EMPLOYMENT TRIBUNALS

Claimant: **Mr S Zaidi**

Respondent: **Capita Business Services Limited**

HELD: **by Cloud Video Platform (CVP)** **ON: 7 and 8 June 2022**

BEFORE: **Employment Judge Shulman**

REPRESENTATION:

Claimant: **In person**
Respondent: **Miss C Urquhart, Counsel**

JUDGMENT

1. The proper title of the respondent is Capita Business Services Limited.
2. The claimant's complaint of unfair dismissal is hereby dismissed.

REASONS

1. **Claim**

   1.1. Unfair dismissal - the claimant found himself in a redundancy selection process and his most significant complaint relates to scores he was given in the selection exercise and in particular a score of two for the appraisal category.

2. **Issues**

   2.1. The issues in this case are set out in paragraph 41.1 of the case management orders dated 11 February 2022 and which are in the bundle at page 44.

3. **The law**

The Tribunal has had to have regard to the following provisions of the law:

3.1. Section 139(1) Employment Rights Act 1996 (ERA).

3.2. Section 98(1)(2) and (4) ERA. I am not setting out these provisions out in the Judgment. They are well known and generally accessible.

3.3. Miss Urquhart has referred the Tribunal to **Williams and Others v Compair Maxam Limited** [1982] ICR 156 EAT, which sets down well known guidelines which assist tribunals and parties in assessing fairness for redundancies. The golden thread running through that (and many other redundancy and other unfair dismissal) cases is that the Tribunal has to ask whether "the dismissal lay within the range of conduct which a reasonable employer could have adopted."

3.4. Miss Urquhart also referred the Tribunal to the case of Dabson v David Cover & Sons Limited (UK EAT/0374/10/SM) in which HHJ Serota QC, amongst other things, referred to the investigation of marking and scores in a redundancy exercise, making it clear that close scrutiny by tribunals was inappropriate and that what is in issue is the fairness of the selection procedure. Marking, he said, should only be investigated where there are exceptional circumstances such as bias or obvious mistake.

4. **Facts**

The Tribunal, having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities):

4.1. The claimant was employed by the respondent from 12 August 2013, ultimately as a customer support advisor, until his dismissal on 30 September 2021. The respondent is a global consulting transformation and digital services business.

4.2. The claimant does not dispute that there was in his case a redundancy situation, nor that the collective consultation procedure, nor his four individual consultation meetings nor the pool he was in were not in dispute.

4.3. The circumstances which brought about the redundancy process was that in the General Ophthalmic Services (GOS) run by the respondent there was a move from paper forms to online. The respondent employed 120 people doing the paper job and the online system required only 28 payment processing administrators. 92 employees were, therefore, at risk. In the end the respondent found jobs for 69 of them and 23 were made redundant, including the claimant, which redundancy followed the processes referred to at paragraph 4.2 above.

4.4. Employees at risk were assessed by five selection criteria:

Achievement of adherence;

Managing work/organisation (including achievement of targets (productivity));

Appraisal result;

Disciplinary record; and

Sickness absence warning.

4.5. The only challenge by the claimant to the scores related to the 2 he received for the appraisal result, which came about because Ms Linda Riley, the claimant's line manager, who gave evidence before us, gave the claimant for the relevant appraisal in 2020 a mark of "D", which meant that development was required.

4.6. The claimant felt very strongly that in his appraisal mark (not to be confused with a redundancy selection score) the respondent had failed to have the correct regard to the level of his productivity and indeed the Tribunal spent much time on this aspect.

4.7. The respondent accepts that during the relevant period of six months prior to the selection the claimant's average productivity score was 118% and he therefore scored a 100% in the achievement of adherence criterion and yet the claimant objected to the criticism that he received in relation to productivity in the appraisal. The criticism arises because the claimant's productivity was not always above 100% (see bundle page 149).

4.8. The claimant sought to rely on, introduced at the appeal stage, his documents (see bundle pages 128 to 148) to prove better productivity. Those pages the Tribunal finds do not do that. They show the number of cases upon which the claimant worked. They do not show how long it took him to close cases, nor whether they were properly dealt with nor in need of revision nor with an average handling time. To come to the productivity figures the respondent used its own management information. The Tribunal finds as a fact that management were entitled to do that.

4.9. In any event there were other factors, the Tribunal finds, which contributed to the "D" mark in the relevant appraisal, such as "Capita values and behaviours", a performance improvement plan or PIP on the claimant in October 2020, the claimant not always logging in, some clerical errors, a data breach incident, the need to re-open some cases and not logging off a system called Exion when there were IT issues.

4.10. After the claimant came off the October 2020 PIP, unfortunately Miss Riley says that his performance dipped again, with his productivity score going down to 83.1% and so he entered another PIP in January of 2021.

4.11. After the claimant went through the redundancy consultation process, on 22 April 2021 the claimant received a letter from the respondent declaring him redundant with notice expiring on 30 June 2021.

4.12. In the scoring process the claimant had scored 60.8.

4.13. Whilst the claimant made an earlier "appeal", the claimant raised a more formal appeal on 27 April 2021 and this was heard in person on 17 May 2021 by Mr Ian Nixon, Senior Operations Manager, who gave evidence before the Tribunal. In the event Mr Nixon raised the appraisal result in the scoring process from 2 to 3.

4.14. Whilst this extended the claimant's notice to 30 September 2021 unfortunately it did not save the claimant from dismissal.

4.15. It is not in dispute that the claimant looked for alternative employment within the respondent and received some assistance from the respondent but again unfortunately the claimant was not successful.

4.16. Before the Tribunal the claimant has made a number of complaints about the respondent during the process. These include length of time it took for the appeal to be dealt with, no appeal notes, lost documentation and in particular 1 to 1's and the relevant appraisal document. The respondent accepts that all this happened. The claimant is passionate about his feelings in relation to this and not the least the significance of his own document bundle pages 128-148.

5. **Determination of the issues**

After listening to the factual and legal submissions made by (and on behalf of the respective parties):

5.1. It is not disputed the claimant was dismissed.

5.2. The claimant accepts that the reason or principal reason for his dismissal was redundancy.

5.3. To be answered is whether the respondent acted reasonably in all the circumstances in treating redundancies as a reason to dismiss the claimant.

5.3.1. It is not in dispute that the respondent adequately consulted the claimant. The question of warning was not raised in the proceedings.

5.3.2. It remains to be answered whether the respondent adopted a reasonable selection process, including its approach to the selection pool.

5.3.3. It is not in issue that the respondent took reasonable steps to try to find the claimant suitable alternative employment.

5.3.4. It is outstanding as to whether the dismissal was within the range of reasonable responses.

5.4. This case is about whether the claimant's appraisal unfairly prevented the claimant from keeping his job.

5.5. The claimant is convinced that his productivity figures were skewed and it was that which gave him a mark of 2 and later 3 in respect of his appraisal. The Tribunal finds that the respondent was entitled to view the appraisal as it did because it not only related to productivity but also the other matters which contributed to the mark of "D" and which are referred to at paragraph 4.9 above. The Tribunal finds that in so doing the respondent acted within the range of reasonable responses and acted reasonably in treating redundancy as the reason for dismissing the claimant.

5.6. It is not for the Tribunal to examine the minutiae of the process, which of itself is not disputed anyway. It takes account of the claimant's complaints but those complaints do not dislodge the finding of the Tribunal at paragraph 5.5 above.

5.7. The respondent allowed the claimant's appeal in part but sadly this did not save the claimant's job and the Tribunal also finds that the decision of the appeal was within the range of reasonable responses.

5.8. The selection process adopted by the respondent was clear and was reasonable as was the selection of the claimant for redundancy.

5.9. In all the circumstances the claimant's claim for unfair dismissal is dismissed.

5.10. This will be very disappointing for the claimant but if he does study the issues as set out in the case management orders it is hoped that he will understand why the Tribunal has come to this decision.

Employment Judge Shulman

15 June 2022