

EAT held employer's discretion over pool for selection was very wide but dismissal was unlawful because the employer did not follow its own processes

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Mr Badmos was a regional development manager for Family Mosaic Housing Association. This employer employed five regional development managers, three of which were new business managers and two were delivery managers. Mr Badmos was a delivery manager. In 2009, the Housing Association decided to reduce the number of regional development managers from five to four, eliminating one new business manager. Both sets of managers were treated as having interchangeable skills and so Mr Badmos' role could be made redundant, despite the fact that his role as delivery manager was not being cut.

Initially, the Housing Association wanted to reduce the number of regional development managers by two, but this was later reduced to one. It was also initially said that all of the regional development managers would have to apply for the new posts but the association later changed their minds on this. It was instead decided that the regional development managers would give an indication of which of the four remaining roles they would like to take on. It was inevitable that more preferences than posts would be received and so it was decided that a selection process would take place to allocate the oversubscribed roles.

When the three new business managers were asked which post they would prefer, two stated that they would like to remain

in their existing role, however, the third, did not express any preference. The two delivery managers both expressed a preference to remain in their current roles. It was therefore decided that the third new business manager would be pooled with the two delivery managers and this would become the pool for redundancy selection.

The Housing Association then held interviews with the three employees and scored them according to various criteria. The Housing Association had indicated that the selection process would consist of an application form, interview, work based tasks and psychometric testing. However, the Housing Association did not have regard to the application form and no psychometric testing took place. On the interview notes it was seen that the interviewing manager had written a number of negative comments regarding Mr Badmos, and that the same manager had written very positive comments regarding the new business manager who was also being interviewed.

Mr Badmos was selected for redundancy. After unsuccessfully appealing this dismissal, Mr Badmos made a claim for unfair dismissal and race discrimination.

The EAT upheld the principle that as long as it can be shown that an employer has applied his mind to the choice of pool, then it will be very difficult for an employee to challenge this pool. Hence, even though the route to formation of the pool was tortuous and a strange choice was made, this did not make the dismissal unfair. The employer lost because of its failure to see through its processes on the selection process such as having regard to the application form and psychometric testing and the prejudice shown the interview notes.

Family Mosaic Housing Association v Badmos UKEAT/0042/13

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