

IN THE COURT OF APPEAL

David v Goliath Water

Goliath Water were a company specialising in the distribution of drinking water to commercial organisations throughout the UK. In 2007, they had a workforce of 350 employees throughout the United Kingdom. Due to the economic downturn, they were forced to make substantive costs savings, including a wave of redundancies.

David was the Northern Web Sales Director at Goliath Water. David had worked in the drinking water industry for over forty years, having set up his own company in 1985, which was bought out by Goliath Water (for whom he had continued to work thereafter) in 1997. David lived in Leeds, although based out of the Leicester office, as the majority of his working week involved calling on clients throughout Yorkshire, the North-East and the North-West, arranging and negotiating sales, and meeting suppliers from various plants.

In August 2007, when David was 62, he was one of the employees at Goliath Industries to be given notice that his job was at risk of redundancy. After discussion with his line manager, Jesse, it was agreed that the possibility of retaining his job, but at a reduced salary, would be considered. At a meeting with HR later that month, David was pleased to be offered a letter stating that his salary would be reduced from £75,000 per year to £45,000, and his job was "no longer at risk of redundancy". David thought that in these economic conditions, in spite of his numerous contacts within the industry, if he accepted redundancy he would find it difficult to find similar employment until he proposed to retire at the age of 65. David signed the letter accordingly.

In February 2008, David was horrified to receive another letter, indicating that due to falling demand again his job would be at risk of redundancy. In this second wave of redundancies, he was not successful in saving his job. He was informed by HR that Goliath Water would explore every possibility to find alternative work for David until the end of his notice period in December 2008. David was offered one job at this time, that of Southern Web Sales Director, based in Southampton, that he rejected. David indicated that he would be interested in any suitable jobs in the north of England, even if they were more junior than the job he was currently in. He was unable to find any alternative employment by the time his notice period had come to an end.

David brought a claim against Goliath Water for unfair dismissal.

At first instance, the Employment Tribunal found as fact that out of 27 redundancies in total, David was the only employee for whom a reduction in salary was requested and offered as an alternative to redundancy. It was also found as fact that Goliath Water had an internal vacancies newsletter that was emailed on a weekly basis to all employees. David's experience would have been suitable for the following roles:

1. The job of Northern Regional Branch Manager, based in Leicester, that had been advertised in the internal newsletter in December 2007 but David had not applied for it.
2. The job of Northern External Sales Manager, based in Liverpool, that had been advertised in the Liverpool Echo in April 2008, but not in the internal vacancies newsletter.
3. The job of Northern Internal Sales Director, based in Leicester, that had been advertised in the internal newsletter in June 2008 and in a letter posted to David's home address at a time when David had been on a two-week holiday to Australia and, as such, had missed the deadline for applications.

The Employment Tribunal found for Goliath Water on the grounds that it was not reasonable for David to consider himself immune from redundancy, regardless of the wording of the letter in 2007. It was further stated that Goliath Water had explored alternative suitable employment for David, but David was not reasonable in refusing or not applying for these positions.

David's appeal to the Employment Appeals Tribunal was rejected, and he now appeals further on the grounds that:

1. he was unfairly selected for dismissal. In consideration for David receiving a reduction in salary, it was implicit that his job would be protected from future redundancies for a reasonable period.
2. Goliath Water had not made any reasonable efforts in considering alternative employment for David. None of the suitable vacancies had been brought specifically to David's attention, and as such, the dismissal itself was unfair.