeployment. The Claimant alleges that there was insufficient consideration given to returning her to her old role, that consideration should have been given to her replacing Chris Deakin in her old job, that the Respondent failed to consider this, or other options, including developing or redefining her role. There was no evidence that any other jobs were available within the company.

66. In the meeting of the 7th December 2022, a vague offer of employment was made, to a newly created administrative role, 1-2 days a week. Without discussion of pay, terms and conditions. The Claimant was left in the difficult position of having to consider her options based upon little information. Whilst the Respondents state that this was just to gauge a response, the would provide further details if asked, it was understandable that due to the problems there had been throughout the process, she felt this to be a part of the box-ticking exercise and lacking integrity. The email response of 12th December was in reality a request for more information or a further meeting.

67. This was an offer of an inferior position. The Claimant stood to lose any benefits from the redundancy situation, such as redundancy pay, should she accept the role. It was accepted by the Respondent that there could have been more clarity in how the process was managed. Whilst a minor error in the process, it was unreasonable for the Respondents to treat the Claimants email of the 12th December as a refusal of the role. The Respondent should have offered another meeting. The Respondents treated the email as a refusal of the role, following the earlier misconceptions about a lack of co-operation. The Respondents therefore did offer an alternative to redundancy, but they failed in effectively communicating with the Claimant by unreasonably failing to provide the Claimant the details that she needed, to properly consider the alternative employment.

Conclusion

68. The Respondent urges me to find that cumulatively, the errors made by the Respondent were minor and did not significantly affect the outcome of the process, that dismissal was within the band of reasonable responses and therefore reasonable under s98(4) of the ERA 1996. The procedure was not perfect, but that is not my consideration. I found that in considering whether this employer, acted in a reasonable way, there was a lack of effective and meaningful consultation. I found this because communication with the Claimant was deficient from the first meeting and then throughout the process. The Claimant was led to believe that she would be made redundant, no matter how much she engaged with the procedure due to the behaviour of the Respondent representatives

towards her. She was unreasonably accused of lying and her level of co-operation was then assessed against that false preconception throughout. The Claimant was denied the opportunity to properly challenge the placing of her role at risk. The Respondents did not adequately deal with the grievance raised by the Claimant and they failed in their communication with the Claimant about the offer of alternative employment by failing to offer details and a further meeting.

69. I am therefore satisfied that it was outside the band of reasonable responses for the Respondent to conduct the consultancy process in the manner described above. The procedure adopted was not within the range of responses to an employer acting reasonably in the circumstances of this case, and the Claimant's claim for unfair dismissal succeeds, as the Respondent acted unreasonably in treating redundancy as the reason for dismissal.

Polkey

70. Having found the redundancy to have been procedurally unfair I considered the chances that the Claimant would have been dismissed in any event, had the Respondent followed a fair procedure.

71. With respect to the consultation, whilst I found that the Respondent ought to have properly investigated the grievance raised by the Claimant, and that may have led to a fair procedure if the making of pre-conceptions about the Claimant were avoided, I found the Respondents consistent upon the question of business need to reduce the numbers of staff at the business. The Respondent company, as a startup, needed to respond to their fluctuating business needs, as demonstrated by the lack of project management work available. I found that the Respondent was not unreasonable in considering the Claimant's role for redundancy.

72. There was evidence that the Claimant would have at least considered traveling to London, had discussions been meaningful. The Respondents praised the performance of the Claimant within her role, she was well respected. The Claimant was suggesting that Chris Deakin could be made redundant, that he should be made redundant, and the Claimant returned to her old, more junior role. Evidence before me was that Chris Deakin had settled into his role and it would have caused problems with an ongoing project and client relations, should this course of action have been adopted. The Office Manager role was only for 1-2 days a week, and the Claimant was never provided with sufficient details about it, to establish whether it was a viable option for her future.

73. The Claimant's workload had been falling and the Claimant had been seeking clarification in the nature of her role before the procedure was commenced. The Claimant raised the possibility of being re-deployed to her old role as project manager. This was in meetings after the initial errors in the procedure had been made. The Respondents had made assumptions about the Claimant, including her willingness to travel. The Claimant denied that she would have been unwilling to travel to London and referred to instances when she had gone on business trips to London with Julian Wrigley. The Claimant claims that had a meaningful consultation procedure been conducted, she would have been able to put forward a viable proposal for this course of action and further to give proper consideration to the alternative role offered.

74. I find that there was a small chance that the redundancy would have been avoided, had a fair procedure been carried out and considering the evidence, and my findings above, as well as in all the circumstances of this case, I find that it is 70% likely that the Claimant would have been dismissed in any event, had the Respondent followed a fair procedure.

Remedy

75. The Claimant's claim for unfair dismissal is successful and the issue of remedy will be considered at a remedy hearing.

76. In the meantime, the parties are encouraged to enter dialogue with a view to reaching agreement if possible. Should agreement be reached, the remedy hearing will be vacated.

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Employment Judge McGregor

Date_2nd April 2024