



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Mason Billig

**Respondent:** Gardline Shipping Limited

**HEARD AT:** Norwich ET      **ON:** 20<sup>th</sup>, 22<sup>nd</sup> & 23<sup>rd</sup> February 2017

**BEFORE:** Employment Judge Postle

## REPRESENTATION

**For the Claimant:** Mr T Gillie (Counsel)

**For the Respondents:** Mr O Brabbins (Solicitor)

## RESERVED JUDGMENT

1. The Claimant was not redundant within the meaning of Section 139 of the Employment Rights Act 1996, the redundancy was a sham.
2. In the alternative event if there was a genuine redundancy the redundancy process was unfair.

## REASONS

1. The Claimant brings two claims to the Tribunal, unfair dismissal and breach of contract in the failure to pay expenses. The Respondents assert that the reason for dismissal was redundancy, in the alternative the requirement for the Claimant's position now to be carried out by a qualified solicitor, and finally some other substantial reason justifying dismissal.
2. The Claimant's position is, there was no genuine redundancy situation, even if there was a genuine redundancy situation there was a failure to adequately consult, the pool for selection was flawed and the selection

process was flawed. The real reason for the Claimant's dismissal was because of her difficult working relationship with Mr Fulford who was promoted to Head of Legal in August 2015. The Claimant asserts that Mr Fulford's bullying attitude and lack of respect for her led her to go on sick leave suffering from work related stress as a result of which she lodged a grievance in October 2015. Having remained absent due to work related stress upon her announcement of return on 11<sup>th</sup> February she was immediately notified she was at risk of redundancy. The Claimant is also claiming unpaid expenses.

3. In this Tribunal we heard evidence on behalf of the Respondents from Mr Fulford, the Head of Legal, and Mr Durrant, a Managing Director of one of the companies within the Gardline group. Both giving their evidence through prepared witness statements. The Respondent tended a further witness statement from Mr Simon Newman who conducted the three consultation meetings with the Claimant. However, although no longer working for the Respondent nevertheless failed to give oral evidence, and the Respondents provided no reason why this witness did not attend given the fact a witness statement had been obtained.
4. The Claimant gave evidence through a prepared witness statement.
5. The Tribunal also had the benefit of a bundle of documents consisting of 431 pages.

### The Facts

6. The Respondent is a company carrying on business primarily in the oil and shipping industry with a number of subsidiary companies in various industries. It would also appear that during lean times, no doubt for opportunist investment, the Respondents have invested heavily in a wide variety of property.
7. The Claimant was initially engaged in 2007 with the job title of Legal Executive. As the Claimant progressed her career with the Respondent she obtained an LLB in law though did not take the formal solicitors examinations to qualify as a solicitor. Given the protected status of the word Legal Executive, this had to be changed to Qualified Paralegal around July 2012. The Claimant's job description in 2007 is set out at p69, and that sets out the job purpose and principal accountability which involved the Claimant progressively over the years in project management, company set ups, joint venture agreements, statutory compliance, property management, litigation, share purchase and sale agreements, commercial contracts, terms and conditions. Her job description over the period of her employment was not altered.
8. The Claimant also became Company Secretary for various of the Respondent's subsidiary companies, and also was made Group Company Secretary to Gardline Marine Sciences in 2014, Non-

Executive Director of Gardline Marine Sciences, Brazil, which was a joint venture company; the UK Shareholding Company Gardline Marine Sciences (South America) Ltd and the Sister Maritime Gardline Limited. The Claimant was also undertaking duties equivalent to Executive Director to Gardline Marine Sciences, Brazil, developing business plans and liaising with clients and collaboration partners.

9. Throughout the Claimant's employment with the Respondents there had never been any question about her capability to perform her job tasks whether legal or other or her capability to perform what was clearly a very responsible role for which she was remunerated, £51,000 per year, which included additional payments for non-executive roles, her base salary was about £42,000 per year. Clearly a salary that is not paid to someone undertaking merely low level administration work.
10. On 1<sup>st</sup> November 2014 Mr Wooltorton sent a letter out to apparently all staff regarding pay reviews for 2014 (96.10). That letter pointed out the difficult industry wide trading conditions, the global economic crisis and the external pressure to reduce costs and the fact that normally all staff had their salaries increased in November, broadly in line with inflation. However, the letter went on, given the sharp decline in activity and increasing pressure from clients to reduce costs, in an attempt to avoid the need for further redundancies the Directors had decided on a group wide pay freeze. The letter concluded by saying that in taking these actions the group will be able to retain staff and prepare for future challenges. In other words redundancies would thus be avoided.
11. In 2015, the legal department consisted of Mr Fulford, Miss A Stallard, a qualified solicitor and the Claimant. It would appear they all worked alongside each other dealing with a variety of legal work. At the time all three appeared to be reporting to Mr Wooltorton. It is clear, even at that stage, although all three appeared to be on equal footing there was an uneasy relationship between the Claimant and Mr Fulford. Particularly there was an altercation between the Claimant and Mr Fulford over the dating of stock transfer forms. Furthermore, in July, Mr Fulford is reporting to Mr Wooltorton about the Claimant's Council activities and reporting to him he had found out that she had attended two Council meetings this week so he thought it was worth mentioning to him. He clearly had issues with the Claimant before his appointment as Head of Legal.
12. On 24<sup>th</sup> July the Claimant was notified completely out of the blue and without warning as no doubt Miss Stallard was that Mr Fulford would be given a new role of Head of Legal effective from 1<sup>st</sup> August. There was no advertisement for this role or either the Claimant or Miss Stallard being given an opportunity to apply for the position. The Claimant was now to report to him rather than to Mr Wooltorton.
13. The Claimant was clearly unhappy with this and concerned about now having to report to Mr Fulford given their uneasy working relationship

that clearly existed. Clearly Mr Browning was not surprised as he is emailing Mr Stanley, a Director and Mr Woollorton referring to his conversation with the Claimant on 29<sup>th</sup> July (103). The upshot was the Claimant's reporting line was to be changed and she was to report to Mr Fulford in the future on all matters.

14. There was then a further meeting between the Claimant and Mr Browning on 4<sup>th</sup> August in which he reports to Mr Woollorton and Mr Stanley by email (104) that the Claimant had wanted a transfer to GMSL and he goes on to comment "which equally I am sure you will reject". The email goes on to say, "it is important we consider this as an alternative as Kay has admitted to taking legal advice on her employment position (we don't have to agree)." He then goes on to say, "It is my view that if it is accepted that Kay's responsibilities in GMSL are not as great as she says they are and that only a third of her time is doing her legal role in shipping then there will be a case to make her role redundant from Shipping." The only time in an email the possibility of making the Claimant redundant is canvassed.
15. Mr Browning reports back to the Claimant on 10<sup>th</sup> August by email (107), that, after further discussions, it was agreed that she would remain reporting to Mr Fulford in the legal department.
16. On 2<sup>nd</sup> September, Mr Fulford is emailing Mr Stanley and Mr Woollorton about the Claimant Brazilian activities; oddly rather than simply asking the Claimant given he was her line manager. Following that Mr Fulford seems to have some issue with the Claimant on 14<sup>th</sup> September, enquiring whether she is coming in today by email (127). The Claimant responds confirming she was in. Mr Fulford then questions the Claimant taking time out for Council meetings on 14<sup>th</sup> September by email. This apparently, had never been questioned before. The Claimant responds on 15<sup>th</sup> September advising they are set in advance, put in the calendar which Mr Fulford has access to. Mr Fulford responds and requests a note be put in his diary about future Council meetings. The Claimant by email confirms she would do this in future. It appears Mr Fulford wants to micro manage the Claimant and make his mark over the Claimant in making it clear he is the boss, so to speak. It seems apparent from his use of emails, rather than discuss matters directly with the Claimant he lacks man management skills given his role as head of the department.
17. Then on 16<sup>th</sup> September he is asking the Claimant to let him have her plans for the Board Meeting in Brazil, and the need for a discussion about balancing the needs of the business as against balancing the needs of Brazilian joint venture.
18. Then on 16<sup>th</sup> September (134) Mr Fulford is emailing the Claimant about an entry she has entered in his diary which he views as too confusing.

19. On 16<sup>th</sup> September it would appear the Claimant has a further meeting with Mr Stanley as she is concerned that Mr Fulford is going to restrict her activities in Brazil which would be to the detriment of the Respondent's business and joint ventures. Mr Stanley acknowledged that a board meeting in Brazil was discussed and it was acknowledged the Claimant was doing well with the Brazilian joint venture work. Further matters were discussed particularly the fact the Claimant was only supposed to be involved in corporate and legal matters; that she may have strayed into other areas and must now step back from Brazil. If she found herself in conflict with her time spent on Brazil such issues had to be addressed directly with Mr Fulford. Mr Stanley felt that the Claimant should only attend one board meeting a year in Rio and the rest of the relevant meetings should be conducted by video conference. The Claimant was pointing out that it often took two days to complete a board meeting in Brazil given the culture of Brazilians and that she was only expecting to go twice a year. She felt that more was achieved by face to face meetings and was concerned that by her absence Gardline were no longer committed to Brazil.
20. Mr Stanley then reports his meeting with the Claimant to Mr Browning and Mr Woollorton, oddly not Mr Fulford at that stage, by email of 17<sup>th</sup> September (137). He reports his view that the Claimant wore three hats, company statutory, filing returns etc. and her duties as the GMSL Company Secretary, Director of Gardline Brazil in which she picked up the duties of an Executive Director and her role in group legal department. He reports the Claimant was unsure of her priorities. Mr Stanley goes on to confirm that as far as he was concerned he had explained to her that working for Mr Fulford was her priority and if any of her other roles conflicted at any time, she should seek the guidance of Mr Fulford. He also reported the fact that the Claimant had concerns about the way Mr Fulford was managing her, particularly discussions in public rather than in private. There is no question in Mr Stanley's report that the Claimant's role was now being considered either as redundant or a restructure was being planned.
21. At the same time in August/September there is lengthy exchange between the Claimant and various people in accounts, including Mr Browning, about unpaid expenses that the Claimant had been trying to sort out and to date had not been successful. It appeared nobody seemed to know whether or not the Claimant's claim had been paid or in fact advances made for expenses to the Claimant were due back from the Claimant. It appears from the lengthy email exchanges that the accounts department either did not keep a careful track on expenses or frankly was dysfunctional. This question of the Claimant's expenses appears not to have been resolved even at the time of the Claimant leaving the Respondents.
22. On 28<sup>th</sup> September by email Mr Stanley reports to Mr Browning that the issue of Brazil is causing problems. The fact that the Claimant should

confine her Brazilian activities to corporate issues only and to attend only one board meeting in Brazil per year. It reports,

“Rumour has it that she has already booked and paid for her flights to Brazil for late October when the board meeting has not yet been confirmed for this time.”

Mr Browning responds on 28<sup>th</sup> September indicating that his understanding was that Mr Fulford had, had a number of meetings with the Claimant on this and that he would speak to Mr Fulford to clear precisely what he had agreed, if anything, with the Claimant.

23. There was a meeting between Mr Fulford and the Claimant on 28<sup>th</sup> September and he reported his understanding of the conversation by email on 29<sup>th</sup> September. He comments as follows:

“If the business plan is ready for you and John to approve and the board meeting goes ahead on 29<sup>th</sup> and 30<sup>th</sup> October as proposed then you should fly out to Brazil on 28<sup>th</sup>, as others in the company would do for the business travel. I am aware that John is flying out on Monday 26<sup>th</sup> for work on 27<sup>th</sup> for example. The flights and time difference are pretty reasonable as well. However, as a one off, this time, if you wish to fly out on 27<sup>th</sup> then okay on this occasion but please be aware that in future I think it is reasonable to expect that you will keep the trip duration to a minimum so that it is as efficient as possible.

If the Board meeting finishes on Friday, then on this occasion only it would seem prudent to keep your existing return flight for the Saturday. In future you should really fly home after the meeting please as to wait until the following evening at the cost of another day out of the office is inefficient.

If the business plan is not ready then it would be best that this trip is deferred until such time as it is. I understand that this is the key reason for the trip and the meeting and this is possible that this will not be ready until November. If flight costs are wasted then so be it. Flights should be arranged to suit the meeting as per the above.

I know your comments about upsetting Flavia and jeopardising the balance of the joint venture if your attendance is reduced. I have also noted your comments about taking responsibility for this personally. As you would expect I have looked into this and I think that the consensus is that it would be okay for you to make a shorter trip but the perceptions will be easily managed. I am sure that all involved and particularly our Brazilian partners understand that you are busy and have many demands on your time.....

To reiterate what we said when we spoke it is important to try to keep your role to what we have agreed, corporate matters and the corporate relationship and to act as Gardline representative from the supervisory board.

Legal tasks which emanate from the joint venture should be discussed with me please, for example, the shareholders agreement for maritime. This should be an English law agreement and should not be drafted by team and we should be preparing this, or alternatively, external lawyers. Otherwise we will have to make a Brazilian contract English. We should discuss how to take this forward to make sure we achieve the desired result and keep all interested parties happy.

If this leaves any areas unclear and/or you have any questions, please let me know.

I hope that this gives us a clear guidance for the future. I am of course happy to discuss with you as needed as things change.”

24. On 29<sup>th</sup> September Mr Fulford is emailing both the Claimant and Miss Stallard, asking for their time sheets for August as he wants to record time in a consistent way. Again on 30<sup>th</sup> September, Mr Fulford is emailing the Claimant rather tersely, “Are you in?” the Claimant responds, “I am at my desk”; presumably if Mr Fulford had bothered to look he would have found the Claimant at her desk.
25. Mr Fulford is then on 30<sup>th</sup> September sending a long email to the Claimant headed, “Are you in?” questioning whether Council commitments are impacting on her work. This had never been questioned before. He then requests the following:
  - “1. Send me copies of the authorisations that you have for your Council work so that I can understand the basis of what has been agreed historically. I know that things changed earlier this year when you were elected to the cabinet and I would like to be absolutely clear as to what the position is.
  2. Notify me in advance of the date and more accurate duration of all meetings. To just say that meetings have no fixed time scaled is not a reasonable approach.
  3. If meetings are running over, please let me know so that I am able to explain to people where you are as with today.”

The email goes on to talk about the amount of unlimited paid time off the company is required to allow and suggests in the near future the Claimant may have to decline attendance at some future meetings.

26. On 1<sup>st</sup> October Mr Fulford emails the Claimant heading "Re Timesheet" about improving time recording (161) and questioning some of her time from her timesheets.
27. On 2<sup>nd</sup> October the Claimant emails Mr Fulford a lengthy email (163) about her concerns regarding the joint venture with Brazil and what she perceived on her attending meetings in the future and the impending meeting in October, the time she is being allowed for that meeting, including travelling to South America. That email concludes:

"Therefore James, I am asking you to reconsider your decisions in this matter. I cannot see how I can continue to be a Director of "GMSdo" of Brazil unless I am allowed to function in my full role as such and I ask that you allow me to do so. I appreciate that you will wish to have full control over the function of my work as a member of the legal team and also as a group Company Secretary but in terms of Brazil, I ask you to please let me continue to play a full role and help towards the continuing success of the joint venture.

Perhaps we can discuss this further when I return from holiday."

28. On the same day, 2<sup>nd</sup> October, the Claimant responds to Mr Fulford about her public service and Council meeting and rebuts the suggestion that her Council work is impacting on her work with the Respondents. It is a lengthy email and sets out her position. The email concludes:

"Please explain what you think I have done wrong or how this can be remedied because I am struggling to understand your aggressive stance on this matter.

I also have to tell you James, that the pressure you have been putting me under recently is causing me stress. I am not sleeping properly and I am worried constantly about what is coming next. Perhaps we need to discuss this properly when I am back after my holiday because the situation has to improve or my health will suffer. As you know I have already had stress related shingles in recent weeks, which I believe is due to the major changes that have been made to my employment status and work since you were made my line manager? I am sure you will be as keen as I am to find a solution so that we can work together without any conflict."

29. At this stage there is still voluminous exchange of email regarding the Claimant's expenses and the fact that she feels she is somewhat out of pocket and no resolution is in sight months later.
30. On 16<sup>th</sup> October, the Claimant emails Mr Stanley and Mr Wooltorton regarding the Brazil board meetings now in the future. She states:



“I have spoken with Paul [Stanley] to explain that I will be sending this correspondence to you both.

Please find below the email from James [Fulford] and my response [which dealt with the Brazilian joint venture and her concern for Mr Fulford’s plans for the future]. I have a further meeting with James today and he suggested I speak to Paul about this which I have done and share the email, James says that as he is following instructions from Paul about the role that I am now expected to play in Brazil, he does not feel he is in a position to answer my email.

I am happy to discuss this with you both but the truth is that I feel that I have come to a crossroads in my involvement with Brazil. If I am not allowed to continue in my capacity of Director as I have done to date, then I ask that you appoint someone else who will have your confidence to do so.”

31. On 16<sup>th</sup> October Mr Browning emails Mr Fulford, Mr Stanley and Mr Woollorton:

“As I mentioned on the phone my concern with this will be whether Kate could use this as a means of identifying that by effectively preventing her to do something she has been required to do for some years might be seen as another example of the employer’s unreasonable behaviour.

Previously an employer would have to show that a single act carried out by an employer was so significant to enable the employee to consider the contract of employment irrevocably broken down due to a breach of trust and confidence.

However, in recent case law it has been found that a single act, albeit not likely to be considered to be as a legitimate reason for an employer to consider the contract broken but if this act is the ‘final straw’ in a series of serious but not fatal events then she may consider herself constructively dismissed.

We should review any resignation letter from Kate in connection with her role as Director of Brazil very carefully to ensure that we are prepared to deal with any issues she raises, particularly if there are allegations affecting her day job.”

32. Around this date there is a dispute between the Claimant and Mr Fulford over the preparation of a Deed of Surrender and a licence to occupy property at Riverside Road in Norwich.
33. The Claimant questions Mr Fulford’s approach as the property is being sold and a Deed of Surrender is being prepared by external solicitors.

There clearly is a difference of legal opinion which Mr Fulford insists his way is effectively the right way in a very short and curt email of 20<sup>th</sup> October responded equally by the Claimant. However, as instructed, the Claimant instructs the external solicitors to proceed as Mr Fulford requires.

34. Mr Fulford on 20<sup>th</sup> October emails Mr Browning suggesting that he has had a wholly unacceptable interaction with the Claimant regarding the property at Riverside Road and the best way forward. Again, a complete lack of man management if he has to report this rather than attempt to deal with the matter himself. It is clearly weak management and suggests an underlying agenda by Mr Fulford in not addressing the matter himself.
35. Mr Browning responds on 20<sup>th</sup> October suggesting a formal discussion with the Claimant to investigate the issues raised by Mr Fulford in his email to Browning.
36. In the meantime on 22<sup>nd</sup> October by email (203) to Mr Stanley copied to Fulford and Woollorton, the Claimant resigns from the Board of the joint venture and a signatory to any legal document in relation to Brazil. She confirms she no longer feels comfortable being registered as a Director having thought long and hard about her involvement with the Brazilian joint venture. She confirms she has cancelled her flights and hotel booking and will thus not be attending the board meeting in Brazil.
37. On 26<sup>th</sup> October the Claimant is sent a letter signed by Mr Browning requiring her to attend an investigating meeting following allegations made by Mr Fulford about incidents taking place on 20<sup>th</sup> October. Particularly it is said that she failed to carry out reasonable management instructions (206).
38. The Claimant is then signed off absent from work on 27<sup>th</sup> October with work related stress until 17<sup>th</sup> November.
39. It is also on 27<sup>th</sup> October the Claimants in a long email to Mr Browning acknowledging receipt of his letter regarding attending an investigatory meeting but pointing out she is unable to attend given her sick absence.
40. In her email she sets out a list and detailed allegations of the treatment she has received from Mr Fulford, particularly, she feels that Mr Fulford has in the last few months systematically humiliated the Claimant. She makes the allegation that he is a bully, and that her health has suffered due to the stress caused by his behaviour, he has not moderated his attitude towards the Claimant. Furthermore that in effect the Claimant has been subjected to multiple emails from Mr Fulford which amount to micro management. The fact that she has been forced to resign from

her Directorship of Brazil, and the continuing problem of unpaid expenses (211 - 212).

41. On 27<sup>th</sup> October (213) Mr Browning responds acknowledging her absence and her medical certificate until 17<sup>th</sup> November. At the same time acknowledging her email as a grievance which will be formally investigated when the Claimant either returns to work or is fit to attend meetings.
42. On 3<sup>rd</sup> November Mr Browning writes to the Claimant advising that he has provisionally arranged a grievance meeting to take place on 19<sup>th</sup> November and confirming he intends to carry out a grievance investigation. He does make the point that if the Claimant is not fit to resume work then they will postpone the meeting.
43. On 15<sup>th</sup> November the Claimant emails the Respondent with a further sick certificate to the 15<sup>th</sup> January.
44. A further letter is sent to the Claimant by Mr Browning on 18<sup>th</sup> November. No suggestion that at this stage he has investigated her grievance but suggesting a meeting on 1<sup>st</sup> December.
45. Mr Fulford has suggested in his witness statement that it was around December, although he cannot recall the exact date, that he spoke to Mr Browning to discuss ongoing requirements of the legal department and the fact that the focus of the legal department had shifted. In turn whether the business could continue to support the Claimant's role. However, there is no evidence, attendance, email, notes of the meeting, no memo of which you would expect confirming any such discussions did in fact take place.
46. The Claimant's husband wrote to Mr Wooltorton, confirming the Claimant was not fit to attend the proposed meeting on 1<sup>st</sup> December.
47. On 17<sup>th</sup> December the Respondents wrote to the Claimant, again asking the Claimant to attend a meeting on 6<sup>th</sup> January to review the Claimant's progress. Again there was no suggestion from Mr Browning that in the meantime he was investigating her grievance. On 23<sup>rd</sup> December the Claimant's GP wrote to Mr Browning (234) advising the Claimant was currently signed off sick due to work related stress, suggesting the Respondents avoid any correspondence with her as at the present time the Claimant was not in a fit state to respond. The GP letter went on to advise he was due to see the Claimant in mid January in any event.
48. On 13<sup>th</sup> January the Claimant supplies a further sick certificate (work related stress) to 10<sup>th</sup> February. On 15<sup>th</sup> January Mr Browning writes to the Claimant acknowledging receipt. Mr Browning suggests that given her absence the Respondents want to implement a process of review

involving occupational health. A date is to be notified to the Claimant in due course.

49. On 18<sup>th</sup> January Mr Fulford emails Mr Browning with a very short summary setting out the Claimant's key work areas.
50. On the 25<sup>th</sup> January (245 – 248) a referral to occupational health has been made. That referral suggests if there is no possible or prospect of a return to work in the near future then Mr Browning is considering dismissing the Claimant for reasons of capability.
51. The occupational health referral is fixed for 8<sup>th</sup> February and this is confirmed to the Claimant by Mr Browning in the letter of 1<sup>st</sup> February. In that letter he reiterates that if the Claimant is unable to return to work within a reasonable period then he will have to consider terminating her employment due to continued absence. Again, there is no sign in the letter from Mr Browning that he has made any attempt or is concluding his investigation into the Claimant's grievance and allegations against Mr Fulford.
52. The occupational health report dated 8<sup>th</sup> February is at 260 - 261. The report concluded that the Claimant was now fit to return to work, however, it noted that the reason for her absence was work stress. The report suggested a meeting with the appropriate parties so that work issues could be addressed and resolved before she returned to work.
53. On 11<sup>th</sup> February, the Claimant emails Mr Browning, confirming that her doctor has declared the Claimant fit to return to work from Monday 15<sup>th</sup> February and indeed, she will be returning to work that date. The email deals with matters of the Claimant's remuneration and outstanding expenses claim. It concludes with the following:

"You will note the comments in my doctor's note regarding being fit to return if sufficient effort is made by Gardline to eliminate stresses that originally led to time off work. I believe the occupational health doctor was of a similar opinion, in that there is no reason why I cannot return once these have been satisfactorily dealt with. The ball is therefore now in your court and I await your advice on what steps Gardline has taken to eliminate the stresses which caused me to become ill. I confirm I will be available to return from Monday provided these have been addressed but of course will not come to the office until I have your confirmation and the details of what steps have been taken. I am of course, pleased to discuss a way forward with you if you require.

Yours sincerely  
Mrs Billig"

54. On the same day a letter is sent to the Claimant (265 and 266) which clearly acknowledges receipt of the Claimant's email referred to above dated 11<sup>th</sup> February confirming the Claimant is fit to return to work further acknowledging the Claimant's anticipated return to work which is 15<sup>th</sup> February.

55. The letter then goes on quite out of the blue to state without any prior warning,

"All departments have been requested to review staffing levels to reflect the difficulties across our industry and in recent months Gardline has lost about a third of its employees and almost 50% of the fleet of this vessel.

It has been identified that the post of Paralegal in the legal department of Gardline is to be made redundant and therefore regrettably I have to inform you that you are now at risk of redundancy.

....

In order to commence redundancy consultation process, a meeting needs to take place with you and I do not believe it would be helpful if you are back at work waiting for the process to commence.

You are therefore now on garden leave with effect from Monday 15<sup>th</sup> February and you will be paid your salary from this date.

... Yours sincerely

Mark Browning

Group Human Resources Incorporate Communications Manager"

56. On the same day Mr Browning is emailing Mr Newman and Mr Fulford:

"Hi Simon

As I will be out of the country for the next two weeks and previously been involved with Kate's position, I feel it would be appropriate for you to review this process.

Attached is the letter I sent by email today and which will be sent by post tomorrow.

If you have any queries please let me know.

By copy of this email I will ask James Fulford, Head of Legal Services and Shipping, to provide the rationale as to why the decision was made to make the post of Paralegal in shipping redundant.

Thanks

Mark"

The attached letter was the letter being sent to the Claimant of 11<sup>th</sup> February confirming she was at risk of redundancy.

57. On 12<sup>th</sup> February James Fulford responds to Mr Newman with a copy to Mr Browning, in effect, retrospectively trying to justify a redundancy that had already been notified to the Claimant (267).
58. Then on 18<sup>th</sup> February a letter is sent to the Claimant (269) inviting the Claimant to a consultation meeting to discuss the redundancy and the suggestion of investigating suitable alternative employment adding "however I cannot guarantee any suitable alternative employment will be found". The letter went on to say because the Claimant was the sole post holder, a redundancy selection matrix was not to be completed. However, at the same time Mrs Stallard also in the legal department had handed in her notice and was in any event leaving. There is no suggestion had she not handed in her notice she would also been made redundant. Therefore the Claimant if her workload had reduced could have absorbed her work. At this stage there is no evidence that Mr Browning or indeed anybody else had investigated the Claimant's grievances that she had lodged way back in October relating to Mr Fulford.
59. The meeting takes place on 23<sup>rd</sup> February with Mr Newman at which the Claimant is advised that the post is being made redundant based on property work significantly reduced and the fact the Claimant has resigned as a Director of Gardline Brazil. No suggestion the Claimant could absorb the work of Mrs Stallard, which the Claimant was clearly capable of undertaking given her experience in the company.
60. The Claimant makes the point that she is a Director for Gardline South America, Gardline Maritime Liberty and IES (Electrical Company). She reiterates the point that she resigned from the Brazilian company as she believed she was prevented from carrying out her role as a Director and was effectively forced out of that role. The Claimant advised Mr Newman that she oversaw mergers, acquisitions, she has done project management, some litigation and in effect has a multi-functional legal role and to say it was just property was just misleading. The meeting then touched upon the Claimant's grievances, particularly the behaviour of her line manager, Mr Fulford, unpaid expenses, the fact that she felt she was forced out of the Brazilian joint venture.
61. Mr Newman reiterated that the role was being made redundant and that her grievances were outside of the redundancy process. The Claimant reiterated her view that Mr Fulford was engineering her out, she was not surprised and she believed the process was unfair.
62. The Claimant believing she was faced with a 'fait accompli' and suggested some form of settlement agreement if she was not to be retained.

63. A further meeting was held on 11<sup>th</sup> March between the Claimant and Mr Newman. At that meeting Mr Newman reported that Mr Browning was dealing with the grievance and the allegation of bullying by Mr Fulford. However, there appears at that stage to be no evidence of any investigation whatsoever, expenses was also touched upon. Mr Newman reiterated that the post was redundant. The Claimant reiterating that she was employed to do anything that came across the legal desk, she specialised in property, had been involved in property mergers, chasing debtors, and did not believe that her post was truly redundant. The Claimant also believed that her grievances were being brushed aside. The Claimant asked whether any alternative employment had been considered, it appeared at that stage Mr Newman had not considered any alternatives or the Claimant absorbing Mrs Stallard's work. Again the Claimant confirmed she did not believe the process was fair.
64. A final meeting which appeared to be going through the motions was held between the Claimant and Mr Newman on 24<sup>th</sup> March at which the Claimant's redundancy was effectively confirmed. Mr Newman also confirming that "the grievances had been heard, alternative employment had been explored, consultation had taken place and saw no reason why the company should consider any form of settlement agreement."
65. On 30<sup>th</sup> March Mr Newman writes to the Claimant to confirm her redundancy (286 – 288). The letter set out the alleged reasoning for the redundancy, the amounts to be paid and notice pay.
66. On 30<sup>th</sup> March, after the Claimant had effectively been made redundant, Mr Browning writes to the Claimant confirming the grievance was not upheld. There is no evidence produced of any meeting that took place between Mr Brown and Mr Fulford in which he goes through the Claimant's grievances and takes any detailed response to each of the Claimant's concerns against Mr Fulford. Furthermore there is no evidence of any other investigations taking place. It would appear it was in effect a whitewash, and in any event as the Claimant had now been made redundant. The Respondent felt the grievance did not have to be addressed in any meaningful way.

#### Credibility

67. It is indeed strange in this case, particular which involves a legal department that the Respondents have failed to produce any contemporaneous emails, reports, written records or any documentation following discussions, meetings, proposed restructures, reorganisation, that the Claimant's role had been identified as redundant on 11<sup>th</sup> February. There is absolutely nothing contained in the bundle to support the need to make the Claimant redundant and put her at risk on the 11<sup>th</sup> February. Indeed the nearest one gets to

that, which is very much an after thought, is a memo/email of 12<sup>th</sup> February by Mr Fulford (267) to Mr Newman and Mr Browning in which, extraordinarily, amongst other things, he now suggests that the role of paralegal within the legal team was, in effect, part time and then seeks to set out some rationale or justification for the Claimant's proposed redundancy. This is notwithstanding the fact that on 11<sup>th</sup> February Mr Browning is writing to the Claimant putting her on notice that she is at risk of redundancy (265/266). It is also somewhat surprising that those involved in making the decision about the Claimant's redundancy were not actually called as witnesses particularly Mr Newman, despite witness statement proffered, Mr Browning (Head of HR) with whom Mr Fulford purported to have had various unwritten discussions about the Claimant's role being redundant given also the fact that Mr Browning was clearly available as he sat throughout the entire proceedings over three days at the back of the Tribunal. This is set against a background that none of the Respondent's HR Advisors were called also given the fact that Mr Fulford accepted in cross examination he had sought advice from the Respondent's HR Department throughout the Claimant's redundancy process.

68. The Tribunal on the other hand were equally impressed by the evidence of the Claimant, making appropriate concessions in her evidence in a consistent and transparent manner under cross examination. Whereas the Respondent's witnesses, particularly Mr Fulford unfortunately, given he is a qualified Solicitor was unconvincing, evasive and gave answers which were clearly contradicted by some of the evidence in the bundle. Indeed it was slightly concerning that despite the Respondent's shifting position as to the justification for the Claimant's redundancy as shown by the at risk letter and the consultation process and appeal that Mr Fulford, having been taken through these did not concede that the evidence clearly demonstrated shifting sands in the Respondent's position as to the reasons justifying the Claimant's redundancy. Mr Fulford's evidence was far from convincing, straight forward and transparent. Another example of this is although his view was he needed a qualified solicitor to replace the Claimant and he was Head of Legal, according to him HR, without recourse to him, placed adverts in the appropriate papers or legal gazettes, advertising a position that makes no reference to a qualified solicitor or post qualification experience. That seems incredulous that Mr Fulford is wanting a qualified solicitor and an advert is placed not mentioning anywhere in the advert the need for a qualified solicitor or for HR to check with him the advert being placed is correct.

### The Law

69. Redundancy is defined in Section 139(1) of the Employment Rights Act 1996 as circumstances where;



“The requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish.”

In those circumstances where an employee puts forward the case that there is a reduction in the requirements of the business for employees to carry out work of a particular kind, the employer must show that there was a diminishing need for employees, not an individual employee to do the work.

70. It is true there is no reduction in work of a particular kind merely because there is a change in the kind of employee required to do it. However, there may be a redundancy situation in circumstances where an employer requires an employee of greater experience or competence to carry out relevant work. It is also true it is not open for the Tribunal to investigate the commercial and economic reasons which prompt a redundancy situation. However the Tribunal should and will consider whether a redundancy situation is genuine.
71. The burden is on the Respondent to demonstrate that there was a redundancy situation and that the Claimants dismissal was because she was redundant. That test is an objective one; was there in fact a redundancy situation and was that in fact the cause of the employees dismissal.
72. It is also true that where there is a chain of events leading up to dismissal, it is the effective cause of the dismissal which must be considered. The Tribunal is entitled to give proper consideration to the relevance of the background circumstances as for the Claimants redundancy.
73. The Respondents have also put forward in the alternative the reason for dismissal as some other substantial reason. Business re-organisations which result in dismissal may not give rise to redundancy situations but may constitute some other substantial reason.
74. In each case involving consideration of the question of whether a business re-organisation has resulted in redundancy situation must be decided on the facts. The mere fact of a re-organisation is not in itself conclusive of redundancy or conversely of an absence of redundancy.
75. As to reasonableness whether redundancy or some other substantial reason again the Tribunal should not substitute its own view for that of the employer, but shall determine whether the decision to dismiss fell outside the range of reasonable responses that is; was it a decision which no reasonable employer would have reached?
76. In dealing with the fairness of redundancy situations one has to look to see whether there was adequate warning, meaningful and proper consultation, where appropriate selecting the redundancy pool and

consideration for alternative positions within the organisation to avoid the redundancy taking place.

### Conclusions

77. As to whether there was a genuine redundancy situation in the first place.
78. It is somewhat surprising given the parties involved in this case are Lawyers, that there is a complete lack of any contemporaneous emails, reports, notes, records, evidence of meetings before the Respondents informed the Claimant that her role had been identified as redundant on the 11<sup>th</sup> February. There is absolutely nothing advanced by the Respondents by way of documentary evidence which supports that contention that it was necessary to make redundancies in the Legal Department. Bear in mind this is an organisation that relies heavily on emails particularly the Claimant's Line Manager Mr Fulford who is a Lawyer who would frequently email the Claimant about matters rather than speak to her directly.
79. Furthermore it is surprising that those involved in the decision regarding the Claimant's redundancy were not called to give evidence before this Tribunal, particularly Mr Newman (the Senior HR Advisor), despite a witness statement being prepared and served on his behalf. Then not being called and no reason being advanced for not doing so. It is also equally surprising that Mark Brown (Head of HR) with whom Mr Fulford allegedly had various unwritten unrecorded discussions about the Claimant's role and which Mr Fulford said in cross examination he had in fact discussed the Claimant's role redundancy again was not called by the Respondents as a witness. This is equally surprising given the fact that Mr Browning was in fact present as an observer certainly on one day of the hearing.
80. It is equally surprising that none of the Respondents HR Advisors were called given the fact that Mr Fulford said in cross examination that he had indeed sought the advice of the Respondent's HR Department throughout the Claimant's redundancy process.
81. Finally on the evidential point neither Mr Woollorton, Mr Fulford's Line Manager nor Mr Stanley were called to give evidence despite the fact that they were not only recipients and authors of various emails in the bundle concerning the Claimants employment in order to support the contention that the Claimant's role was really redundant.
82. The fact of the matter is no such evidence has been introduced by the Respondents because it simply doesn't exist, the redundancy was a sham, Mr Fulford did not get on with her, there was a clash of personalities, he couldn't man manage her, or at least lacked the ability to man manage in a proper and reasonable manner. The Claimant was capable of performing her legal role which she had done for many

years and could have equally absorbed the work of Mrs Stallard a lawyer in the Legal Department (who was now leaving) and that seems to have been given absolutely no thought whatsoever. The reason being is the Respondents/Mr Fulford simply did not want her in the business anymore. Furthermore it seems more likely than less likely that when she went off sick the Respondents were rather hoping that she would not return, and when she indicated that she was to return after some months they had to think quickly of a way to remove her from the business. A fact which seems to be borne out by putting her on garden leave when she was fit to return to work during the consultation process. Which tends to point to the fact the Respondents had no intention of engaging with the Claimant in a meaningful way.

83. It is also surprising that given the Respondents argued that they identified the Claimant's post as redundant in December 2015 that they didn't commence the redundancy process at that stage. It is true the reasons given by the Respondents why it was necessary to make the Claimant redundant appears to have changed a number of times between February and May 2016. By letter to the Claimant on the 11<sup>th</sup> February identifying her paralegal role as redundant was said to be because of the downturn in the oil and gas industry and that all departments had been requested to reduce staffing levels.
84. However, surprisingly one day later on the 12<sup>th</sup> February 2016 after the risk of redundancy letter had been sent Mr Fulford was emailing (267) Mr Browning (Head of HR) providing an entirely different rationale for making the Claimant redundant, particularly the work focus of the legal department was changing which required skills and qualifications in Company and Commercial disciplines. His note read "with the significant reduction in property related work, reduction in company secretarial commitments the role for a paralegal in the legal team is not needed. The workload of the legal team is now much more focused on more complex company and commercial areas that the skills and qualifications need to be suitable to match this". Even if that was true there was no reason why given the Claimants vast experience and background with the company she could not undertake such work.
85. However doing the first consultation meeting on the 23<sup>rd</sup> February Mr Newman (the Senior HR Advisor) informed the Claimant that she was in fact being made redundant due to a decline in her workload.
86. On 24<sup>th</sup> March during the second consultation meeting with Mr Newman the rationale for making the Claimants role redundant changed yet again, this time the reason was "I've spoken to JF it would be more commercially viable for the remaining elements of the role can be outsourced". This was in effect suggesting that a lot of the company secretarial roles that the Claimant dealt with were now going to be outsourced. That doesn't seem to have happened immediately following the Claimant's dismissal.

87. It is also noted that there was a lack of details as to the reason for redundancy in the Respondents outcome letter of the 20<sup>th</sup> March (286). Again, the reason for the redundancy changed in the outcome letter of the Appeal on the 3<sup>rd</sup> May (320). For the first time the Respondents were now claiming the Claimant had been made redundant because they needed a qualified Solicitor in the legal team rather than her for reasons of, 'professional privilege'. It is interesting to note that Mr Fulford refused to concede that there had been a progression of reasons given why the Claimant's post was redundant however ultimately he did admit in response to questioning by the Tribunal that "HR may have had a different agenda" to his own reasoning for the Claimant's redundancy.
88. It is clear there have been a multitude of reasons advanced by the Respondents to try and justify the redundancy, there was not a genuine redundancy which was capable of causing the Claimant's dismissal.
89. As to arguments of re-organisation or restructure. It is clear the Claimant had a wide knowledge of legal work. She had after all been employed by the Respondents since 2007 – some 9 years in a variety of legal roles. She had also undertaken a law degree which she had successfully achieved. It is accepted that she did not take the Solicitors exams or qualify as a Solicitor. However, it is clear that the work that she was involved with was not routine and largely the work of a qualified Solicitor in any event. She was involved in not only property work, company work and to a lesser extent court work. She was clearly capable of advising on complex contractual and company issues. There had never previously been any concerns raised about the quality or her competence. The suggestion that the focus of the company had moved away from a legal point of view in the work that the Claimant was required to do is nonsense and simply a sham.
90. Despite Mr Fulford's efforts to suggest that he'd been revising the tasks undertaken by the members of the Legal Department before the Claimant's dismissal once again there is absolutely no documentary evidence presented by either he or the Respondents of any such detailed analysis or review.
91. What is extremely surprising is there is evidence in the bundle that the Respondents advertised for a new employee to replace the Claimant to do significantly almost entirely the same work as the Claimant was doing a few months after she was purportedly made redundant (340-341). If one looks at the legal counsel job description for the new role and the Claimant's original job description (69-72) from 2007 they have similar requirements (if not almost identical) particularly requiring the review and drafting of legal contracts, providing advice to the Respondent and undertaking administrative work, focus on property matters. All of which is contrary to the Respondents assertion that the Claimant's role was redundant in part because there was no longer a need to focus on property matters. The new role that was being

advertised was almost entirely the same as the Claimant's role and it is interesting again despite Mr Fulford's efforts to suggest a qualified Solicitor was needed that the new role did not mention anywhere a requirement that the candidate be a qualified Solicitor or indeed have a legal degree, simply the ideal candidate will possess detailed and current knowledge of English Law on contract.

92. The whole argument that the Claimant's role was redundant or that there had been substantial re-organisation was simply a sham to get rid of the Claimant. The fact of the matter was, Mr Fulford when he became Head of Department had issues with the Claimant for reasons best known to himself, did not want her in his department. Mr Fulford appeared totally incapable of properly managing the Claimant as her line manager, hiding behind emails and other senior employees rather than address matters directly himself. When the Claimant went off with stress and raised a grievance against Mr Fulford, the Tribunal inferred from the evidence the Respondents hoped the Claimant would not return and that would solve the problem. When she did return they had to find a way to get rid of her and they frankly invented a sham redundancy.
93. In so far as the expenses are concerned, it seems to be the case that the Claimant had sent her expenses as appropriate for authorisation, they had been signed and sent to the Accounts Department. It seems to have been the case that the Accounts Department was run in a shambolic manner and unless the Respondents can show at the future remedy hearing they were categorically not due to the Claimant it would seem likely that the expense claims are genuine and have simply not been authorised as they should have been. Given the fact that these had been constantly chased by the Claimant over a significant period of time.

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Employment Judge Postle, Norwich.  
Date: 13 June 2017

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY TO THE TRIBUNALS