



# EMPLOYMENT TRIBUNALS

## BETWEEN

Claimant

MR G S WILLIAMS

AND

Respondent

FRIDGE SPARES WHOLESALE  
LTD

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF      ON:      23RD OCTOBER 2018

EMPLOYMENT JUDGE MR P CADNEY  
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:-      IN PERSON

FOR THE RESPONDENT:-      MR K WILFORD

## JUDGMENT

The judgment of the tribunal is that:-

1.            The claimant's claim of unfair dismissal is dismissed.

## Reasons

1. This is the decision of the tribunal in the case of Mr GS Williams (claimant) v Fridge Spares Wholesale Ltd (respondent). By this claim the claimant brings a claim of unfair dismissal arising out of the termination of his employment by reason of redundancy.

2. The respondent operates as a supplier to the refrigeration and air-conditioning industry. Its head office is based in Cannock and it has branches across the United Kingdom covering all countries and regions of the United Kingdom. The claimant was the branch manager of the respondent's Cardiff branch. The financial performance of the Cardiff branch had declined significantly between 2011 and 2015. In 2011 its turnover was just short of £2 million and by 2015 the turnover was just in excess of £1 million, a loss of turnover of 47%. I have heard evidence from Mr John Hopley who is the respondent's South, South Wales and South-West Regional Manager. He was at pains to point out that the loss of turnover is not the fault of any individual or in general terms of the branch itself. It is almost all attributable to one of its leading customer's work diminishing and then going into liquidation. However given the fall in turnover at the respondent had by early 2016 decided that it needed to take a decision as to the future of the Cardiff branch. One option was to close the Cardiff branch and to transfer its customers to Bristol. There were two principal objections to this. The first is that as the respondent is a national company it was thought to be important to maintain its presence in Wales, and secondly it has contracts with supermarkets which require a response within two hours which might prove difficult if the extra time in travel from Bristol had to be factored in. Accordingly the respondent took the decision that it would keep the Cardiff branch open but that it would reduce the staff there.
3. The decision was taken that a new structure would be put in place. The new structure that was adopted was taken from the structure in the Southampton branch which Mr Hopley had been responsible for introducing. That involves the employment of one branch supervisor and three branch assistant/drivers. In oral evidence he commented that effectively the structure meant that everyone could multitask and do each other's jobs. As a result the respondent decided to adopt the same structure in Cardiff which meant the potential redundancy of the roles of the branch manager and assistant manager.
4. As a consequence on 15 March 2016 a briefing meeting was held with the claimant at which he was informed of the decision and handed a copy of the briefing document which sets out the redundancy of the roles of manager and assistant manager and the new structure, being a supervisor and three branch assistants. Also attached was the job description for the role of branch supervisor. Pausing at this point the proposal was that the claimant and Mr Dickinson the assistant manager, whose post was also being made redundant would be given the opportunity to apply for the branch supervisor role. If both applied there would be an interview for the post. In the event neither did.
5. A further consultation meeting was held on 16 March with the claimant at which he was informed that the claimant had until 18 March at to confirm whether he was interested in any of the positions at available. On 16 March the claimant emailed Mr Hopley to indicate that he was interested in the branch supervisor role at subject to confirmation as to the salary package.

6. A further consultation meeting was held on 21 March at which the remuneration package was clarified as 25,000 to £28,000 per annum, and that if claimant were appointed to the role he would be on the £28,000 salary.
7. There was further meeting on 4 April 2018 and on 13 April 2018 the Mr Hopley emailed the claimant to notify him that if he was interested in applying for a four-week trial of the branch supervisor role that he must notify him by 15 April 2018. The claimant did not reply and it was therefore invited to a final redundancy consultation meeting on 21 April 2018 at which it was confirmed that as he had not applied for the role of branch supervisor his position had been made redundant and as a consequence his employment was to be terminated. This was confirmed by letter dated 29 April. That letter confirmed the redundancy package together with the fact that the claimant would be paid one month in lieu of notice.
8. The claimant appealed, and the appeal was heard by Mr Graham Hill the Managing Director of the respondent. The appeal took place on 31 May 2018 and the claimant raised the following issues; that he did not agree with the new branch structure; secondly the redundancy decision was premeditated; and thirdly that he had been made aware of alternative role which had become available on 26 April, this was a role for a sales engineer to cover the East Midlands area. The claimant requested that Mr Hill speak to Robin Green who was the previous Branch Manager which Mr Hill did, although not personally but by Ms Carol Farrow an external HR consultant, although the issues raised were in my view of little relevance to the issue of redundancy. Mr Hill decided not to uphold the appeal on the basis that the business decision to restructure meant that the role would no longer exist, and that whilst it would involve a salary reduction the claimant had been given the opportunity to apply for the new branch supervisor role, and also that the East Midlands sales engineer position was that at the same salary as the branch supervisor role in Cardiff which the claimant had already declined to apply for on the basis that the salary reduction was too great.
9. The respondent asserts that this was a fair dismissal by reason of redundancy. Redundancy is one of the potentially fair reasons for dismissal set out in section 92 of the Employment Rights Act 1996.
10. The first question therefore is whether this was a redundancy situation. Section 139 of the Employment Rights Act 1996 defines redundancy, and in my judgement this case falls squarely within s139(1)(b) (the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer has ceased or diminished or expected to cease or diminish). I accept that this was the genuine reason, and it follows that the claimant was genuinely dismissed by reason of redundancy.
11. The next question is whether that dismissal was fair within the meaning of section 98(4). A fair redundancy process as a general proposition requires the pool for selection to be rationally constructed; the criteria for selection to be rational; for the process to be fair in the sense that there is appropriate consultation with the

- employee; and for the employee to have been offered any suitable alternative employment.
12. In this case one of the claimant's primary contentions is that the process was not fair because the outcome was predetermined. To an extent he is obviously correct in that the decision had been made that two positions were in within the branch were to be removed. It followed automatically that the pool for selection was the two holders of those roles, and that both would be made redundant unless alternative employment was found. This is inherent in the decision the respondent had made and does not of itself make the decision unfair.
  13. The next question leads on automatically from the last. Given that this is not a redundancy selection case in which the employer was selecting from between a group of employees, but would inevitably make the particular post holders redundant unless alternative employment could be identified, it follows that the question of selection does not arise. Secondly it follows that the consultation in reality was focused on one issue which was whether there was or was not suitable alternative employment. In this case there is no dispute that the claimant was offered the role of branch supervisor and that given that Mr Dickinson the Assistant Manager did not apply for it, had he wished to be appointed it is highly likely that he would have been appointed to that role. However he concluded primarily on the basis of the significant drop in salary that he did not wish to pursue that role.
  14. That in reality only leaves the question of whether there was other alternative employment. In this case that alternative employment is the position of sales engineer in the East Midlands. The claimant's evidence before me is that had he been allowed to pursue the role that he would have done so, and that he would have accepted that role if offered it despite the fact that the salary was no higher than that of the branch supervisor in Cardiff. The basis for this is his assertion that the role would have attracted either a car allowance or a company car, and as a sales role would have been likely to have attracted a bonus both of which would have been attractive to him. He therefore contends that he should have been treated as an internal candidate and been given the opportunity to apply for he role. The respondent contends that that is unrealistic and that the likelihood that the claimant would have accepted a job in the East Midlands which potentially involved relocating for the same salary as a job which he had rejected in Cardiff is not plausible. They point to the fact that on 6 May he wrote saying "I would like to be considered for the position. As it will be a case of staying away or possibly a relocation I need to understand what the remuneration package would be so that I can see if the role as a viable proposition." The respondent submits that it's evident from that that the package would need to have been sufficient to justify the potential costs of relocating, and that given that it was subsequently confirmed that there would be no relocation package and that the salary was at the same level (21,000 -£28,000) as the branch supervisor role that at the time the evidence is clear that the claimant would not have accepted that role.
  15. It appears to me that on the basis of the contemporaneous evidence that is highly unlikely that the claimant would have accepted a role in the East Midlands on the

same salary as a post he had rejected in Cardiff, and on the balance of probabilities I am not satisfied he would have done so. That being the case, and as in my judgement the process leading to the decision to make the claimant was a fair one, in reality the only issue is the question of suitable alternative employment and the claimant was offered the most appropriate local job for which for perfectly understandable reasons of his own he declined to apply.

16. It follows that in my judgement that this at the claimant's claim for unfair dismissal that must fail.

**Judgment entered into Register  
And copies sent to the parties on**

**13 November 2018**

---

**EMPLOYMENT JUDGE CADNEY**

**Dated: 9 November 18**

.....  
**for Secretary of the Tribunals**