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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr A Hijink

and

Respondent

Holophane Europe Limited

JUDGMENT FOLLOWING A HEARING

Held at Cambridge on 22 January 2019

Representation

Claimant:

Mr M Moore, Counsel

Respondent:

Mr J Meichen, Counsel

Employment Judge Kurrein

RESERVED JUDGMENT

The Claimant's claim alleging unfair dismissal is not well founded and must be dismissed.

RESERVED REASONS

The Claims and Issues

- 1 On 7 March 2018 the claimant presented a claim to the tribunal alleging unfair dismissal and breach of contract. By a response presented on 16 April 2018 the respondent contested that claim, asserting that the claimant had been fairly dismissed for redundancy and had been paid all sums contractually due to him.
- 2 Following discussion with Counsel it was agreed that the matter would proceed on a hearing of liability only on the issue of unfair dismissal. This was because all those present were concerned that the time available was limited. In the event, however, the hearing only lasted three hours.

The Evidence

- 3 I heard the evidence of Mr Alisdair McRury, Managing Director EMEA, on behalf of the respondent. I heard the evidence of the claimant on his own behalf. I considered the documents to which I was referred and heard the submissions of the parties. I make the following findings of fact.

Findings of Fact

- 4 The claimant was born on 19 December 1972 and had many years' experience in both engineering and sales of lighting. At the time of his recruitment by the respondent he was working for Phillips BV.
- 5 The respondent is a wholly owned subsidiary of an American corporation that manufactures specialist lighting products. The claimant started work for it on 26 August 2013 as its International Business Development Manager. His principal remit was Europe, excluding the UK and Eire, but he also had some involvement with the Middle East.
- 6 Prior to the claimant's appointment the respondent had a Sales Manager in Germany, with another in the Netherlands, who reported directed to Mr McRury. This continued until 26 March 2014 when the claimant was appointed as Sales Director Europe with responsibility for sales in both Europe and the Middle East. Thereafter, the German and Dutch Sales Manager reported directly to the claimant. Sales in the UK and Eire continued to be the responsibility of the Sales Director UK, Mr Ian Evans. Both the claimant and Mr Evans reported directly to Mr McRury.
- 7 I accepted Mr McRury's unchallenged evidence that the respondent had a particular wish to increase sales in Germany. It thought this to be a very large market in a stable economic setting. At that time total sales for the respondent were of the order of £15,000,000 per annum, to which Germany contributed approximately 10%. However, over the preceding two years sales in Germany had decreased by nearly £500,000.
- 8 The respondent invested in an increased presence in Germany by employing further Sales Engineers and engaging a specialist sales lead generating business at considerable cost. Despite these efforts it is apparent that the respondent's expectations were not met. Whilst I accepted that overall international sales increased substantially from 2014 to 2017, sales in Germany had not recovered even to 2013 levels by the end of the 2017 financial year.
- 9 This was the subject of discussion between Mr McRury and the claimant on several occasions. He and Mr McRury discussed making one or more of the German staff redundant. Those discussions were ongoing in the Autumn of 2017 when Mr McRury secured the claimant's agreement to one of the Field Engineers, a Mr Schweitzer, being made redundant, He was given a letter to that effect dated 19 September 2017. The claimant had persuaded Mr McRury to stay his hand in respect of another Field Engineer, Mr Rummer.
- 10 In mid-September 2017 the CEO of the American Corporation visited Mr McRury in the UK office. They held discussions about the financial circumstances of the respondent and its international sales. Mr McRury formed the view that he should give close attention to the respondent's structure with a view to improving efficiencies. With that in mind a detailed spreadsheet was produced (page 58 of the bundle) which set out key financial information regarding the investments made in international sales, staffing levels, sales and other detailed information. He came to the conclusion that it might be appropriate to make the claimant redundant so that he should be put at risk.

- 11 Mr McRury called the claimant in to see him in his office on 26 September 2017. He told the claimant, he acknowledges quite inappropriately, the meeting would be, “short and sweet”. He went on to tell the claimant that:-
- 11.1 The respondent had taken the decision to restructure its business to meet the disruption in the market and to maximise efficiencies;
- 11.2 The claimant’s position was to be deleted from the respondent’s structure, which would revert to direct reports from International Managers to Mr McRury.
- 12 I accepted Mr McRury’s evidence that the meeting was quite amicable. The claimant expressed an intention to set up in business as a Consultant, and Mr McRury offered his assistance as a former President of the Lighting Industry Association. The claimant sought to negotiate an exit package, which was not available, and the meeting ended.
- 13 By a letter of 27 September 2017, Mr McRury confirmed what had taken place in the course of that meeting and invited the claimant to a consultation meeting on 6 October 2017. The claimant was invited to consider whether any alternative roles might exist and advised of his right to be accompanied.
- 14 The claimant sought a postponement of that meeting, which was offered until later the same day, but the meeting took place as arranged in the morning. A note taker was present on behalf of the respondent and the claimant was accompanied by a colleague, Mr Barnwell. The claimant also covertly recorded that and a subsequent meeting.
- 15 It became clear in the course of the hearing that the claimant made no complaint that this was not a genuine redundancy situation, nor that that was not the reason for his dismissal. He also abandoned any reliance on a contention that his position should have been pooled with that of Mr Evans.
- 16 Against that background, the principal complaint advanced by the claimant appeared to be that he was given insufficient evidence to allow him to challenge the respondent’s rationale for the redundancy. I was concerned that in doing so he was seeking to undermine the respondent’s right to manage its business.
- 17 However, in the course of the discussions that took place on 6 October and again on 16 October 2017, the respondent made it clear that it had taken the view it did not need a person in the claimant’s position in order to continue operating successfully. He was specifically informed that his role would therefore be subsumed by existing members of staff.
- 18 Although the claimant asserted that the rationale for that was not clear, he accepted that redundancy would save the costs of his role, which would have been in excess of £100,000 per annum, and that in the context of what was taking place he understood that maximising efficiencies meant that the respondent believed it could run its international business without him.
- 19 The claimant accepted that at that time there were no suitable vacancies for him in any part of the respondent’s business. He was aware of an intention to recruit further staff in the future, but also accepted that these future roles had not been defined or settled upon.

As noted above, the claimant attended a further consultation meeting on 16 October 2017 in common with all the attendees at the earlier meeting. Following further discussion and explanation by Mr McRury the claimant was orally informed that his employment would be terminated. It was made clear to the claimant that the decision to dismiss him had nothing whatever to do with his performance or his achievement of KPIs. His role that was being removed because it was no longer needed.

20 The claimant accepts that he did not put forward any proposals by which his redundancy might be avoided. He has accepted before me that he has not been replaced in that or any similar role that he held, he accepts that Mr Rummer was also made redundant shortly after he was and that Mr Pearce, who was the Sales Manager for the Middle East, resigned at about this time and was not replaced. He did not dispute that the structure was considerably leaner than it had been at the time he had held the position of European Sales Manager. At the conclusion of the meeting the claimant confirmed that he had no further questions. I note that he said that he did not accept by that that all his questions had been answered. However, I took the view that the claimant was not entitled to be given confidential information as to the respondent's future plans for its business.

21 Mr McRury confirmed the claimant's dismissal by reason of redundancy in a letter to him of 20 October 2017 which confirmed the claimant's entitlement to a statutory redundancy payment and that he would be receiving payment in lieu of notice. He was advised of his right to appeal and how he should exercise it, which he then did by letter on 14 November 2017.

22 The claimant's letter reiterated the points that have been dealt with above, primarily complaining that he had been given insufficient information to challenge the redundancy. The letter concluded, however, by stating, "many of the items mentioned might be procedural, and potentially would not have changed the outcome of the process."

23 The claimant was invited to and attended an appeal hearing with the respondent's Finance Director Mr Simon Childs, on 30 November 2017. He makes no complaint about the manner in which that appeal was conducted.

24 Mr Childs wrote to the claimant on 15 December 2017 to set out his reasons for rejecting the appeal. Mr Childs letter set out each of the claimant's grounds of appeal and dealt with them, in detail, in turn. I thought those findings to be entirely reasonable.

25 I heard oral submissions on behalf of each of the parties. It is neither necessary nor proportionate to set them out here.

26 The principles to be applied in a case of this nature are set out in Williams v Compair Maxam Ltd. [1982] ICR 156. I also have regard to the provisions of section 98 of the Employment Rights Act 1996.

27 In this case the claimant was the only UK employee affected by the respondent's decision to remove the post of International Sales Director. The claimant was specifically warned of the risk on 26 September 2017, only a few days after Mr McRury had met the CEO and given consideration as to what

steps he should take. In reality, he could not have been given more notice than he was. I also take into account that the claimant was a very senior manager within the respondent who knew of Mr McRury's concerns regarding international sales and his wish to make one or more of the German Field Engineers redundant. Against that background I cannot think that the meeting with Mr McRury on 26 September 2017 came entirely as a surprise.

- 28 The respondent had no standard redundancy procedure. That is true of the vast majority of smaller non-unionised employers. In my view it followed a reasonable procedure.
- 29 This was not a case involving a 'pool' of employees: no selection criteria were necessary.
- 30 At the time of these events the respondent had no vacancies at all that might have been suitable to the claimant. He accepted that this was the case.
- 31 In all the circumstances of the case I have concluded that the claimant's claim is not well founded and must be dismissed.
- 32 The Claimant's claim alleging breach of contract remains outstanding. If he wishes to pursue it he should make an application for a hearing date within 42 days of the date this Judgment is sent to him failing which it will be struck out because it is not being actively pursued.

Employment Judge Kurrein
20 February 2019

Sent to the parties on:

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For the Tribunal Office