THE INDUSTRIAL TRIBUNALS

CASE REF: 21287/19

CLAIMANT: **Jamie Penney**

RESPONDENT: **Emma Irvine trading as Sheer Madness Hair Salon**

JUDGMENT

The unanimous judgment of the tribunal is that the claimant was not unfairly dismissed and her claim to the tribunal is therefore dismissed.

CONSTITUTION OF TRIBUNAL

Employment Judge: **Employment Judge Sturgeon**

Members: **Mr E Grant**
Mr A White

APPEARANCES:

The claimant appeared in person and represented herself.

The respondent was represented by Mr C Irvine.

AMENDMENT OF TITLE

1. At the commencement of the hearing, I clarified with the parties the proper name for the respondent. Mr Irvine confirmed that Mrs Irvine is the sole proprietor of Sheer Madness Hair Salon which is Mrs Irvine's trading name. The Tribunal therefore concluded that Sheer Madness Hair Salon is not a separate legal entity and is a trading name of Emma Irvine who was the Claimant's employer. The Tribunal therefore amends the title of the respondent to Emma Irvine t/a Sheer Madness Hair Salon, as set out above.

THE CLAIM

2. The claimant claimed that she was unfairly dismissed. The respondent claimed that the claimant was fairly dismissed for redundancy.

THE ISSUES

3. The issues for the tribunal were therefore as follows:

(1) Was the claimant's post redundant due to a downturn in business?

(2) Was redundancy the reason for the claimant's dismissal?

(3) Was that dismissal fair or unfair in all the circumstances?

(4) Was sufficient consultation carried out and did the respondent consider suitable alternative employment for the claimant?

SOURCES OF EVIDENCE

4. For the respondent, the tribunal heard evidence from Emma Irvine, the proprietor of Sheer Madness Hair Salon, Chris Irvine, Emma Irvine's husband, and Lena Grattan. The claimant gave evidence on her own behalf and the tribunal heard evidence, on the claimant's behalf, from Claire Murray and Laura McIlroy. The tribunal also had regard to the documentation to which it was referred.

THE LAW

5. The right not to be unfairly dismissed is set out in the Employment Rights (Northern Ireland) Order 1996 as amended (referred to below as ERO). One of the potentially fair reasons for dismissal listed in ERO is redundancy. It is for the employer to show the reason for dismissal and it is for the tribunal to determine whether the dismissal was fair in all the circumstances.

6. The two key elements in a redundancy process relevant to this case are, firstly, that there should be fair warning and consultation to enable the employee to respond to the proposed redundancy so that the employee is in a position to suggest alternatives and, secondly, that suitable alternative employment is actively considered and offered by the employer, if available.

7. The employer must follow the basic minimum procedures stipulated under the statutory dismissal procedure legislation (the SDP) as otherwise the dismissal will be automatically unfair.

8. If the employer fails to follow proper procedures, other than the SDP, it is open to the tribunal to find that the dismissal was nevertheless fair, as dismissal would have ensued even if there had been no flaws in the procedure. This is stipulated in the Article 130A of ERO.

FINDINGS OF FACT AND CONCLUSIONS

9. The tribunal found the following relevant facts, on a balance of probabilities, and reached the following conclusions having applied the legal principles to the facts found.

10. The claimant was employed as a beautician therapist for the respondent. Her employment began on 27 April 2017 and ended on 19 July 2019 when she was dismissed by reason of redundancy. The claimant was the respondent's only employee.

11. The claimant disputed that she was the only employee of the respondent organisation. It was the claimant's belief that Paula Watkins was also an employee of the respondent organisation and therefore should have been included in a redundancy pool with the claimant. However, the respondent stated that Ms Watkins was self-employed. The respondent produced evidence to show that the claimant was the only employee. The claimant produced no evidence to the contrary to show that Ms Watkins was not an employee. On that basis, the tribunal concludes, as a finding of fact, that the claimant was the only employee.

12. We accept that a redundancy situation pertained at the relevant time due to a downturn in the financial state of the business. Our primary reasons for so finding are as follows:

    (i) The turnover figures supplied show a substantial decline in business between 2018 and 2019.

    (ii) The proprietor of the respondent entered into an Individual Voluntary Arrangement (IVA) in August 2020.

    (iii) In 2018 and 2019, wages represented one of the biggest expenses for the respondent company.

13. We regard it as reasonable of the employer to decide that that claimant's post was at risk, of redundancy, due to the particular downturn in work due to the fact that she was the only employee of the respondent. We accept the respondent's evidence that the figures were such that the turnover did not justify the salary and associated costs of employing the claimant.

14. By letter of 3 July 2019, the claimant was informed that her role was at risk of redundancy and she was notified that a consultation meeting would take place on 6 July 2019 at 3.30 pm. The claimant was informed that the aim of the meeting was to give her a chance to discuss the proposed redundancy in more detail and that issues for discussion may include:

    - Why your position has been proposed for redundancy.
    - Any possibilities for alternative employment.
    - Any ideas you may have for avoiding redundancy or reasons why you think she should not make you redundant.

15. The claimant's criticism of the consultation meeting was as follows:-

    (i) that the respondent did not put forward any alternatives to redundancy but waited for the claimant to put forward options;

    (ii) the claimant, who was on maternity leave from the respondent organisation when selected for redundancy, believes that she was presented with an ultimatum of either coming back to work or being made redundant;

(iii) that it only took three days, after the meeting on 7 July 2019, for a final outcome letter to be sent on 10 July 2019 – the claimant contends that this was unprofessional.

16. We don't regard it as a flaw of the procedures that the respondent did not volunteer alternative work suggestions. Within its letter, of 3rd July 2019, the respondent set out the aim of the meeting, as stated at paragraph 14 above. However, the claimant brought no alternatives to redundancy to the meeting on 7th July 2019. While she made it clear that she was not fit to return to work at that point in time, she presented no evidence of having made any suggestion of any alternatives that could be explored if she did return.

17. In the absence of any alternatives being suggested by the claimant, the tribunal finds that the respondent acted reasonably in moving to notify the claimant of dismissal on 10 July 2019. In the circumstances, it was clear that there was no alternative to redundancy and that it was reasonable for the employer to move to make the claimant redundant at that point.

18. The claimant was dismissed for redundancy by letter of 10 July 2019. The claimant was advised of her right to appeal in that letter.

19. The claimant exercised her right to appeal by email of 24 July 2019. An initial meeting was arranged for 31 August 2019 at 3.00 pm. However, the claimant was unable to attend this meeting and it was rearranged to Saturday 28 September 2019 at 4.00 pm. The claimant did not attend this appeal meeting and did not notify Mr Chris Irvine that she would not be in attendance. The appeal was conducted by Mr Chris Irvine. As no new material was put forward on appeal, the decision to dismiss was upheld by Mr Irvine.

20. The claimant, however, was not notified of the outcome of the appeal until 30 October 2019 as Mr Irvine forgot to send the outcome letter to the claimant until that date.

21. It is most unsatisfactory that Mr Irvine forgot to send a crucial letter regarding an appeal to someone's employment until almost a month after the decision was made. However, in this case, we do not find that the flaw made the dismissal unfair. In the circumstances of this case, we find the dismissal would have occurred anyway even if the flaw had not been present and therefore we find that Article 130A of ERO comes into play and the dismissal was fair. Our reason for so finding is that the claimant, as the only employee, was clearly liable to be made redundant given the downturn in turnover and the lack of suitable alternative employment.

SUMMARY

22. Due to a decline in the respondent's business, there was a redundancy situation at the relevant time and there was therefore a reasonable basis for the respondent to conclude that they might have to make the claimant, its only employee, redundant.

23. The respondent complied with the SDP and complied with a reasonable redundancy procedure except in so far as there was a delay in sending out the appeal outcome letter at paragraph 20 above.

24. Specifically, the respondent conducted a consultation process with the claimant and gave the claimant the opportunity to consider whether there was suitable alternative employment as an alternative to redundancy. However, the claimant did not engage in suggesting alternatives and left it to the respondent to suggest alternatives.

25. It was reasonable for the respondent to dismiss the claimant for redundancy.

26. The claimant's claim is therefore dismissed in its entirety.

Employment Judge:

Date and place of hearing: 10 December 2020, Belfast.

This judgment was entered in the register and issued to the parties on: