



# EMPLOYMENT TRIBUNALS

Claimant: Miroslaw Urbanczyk  
Respondent: Samworth Brothers Ltd

At a hearing heard By CVP

Heard at: Nottingham  
On: 19 & 20 April 2021

Before: Employment Judge Hutchinson (Sitting alone)

Representation

Claimant: Max Gordon, Counsel  
Respondent: Andrew McMillan, Solicitor

## JUDGMENT

1. The Employment Judge gave Judgment as follows:

The claim of unfair dismissal fails and is dismissed.

## REASONS

### Background Claims and Issues

1. The Claimant presented his claim on 17 December 2020. He had been employed as an Engineer by the Respondents from 1 February 2015 until 24 September 2020 when he was dismissed. The Respondents say that the reason for the dismissal was redundancy.

2. The Claimant claims unfair dismissal only. He says that the real reason for his dismissal was not redundancy. It was not a genuine redundancy because the Claimant's role still existed within the Respondents. He said that agency workers who

were part of the Respondents weekend maintenance team had been carrying out the Claimant's role.

3. He complained that there was no meaningful consultation and that he was not given the opportunity to ask questions or have his say.

4. He said that the selection criteria had not been weighted properly meaning that the Claimant's colleagues who had similar technical skills to him but less tenure remained in the employ whilst the Claimant was made redundant.

5. He complained that there had been no consideration of alternative roles which he said had been advertised after he had been made redundant.

6. The Respondents deny all the allegations made by the Claimant. They say that the real reason was redundancy and that they had conducted a reasonable process with meaningful consultation a fair selection process and that they had given the Claimant opportunity to apply for other roles but he had declined to do so.

7. They say the Respondent acted reasonably in all the circumstances and that the dismissal was within the band of reasonable responses.

### **Evidence**

8. I heard evidence from the following namely:

- Brendan Russell, Personnel Manager
- David Morley, Chief Engineer
- Steve Pattison, Maintenance Manager
- The Claimant

9. There was an agreed bundle of documents and where I referred to page numbers it is from that bundle.

10. I was satisfied that the evidence I was given by the Respondent witnesses was truthful. I am satisfied that they acted professionally and what they said to me was credible and consistent with the documentary evidence provided. Where there was a conflict in evidence I preferred their evidence to that of the Claimant.

### **The Facts**

11. The Claimant was employed by the Respondent as a multi skilled engineer. He worked in the Respondents Walker & Son business which operates two sites being Abbey Bakery and Charnwood Bakery. Walker & Son produces pork pies and hot and cold pies for many of the UK's leading supermarkets.

12. The Claimant was based at Charnwood Bakery and was employed on a four-week rotating shift pattern. Each shift was twelve hours long and the Claimant was entitled to two 30-minute breaks during the course of each shift to be taken at times agreed with his line manager. There were four teams of engineers working this shift

pattern to enable the Respondents to operate seven days a week.

13. The Claimant was one of twelve engineers who reported to Steve Pattison the maintenance manager. They were responsible for the maintenance of the machinery.

14. All the maintenance engineers including the Claimant undertook an electrical assessment by Leicester College. It was in two parts with a written element and a practical element.

15. The written element was undertaken in November 2019 where the Claimant's scored 47% and the practical element was undertaken in February 2020 and Claimant scored 25%. The pass mark was 75% and the Claimant's scores in both the written and practical sections were the lowest in the maintenance team and his scores are shown at pages 61-2.

16. The Claimant, because of this failure was unable to undertake certain electrical work and the restrictions the Claimant was subject to is set out page 64.

17. The Respondents business was severely affected by the coronavirus pandemic and the decision taken by many supermarkets to close their delicatessen counters. As a result, in March 2020 the Respondents took the following steps:

- Closing the Abbey Bakery and Charnwood Bakery at the weekends.
- Pausing all not critical activities.
- Rationalising the product being offered to customers.

18. They also made use of the Coronavirus Job Retention Scheme ("CJRS").

19. On 3 April 2020 there was a discussion between the Claimant and Dave Marley the Respondents Chief Engineer regarding him being placed on furlough pursuant to the CJRS. He was told that the initial steps they had taken would impact the number of people and skills needed within the business in the short term and a decision had been taken to reduce the shift teams from four to three on a temporary basis.

20. A decision had been taken to remove the Claimant's shift on a temporary basis to achieve this temporary reduction. He was given the option to transfer to alternative work within the same division, transfer to work at a different bakery, take paid holiday or to become a furloughed employee. He chose to become a furloughed employee.

21. From March 2020 the Respondents Senior Leadership Team met with the Workforce Consultative Committee (WSCC) on a weekly basis.

22. On 4 June 2020 the Respondents held a first consultation meeting with the WSCC and notified them it was proposing amongst other things to make;

- 20 indirect positions redundant across the bakery operations supply chain, engineering, personnel and training and technical.
- 113 full time equivalent roles redundant in the operations structure including hygiene and dispatch.

23. The engineering team representative was Robert Lazar. The notes of the meeting are pages 66-9. The presentation was shared with the WSCC at that meeting (pages 70-110).

24. The situation was confirmed in writing and the Claimant's letter dated 9 June 2020 is at pages 113-4.

25. A second WSCC meeting was held on 11 June 2020. The notes of the meeting are at pages 115-7. It included a presentation about redeployment and outplacement support. The meeting also covered the principles of the redundancy selection exercise and the proposed selection process (pages 123 and 125).

26. A third collective consultation meeting took place on 16 June 2020 where they discussed the selection criteria that had been proposed. These criteria were amended during the process and the final version agreed is at pages 322-5 with the agreed redundancy selection matrix at page 326.

27. A fourth collective consultation meeting took place on 18 June 2020 when there was further discussion about the proposed selection criteria (pages 137-46).

28. A fifth consultation meeting took place on 30 June 2020 at which an update was given on the redeployment process and the help and support that would be available to all employees affected by the redundancy process. The notes are at pages 166-75. At this meeting they all also agreed the text of a Q&A document which is at pages 190-234.

29. A sixth consultation meeting took place on 7 July 2020 when there was further discussion about the selection process and the pools of selection. The notes are at pages 235-243.

30. A seventh consultation meeting took place on 16 July 2020 where the final position on the scoring process was agreed and the next steps and timetable. The meeting notes are at page 255-258E.

31. An eighth consultation meeting took place on 28 July 2020 where they discussed the scoring process. The notes are at pages 271-81.

32. A ninth consultation meeting took place on 30 July 2020. The management told the committee that the first consultations would be starting in the next few days. The notes are at pages 288-97.

33. The final consultation meeting took place on 4 August 2020 where a report was produced of the individual's scorings and an update given on the consultation meetings that had taken place.

34. The pool of selection in the engineering department comprised all the engineers named at page 332. Originally three engineers were to be made redundant but one engineer resigned reducing therefore the requirement to two.

35. As can be seen from the selection criteria at page 326-7 there was mixture of objective and subjective criteria namely:

- Work performance.
- Skills and competencies.
- Disciplinary record.
- Attendance record.
- Length of service.

36. As agreed a weighting was applied to the factors.

37. At the time there had been no annual appraisals of the engineers and so what was required was an assessment to be made by Dave Marley and Steve Pattison of the scores for the engineers at risk of redundancy. These were undertaken on 27 and 28 July 2020 respectively and their scores are at pages 328-9 and 330-1.

38. They both arrived at the same score for the Claimant i.e. 25 which was the lowest in the pool. The scores for the pool appear at page 332 and show that the Claimant and Rakesh Chouhan had been provisionally selected for redundancy. It can be seen from the scores that the Claimant would have had to score 33 or more to avoid being selected for redundancy.

39. On 4 August 2020 the Claimant was written to and invited to attend a consultation meeting page 334.

40. That meeting was conducted by Dave Marley and Tracy Renshaw for the management. The Claimant was accompanied by Sylwia Dobrowolska member of the WSCC. The notes of the meeting are at pages 347-349. The minutes of the meeting was signed and agreed by all present.

41. At that meeting there was a discussion about the score for “disciplinary record”. His score had been adversely affected because of him having been subject to “informal disciplinary discussions” with two other members of his shift. This related to them having left part way through the shift during a power outage to go to a McDonalds restaurant some 10 minutes away rather than using adjacent facilities that had been provided at the Bradgate Bakery without their supervising manager’s permission.

42. There was also a discussion about contractors who were working for the Respondent at weekends. The Respondents had two specialist contractors working at the weekend together with an apprentice to carry out maintenance work for the Respondents Rademaker machines. Although the apprentice role had been placed at risk it was not proposed to remove the two contractor roles. He was asked about going onto the redeployment tracker but said that he did not want to do so. He said there was nothing for him on it.

43. On the 12 August 2020 a letter confirming the position was sent to him - page 341 that he was told he had been provisionally selected and what the process was from there.

44. The Claimant contacted Blatchford Clinic about a timeline in respect of some replacement boots. It can be seen from the email at page 346 from Jill Fleming at the Blatchford Clinic that a request had been made on the 29 November 2019 for a repeat order of the safety footwear provided for the Claimant. There had been some delays in respect of that order which are explained in the email. There is no indication in the email that there was ever any undue delay in obtaining his replacement boots.

45. On 26 August 2020 there was a further consultation meeting with Dave Marley with the same people in attendance as before. An explanation was given as to the Claimant's selection for redundancy and they discussed redeployment opportunities at that meeting. The Claimant's said that he did not wish to go on the redeployment tracker.

46. On 1 September 2020 the Claimant appealed against the decision to choose him for redundancy (page 350).

47. He set out some of his concerns about "being randomly furloughed" and that his team was being made redundant which was the same team who had been reprimanded for leaving the workplace on a nightshift. He also said that he could not understand why he had been scored less than others or why the weekend maintenance team had not been included in the process. He said that "I feel that my face does not fit anymore and it is much easier for the company to select me because of the issues I have had re footwear".

48. On the 21 September 2020 to Claimant had a review meeting with Brendan Russell a Personnel Manager for the Respondents. The notes are at page 356-62. They discussed the following issues:

- The scoring.
- Him being placed on furlough.
- His long service.
- His skills.
- Redeployment.

49. Mr Russell agreed to go away and speak with the scorers and that he would get back to the Claimant.

50. On 22 September 2020 Mr Russell met with Mr Marley and Mr Pattison about the scoring. The notes of those meetings are at pages 367-370.

51. Mr Russell then wrote to the Claimant on the 23 September 2020 responding to his concerns and those concerning:

- Him being randomly furloughed.
- His work performance.
- The weekend maintenance team.
- His boots.

52. Mr Russell was satisfied that the redundancy selection criteria was scored fairly in line with the agreed process and that the scoring should not be amended.

53. A letter confirming the notice of termination employment was sent to the Claimant on the 24 September 2020 and told him of his right of appeal. He did not do so.

54. Throughout the process the Claimant did not express at any stage any interest in redeployment and was paid his notice pay and redundancy pay before he submitted his claims.

### **The Law**

55. This is a claim of unfair dismissal made under Section 94 of the Employment Rights Act 1996 (ERA).

56. Section 98 provides:

*“(1) In determining for the purpose 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 principle reason) for the 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:*

*(c) is that the employee was redundant”*

Section 98 (4) provides:

*“Where the employer has fulfilled the requirements of subsection (1) the determination of the question of whether the dismissal is fair or unfair (having regard for the reason shown by the employer):*

*(a) Depends on whether in the circumstances including the size of the administrative resources of the employer’s undertaking the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissal of the employee.*

*(b) Shall be determined in accordance with equity and substantial merits of the case”.*

57. In respect of establishing the reason for the dismissal both parties referred me to the leading case of Safeway Stores Plc v Burrell 1997(ICR523). I was also referred to:

- Associated Society of Locomotive Engineers and Fireman v Brady 2006 (ILR576).

It is conceded in this case that a redundancy situation existed and that the claimant was dismissed. I have determined whether the redundancy was the real reason for the dismissal.

58. On the question of fairness both parties referred me to the case of:

- Williams & others v Compair Maxam Ltd 1982 (ICR156)
- Iceland Frozen Foods v Jones 1982 (ILR439)

Whether the employer acted reasonably is a question of fact. I must not substitute my view to that of the employer. The test is an objective test and I have to decide whether in the circumstances of this case the employer's decision to dismiss the employee fell within the range of reasonable responses that a reasonable employer might have adopted.

59. Mr Gordon also referred me to:

- Quinton Hazell Ltd v WC Earl 1976 (ILR296)
- Fisher v Hoopoe Finance Ltd (EAT0043/05)
- Brown v Gavin Scott T/A Gavin Crawford (EAT149/87)
- Stacey v Babcock Power Ltd (Construction Division) 1996 (ILR3)
- Swinburne & Jackson LLP v Simpson 2013 (11WLUK660)
- Howard v Siemens Energy Services (ET/2324423/08)
- British Aerospace Plc v Green & Others 1995 (ICR1006)
- E-Zec Medical Transport Service Ltd v Gregory (UKEAT0192/08)

### **My Conclusions**

60. I am satisfied that the reason for the dismissal was redundancy. It is not in dispute that he was dismissed. I am satisfied that the requirement for employees to carry out work of a particular kind had diminished. There was a redundancy situation. I am satisfied that his dismissal was caused wholly by those circumstances.

61. I am also satisfied that there was no ulterior motive. He was not dismissed because his face did not fit or because there were any issues with the replacement boots that he had requested. There is no evidence to support any such contention made by the claimant.

62. I am satisfied that his dismissal on the grounds of redundancy was within the band of reasonable responses. As can be seen from my findings of fact there had been a very thorough collective consultation process over a lengthy period.

63. The method of selection had been agreed between management and the elected representatives of the employees. The method of selection did include subjective and objective criteria and it was always acknowledged that the criteria would involve an element of subjective judgment being applied. In my view that was



reasonable. This was especially so when checks and balances had been applied to ensure that the process was fair to everyone.

64. I note in this case that Mr Urbanczyk does not substantially disagree with his scoring and when he was taken through his scoring by Mr Macmillan he did not substantially disagree with the scores that he had received and it was perfectly reasonable for him to be placed in the bottom two.

65. I am satisfied that Mr Marley and Mr Pattison were the right people to make the assessment. It was a pity that they had no appraisals to base it on but I am satisfied that they did the job fairly and came to a choice that was reasonable in the circumstances.

66. The Claimant made much of his failure in respect of the electrical test but I am satisfied that if he had passed that test would not have made any great difference to the result. The Claimant was consulted about the scoring and had ample opportunity to challenge the scoring which I am satisfied had been conducted fairly by Mr Marley and Mr Pattison.

67. I am satisfied that the Claimant was not interested in redeployment. He was aware that there were other vacancies that he could have applied for and that the Respondent would have redeployed him if he had been willing to be redeployed. I am satisfied that he decided to except his redundancy and notice pay which was more than £10,000 and that he did not wish to appeal or complain about the matter until he had received payment.

68. For all these reasons the Claimant was not unfairly dismissed. The reason for his dismissal was redundancy and his dismissal fell within the reasonable band of responses and his claims fail and is dismissed.

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Employment Judge Hutchinson

Date: 5 July 2021

JUDGMENT SENT TO THE PARTIES ON

6 July 2021

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FOR THE TRIBUNAL OFFICE

***Covid-19 statement:***

***This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.***

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