EMPLOYMENT TRIBUNALS

Claimant: Mr D Hick

Respondent: Samuel Smith The Old Brewery (Tadcaster)

HELD AT: Leeds **ON:** 16 July 2018

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person
Respondent: Mr B Hodgson, Solicitor

JUDGMENT

The Claimant's claim of unfair dismissal is dismissed.

REASONS

1. **Introduction**

In this case Mr Hick was employed by the Respondent in the Respondent's quarry operation until his dismissal. The Claimant complains to this Tribunal that he was unfairly dismissed.

2. **Issues**

The issues at the outset of this claim related to whether or not there was a redundancy and if there was whether the Claimant refused suitable alternative employment together with the usual unfair dismissal issues of what the reason was for the dismissal and whether the dismissal was fair including whether fair procedures were followed by the Respondent in dismissing the Claimant.

3. **Matters occurring during the hearing**

During the hearing it became apparent that the Claimant accepted that he was made redundant but he did not accept that he had unreasonably refused a suitable offer of alternative employment.

4. **Facts**

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

4.1. The Claimant was a long-serving employee at the quarry.

4.2. The Claimant suffered a major stroke in November 2016 and was absent until February 2017 but in the event we find as a fact that this very serious illness was not a determining issue in this case.

4.3. The Claimant worked normally after his return to work on a full-time basis save that he was not permitted to drive until at least 7 March 2018.

4.4. There came a time when the Respondent needed to make savings and it was also clear that the work of the quarry could adequately be carried out by two members of staff. In the event there were three. The supervisor, a stonemason and the Claimant.

4.5. The Respondent through Mr Gavin Scoreby, the production manager, had to embark on an assessment of how the workforce at the quarry could be reduced from three to two. He came to the conclusion that as the Claimant did not have the skills of the stonemason nor the experience and skills of the supervisor he was, that is the Claimant was, the natural person to be considered for redundancy which we now know the Claimant does not dispute.

4.6. A consultation meeting was convened for 19 September 2017 and Mr Scoreby considered what if anything by way of alternative employment there might be for the Claimant. He considered that it might be possible to re-deploy the Claimant in what are known as the Direct Works of the Respondent, in a similar but not identical capacity.

4.7. It was quite a lengthy consultation meeting on 19 September 2017 and the alternative role at Direct Works was explained to Mr Hick. The Tribunal had evidence about the differences between the two jobs. There were similarities. There were some differences and Mr Oliver Smith, who gave evidence before us, said that in the end they were both labouring jobs.

4.8. The Claimant did not accept the alternative role at the first consultation meeting nor at all. In any case the proposed role involved driving and consideration would have to have been given for the period whilst he was unable to do so and the Respondent so agreed.

4.9. On 20 September 2017 Mr Scoreby wrote to the Claimant and invited him to a further consultation meeting on 27 September 2017. He warned the Claimant that there was a risk that his employment may be terminated by reason of redundancy and were he not to agree to the alternative offer he might lose his redundancy payment, which was substantial.

4.10. The Claimant says that he did not, during the consultation process, know what the redundancy payment would be. Whether he did or he did not he was directed to the appropriate department of the Respondent so he could find out, but for some reason he never found out the amount of the redundancy payment.

4.11. He attended the meeting on 27 September 2017. The alternative position was discussed yet again and he was given some documentation for which he had asked.

4.12. The second consultation meeting was inconclusive and on 16 October 2017 he attended the final consultation meeting which turned into a meeting which indicated that his employment would be ended by reason of redundancy on 12 weeks notice, but Mr Scoreby indicated that he would leave the offer open until 27 October 2017 should the Claimant wish to reconsider the position and he was also informed of his right to appeal.

4.13. The Claimant worked his notice until going off sick on 18 December 2017 and never returned but he did write a letter dated 15 January 2018. Although not an appeal the letter was treated by the Respondent as an appeal and an appeal was indeed heard by Mr Oliver Smith on 7 February 2018. Mr Smith went through the Claimant's issues and turned down the appeal but not before the question of a trial period was discussed for the first time. It was not in fact raised for the first time. The Claimant had raised it in his letter which resulted in the appeal and Mr Smith gave the Claimant the option of a trial period for the alternative job and gave the Claimant time to consider the matter. The Claimant turned down a trial period.

4.14. In fact the Claimant told us not only that he had turned down the trial period but also that irrespective of any other issue he the Claimant did not want the offer of alternative employment suitable or otherwise.

5. **The law**

The Tribunal has to have regard to the provisions of the Employment Rights Act 1996 (the Act) which deal with the question of unfair dismissal. These are found in section 98 of the Act and can be paraphrased by saying that the Respondent must prove the reason for dismissal and that by joint onus the reason must be within the realms of fairness.

It is also important to consider the issue of the law in relation to whether the Claimant reasonably refused a suitable offer of alternative employment.

It is well known law that "suitability" and "unreasonableness" are questions of fact for the Tribunal. The words are ordinary English words with no specific legal significance. They are therefore matters entirely for the Tribunal.

6. **Determination of the issues**

After listening to the factual and legal submissions made by and on behalf of the respective parties the Tribunal finds that the reason for dismissal related to redundancy:

6.1 In relation whether the offer was suitable **t**he Tribunal carried out a detailed comparison between the job which the Claimant carried out and the one that was proposed. At the end of the day and having compared the two and having

listened particularly to the simplicity of the evidence in this regard given by Mr Smith in that he saw them both as labouring jobs the Tribunal finds that the offer was indeed an offer of suitable alternative employment.

6.2 Was the Claimant unreasonable in refusing to accept the offer of alternative employment? As the evidence shows the Claimant simply did not want the job and as the job is a suitable job, the whim of an employee is not sufficient to avoid the conclusion which the Tribunal has drawn which is that the Claimant acted unreasonably in refusing this job.

6.3 There are one or two matters which the Tribunal wishes to mention before coming to its final conclusion.

6.3.1 The first is the trial period. The trial period in this case was not a trial period which is the subject of the statutory provisions in sections 138 and 141 of the Act. It was an attempt when dealing with the appeal to offer the Claimant a way out. The Claimant chose not to take it. That was his choice and indeed he suggested it in the first place. The offer of a trial period was nothing more and nothing less than such an offer.

6.3.2 The Tribunal has every concern for the Claimant's good health and does not belittle in any way the unpleasantness that the Claimant must have gone through in suffering what has been described and what undoubtedly was a major stroke. This prevented and prevented until after termination the Claimant driving at work or anywhere else but the Tribunal is satisfied that this cautious decision on behalf of the Claimant's medical advisors does not have any bearing on the case which we have in hand here. Similarly there has been no other evidence relating to the Claimant's health which would have prohibited him in taking this alternative job.

6.4 The Tribunal has considered the issue of fairness and there were undoubtedly matters in the process which the Respondent if they repeat the exercise must consider. For example, the need for a redundancy policy, the need, when granting choices of alternative employment, to spell out the existing and proposed job descriptions and the need to inform an employee who is to be made redundant, without leaving the onus on the employee, of the amount he may or may not receive by way of redundancy.

6.5 Finally however it is clear to the Tribunal that in all the circumstances of the case and having regard to the evidence the dismissal was fair.

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Employment Judge Shulman

02/08/2018

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