



# EMPLOYMENT TRIBUNALS

## Claimant

## Respondent

Ms K Lawrence

v

Eastern Region Roof Training Group

**Heard at:** Bury St Edmunds (CVP)

**On:** 1 & 2 February 2024

**Before:** Employment Judge S Moore

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr Clive Coote, Managing Director

## JUDGMENT

- (1) The claim of unlawful deduction of wages is dismissed on withdrawal by the Claimant.
- (2) The claim of unfair dismissal succeeds.
- (3) The Claimant is entitled to compensation in the sum of £2,311.

## REASONS

### Introduction

1. The Claimant was employed by the Respondent as a Financial & Office Manager between 15 May 2021 and 31 May 2023, when she was dismissed, the Respondent says, on grounds of redundancy.
2. Early Conciliation began on 15 June 2023 and an EC certificate was issued on 19 June 2023.

3. On 19 June 2023 the Claimant brought a claim for unfair dismissal and unlawful deduction of wages, however the claim for unlawful deduction of wages was no longer pursued, having been paid by the Respondent.
4. I heard evidence from the Claimant and, for the Respondent, from Mr Clive Cootes (CC), Managing Director, and Ms Jennifer Ball (JB), Quality and Compliance Manager.

### **The Facts**

5. The Respondent is a not-for-profit independent apprenticeship provider that specialises in roof construction and delivers apprenticeships to roofing contractors across East Anglia.
6. The Claimant was employed on a full-time basis as the Financial and Office Manager, on a gross annual salary of £38,000 and net annual salary of £30,101. She is level 3 AAT qualified and during her employment with the Respondent had completed two of the five exams required to become level 4 AAT qualified.
7. During the Covid Pandemic the Respondent had to close for lengthy periods and when it opened post Covid the business had accumulated a lot of debt; CC put £30,000 of his own money into the company to pay the wages and keep it afloat.
8. The Respondent's debts included unpaid VAT that was owed to HMRC. CC agreed a repayment plan with HMRC in respect of the debt, however the plan provided that if a scheduled payment was missed the agreement came to an end and HMRC could take action to recover the full amount.
9. Towards the end of April 2023 CC asked the Claimant to come into his office along with JB, the Quality and Compliance Manager (who also took responsibility for HR matters). He said that HMRC had been in contact and told him that the Respondent had missed a payment in its repayment plan which meant it was liable to pay about £90,000 by the end of the week. He asked the Claimant why he did not know about the missed payment. The Claimant showed CC emails she had sent him which said there was a payment due or overdue to HMRC. CC replied he did not get time to look at his emails and that she should have brought the matter to his attention face-to-face.
10. The Claimant said that CC was angry and swore during the meeting and that she felt blamed for the missed payment. CC denied he swore or blamed the Claimant but did say in evidence that there were funds in the Respondent's account from which the VAT payment could have been made and that it was the Claimant's job to make the payment. The Claimant's evidence was that if she had made the VAT payment there would not have been sufficient funds to pay the wages.

11. Regardless of whether CC swore in the meeting or not, I consider it more likely than not that he was angry and stressed about what had happened and thought the Claimant should have done more, given her position as Financial and Office Manager, to avoid the problem by making sure the missed payment had come to his attention or making the payment.
12. The Claimant's evidence was that for the next two weeks the atmosphere was very hostile, that CC would not speak to the Claimant and did not allow her to attend meetings as she had before. The Claimant said she felt ignored and intimidated and believed her job was under threat.
13. CC stated that it was a very stressful time and he was very preoccupied in trying to negotiate a new a repayment plan with HMRC and that the whole team would have noticed a change in his demeanour. He also accepted that the Claimant wasn't invited to the same number of meetings as before but said this was because a new individual had come into the post of Apprenticeship and School Lead since about February 2023 and had taken over some of the Claimant's responsibilities.
14. I accept that it was a very stressful period of time for CC and that his demeanour would have reflected that. However, I also accept the Claimant's evidence that CC's attitude towards her had been affected by the missed payment and that he involved her less in meetings than before.
15. Further, during this period CC decided he had to restructure the business and lose some costs because of the Respondent's very precarious financial position.
16. There were the following seven posts in the Respondent's office: Quality and Compliance Manager, Construction Tutor, Roofing Tutor, Finance and Office Manager, Apprenticeship and Schools Lead, Customer Relations Manager, and Apprentice.
17. CC stated he selected the Claimant's post of Finance and Office Manager as the post to be made redundant because it would have the least impact on the business and would make the greatest financial saving. He said the Respondent couldn't operate at all without the two tutors and the Apprenticeship and Schools Lead, that the Quality and Compliance Manager role was essential to continuing to receive government and local council funding and required the holder to have specialist knowledge in regulatory affairs, that the Customer Relations Manager was essential to maintaining employer engagement and bringing in new business, and that removing the Apprentice would mean that person was unable to complete their qualification and in any event would not result in significant financial savings.

18. However, as regards the Claimant's post of Finance and Office Manager, CC considered the Respondent would need to outsource the payroll but the rest of her role could be absorbed by the other posts in the business. Further the Claimant was paid the highest salary.
19. On 2 May 2023 the Claimant was again called into CC's office (with JB) and told her position within the company was being made redundant as her role had been distributed, or would be distributed, between other employees. It was suggested there might be a part-time free-lance role to cover essential financial operations for 2.5 days per week at £15 per hour. There are no notes of that meeting.
20. Later that day the Claimant asked if the free-lance rate could be increased to £20 per hour but was told it could not be. The Claimant was not offered any consultation or any further meetings.
21. The following day CC wrote to the Claimant confirming she had been dismissed on grounds of redundancy and would receive a redundancy payment of two weeks' pay. She was paid four weeks' notice so that her employment terminated on 31 May 2023, although she was not required to work her last two weeks of employment.
22. When the Claimant received her pay on 31 May 2023, she realised she had not been paid her redundancy payment and messaged CC to ask why not.
23. He replied the same day stating:

"It's been a really busy day, so first chance to touch base. HMRC dropped in last Friday to demand full payment of £9.4K, £7.6K in unpaid VAT from February, and £1.8K in charges, all to be paid tomorrow!!!! This does not include the 2K I paid yesterday by D/D. I've paid you all I have, and NO, I haven't paid myself. I will pay the remaining £1,200 or so in the next couple of weeks or sooner if I receive funds. As for starting on the 5<sup>th</sup>, I'm afraid that I'm going to withdraw my offer as we simply cannot afford an additional wage at the moment. I wish you well in whatever you do, and I will provide you with a reference if asked. Thanks."
24. The Claimant replied to say she was not interested in the free-lance role in any event because she had found a new full-time job. She started that new job on 5 June 2023 at a net annual salary of £23,742.
25. On 21 June 2023 the Respondent advertised on Indeed.com for an experienced accounts administrator for three days (22.5 hours) per week at £12-£17 per hour.
26. CC said that at this stage he was just putting out "feelers". However, in September 2023 the Respondent employed a Financial Controller, working 3.5 days a week on a fulltime equivalent (FTE) salary of £31,500. That individual was level 4 AAT qualified.

## Conclusions

### *Liability*

27. Section 98(1) Employment Rights Act 1996 (ERA) provides that in determining whether a dismissal is fair or unfair it is for the employer to show the reason for the dismissal and that it is either a reason within section 98(2) or some other substantial reason of a kind which justifies the dismissal of an employee holding the position which the employee held.
28. In this case the Respondent relies on redundancy which is a reason within section 98(2).
29. The Claimant maintains the reason for her dismissal was not redundancy but because CC blamed her for the missed VAT issue which had arisen two weeks earlier.
30. Section 139 ERA provides:
  - (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to-
    - (a)...
    - (b) the fact that the requirements of that business-
      - (i) for employees to carry out work of a particular kind
      - (ii) have ceased or diminished or are expected to cease or diminish.
31. Accordingly, the question is not whether the amount of work itself has ceased or diminished but whether the business' requirements for employees to carry out that work has ceased or diminished (or is expected to do so).
32. In this case the evidence shows that the Respondent's requirements for employees to carry out the work done by the Claimant in the role of Finance and Office Manager had diminished or were expected to diminish because for a period of three-four months the Respondent made do without an employee performing that role at all (and outsourcing the payroll to its accountants) and has since employed someone in the role for 3.5 days a week, instead of on a full-time basis.
33. It is understandable that the Claimant feels that the reason she was dismissed is because she was blamed for the VAT issue. Further I consider it likely that because the VAT issue exacerbated the Respondent's acute financial difficulties it was the reason why CC

decided to restructure and I also consider it likely that when he embarked upon that restructure he was looking to see whether the Respondent could manage without the Claimant's post. Nevertheless, since he decided that the Respondent could manage without a fulltime Financial and Officer Manager, and the Respondent has in fact done so, the dismissal falls within the definition of redundancy because the requirements of the Respondent for employees to carry out the kind of work done by the Claimant had diminished or were expected to diminish.

34. However, it is not enough for the reason for the dismissal simply to fall within section 98 ERA, the Tribunal must also determine whether the dismissal was fair and reasonable within the meaning of section 98(4) ERA.
35. In the case of redundancy that generally requires consideration of whether the "pool" of employees from which the redundancy was made fell within the range of reasonable responses open to the employer, whether the selection criteria within that "pool" were objectively chosen and fairly applied, whether the employees were warned and consulted about the redundancy and whether reasonable consideration was given to suitable alternative work.
36. In **Polkey v AE Dayton Services [1988] ICR 142**, Lord Bridge stated with regard to redundancy dismissals:

"...the employer will not normally act reasonably unless he warns and consults any employees or their representatives, adopts a fair basis upon which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by deployment within his own organisation."
37. In this case CC identified the "pool" from which the redundancy was to be made as being that of the Financial and Office Manager function, and I am satisfied that was a decision which he was reasonably entitled to reach given his analysis of which post would have least impact on the business if lost and provide the greatest financial saving. Further since the pool comprised only the Claimant, the question of selection criteria for those within the pool was irrelevant since the Claimant was inevitably the employee at risk of redundancy.
38. The next question is whether the Claimant was warned and consulted about her redundancy and whether there were reasonable attempts to find her suitable alternative employment.
39. Here it is clear that the Claimant had no warnings or consultation whatsoever. The Claimant was simply informed on 2 May 2021 that she was being dismissed on grounds of redundancy and given 4 weeks' notice. There was a suggestion of a free-lance part-time position that would start on 5 June 2023 but this was never explored

properly or followed up until CC messaged the Claimant on 31 May 2023 stating the offer was being withdrawn in any event.

40. I therefore consider that the Respondent failed to follow a fair procedure and that the Claimant's dismissal was unfair.

41. I turn next to the question of remedy.

*Basic Award*

42. The Claimant is not entitled to a basic award because she has already been paid a redundancy payment (section 122(4)(b) ERA).

*Compensatory Award*

43. As regards the Claimant's compensatory award, section 123(1) ERA provides the amount shall be "such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to the Respondent.

44. In this respect although the Respondent's requirements for employees to carry out financial and office manager work had diminished, the evidence is that it continued to need someone to occupy a financial post, albeit the post available was now part-time and at a lower salary than the Claimant had been paid in order for the Respondent to make the necessary financial savings. Notably, the Respondent had to outsource its payroll function as soon as the Claimant left, was considering a part-time replacement for the Claimant less than a month after her last day of employment and within a few months had in fact employed a part-time replacement.

45. Had the Claimant been properly consulted and given an opportunity to formulate her thoughts and proposals in response to being told she was at risk of redundancy, and had the Respondent been open-minded about continuing to employ her (rather than someone else), I consider it likely the Claimant would have continued to work for the Respondent for a similar number days per week as the Financial Controller whom the Respondent now employs and at a similar rate of pay to that person.

46. Had that happened she would have continued to work for the Respondent 3.5 days a week (earning the salary now earned by the Respondent's Financial Controller) and been able to take on another part-time role to occupy the rest of the working week.

47. I therefore consider that a just and equitable compensatory award is the difference between the Claimant's current net salary and the net FTE salary of the Financial Controller now employed by the Respondent, taken over the period of one year. (After one year I consider any continuing loss sustained by the Claimant becomes

attributable to her decision to remain in her current employment rather than attributable to the Respondent.)

48. The net FTE annual salary of the Financial Controller is £24,849.

49. The Claimant's net annual salary is £23,742.

50. This is a difference of £1,107 per annum.

51. Further, had a proper consultation process been followed, there would have been at least one more meeting with the Claimant after she had had a period of time to reflect and make proposals on the proposed redundancy. I therefore consider it likely she would have continued to have been employed full-time at her previous salary for another two weeks.

52. Since her net annual salary was £30,101, her net weekly salary was £579. She is therefore entitled to a further sum of £1,158.

53. In addition, she has claimed £46.00 in respect of the petrol costs of attending interviews in the search for a new job which she is entitled to receive pursuant to section 123(2)(a) ERA.

54. This makes a total compensatory award of £2,311 (£1,107 + £1,158 + £46).

### **Conclusion**

55. The claim of unfair dismissal succeeds and the Claimant is entitled to compensation from the Respondent in the sum of £2,311.

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Employment Judge S Moore

Date: 2 February 2024

Sent to the parties on: 20 February 2024

T Cadman  
For the Tribunal Office