EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr W G A Jasper	AND	Samworth Bothers Limited t/a Tamar Foods

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 10, 11 and 12 April 2017

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person
For the Respondent: Mr C Finlay, Respondent's Head of Legal Services

JUDGMENT

The judgment of the tribunal is that:
1. The claimant's claim for breach of contract in respect of the balance of his notice pay has been met by the respondent and is now dismissed on withdrawal by the claimant; and
2. The claimant's claim for unfair dismissal is dismissed.

REASONS

1. In this case the claimant Mr Alan Jasper, who was dismissed by reason of redundancy, claims that he has been unfairly dismissed, and that the principal reason for his dismissal was that he had made protected disclosures. The respondent contends that the reason for the dismissal was redundancy, and that the dismissal was fair.
2. I have heard from the claimant. I have heard from Mr M Bell, Mr D Rufus, Mrs A Stamp and Miss J Roberts on behalf of the respondent.

3. There was a degree of conflict on the evidence. I have heard the witnesses give their evidence and have observed their demeanour in the witness box. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
4. The respondent is a national food manufacturer which includes a division known as Tamar Foods. The primary business of Tamar Foods is the production and supply of own label foods to major retailers, focusing on savoury pastry pies, savoury slices, pasties and rolls. It operates four fixed shifts which are for three days, three nights, four days, and four nights. The claimant was employed by the respondent as a Process Engineering Manager having commenced employment on 2 May 1989. He was dismissed by reason of redundancy with effect from 5 August 2016.
5. As at June 2016 the engineering team consisted of the following personnel. The Head of Engineering was Mr Michael Bell, from whom I have heard. There were two Engineering Managers namely Mr Rob Jackson and Mr Dan Rufus. I have also heard from Mr Rufus. There was one Project Engineering Manager. There were two Process Engineering Managers namely the claimant and Mr Lee Firth. There were four Engineering Team Leaders, one on each shift, and four or five engineers (which included Engineering Line Technicians) on each of the four shifts.
6. Unfortunately the respondent was losing approximately £1 million per year and there was a need to cut costs throughout the business. The respondent's Production Director, namely Miss Julie Roberts from I have also heard, instructed Mr Bell to reduce the engineering costs by 10%. This required an annual salary saving in the range of £140,000. One engineer decided to leave, and another had agreed to reduce his hours significantly but this still left Mr Bell needing to save approximately £80,000 in salary costs.
7. The role of Process Engineering Manager was to oversee the development of new products from conception to delivery. This contrasted with the role of the Engineering Managers who were responsible for day-to-day operations and delivery of customer and audit compliance. Engineering Managers also have managerial responsibilities for teams of engineers who are managed through the team leaders. Mr Bell decided that if the two Process Engineering Managers were made redundant then these absent roles would have the least negative impact on the functioning of the factory whilst delivering the required salary savings. This decision put the claimant and Mr Firth at risk of potential redundancy. Nonetheless Mr Bell was confident that the respondent would be able to retain their expertise within the respondent's extended business. Its Ginsters factory is next door to the Tamar Foods factory in Callington in Cornwall, and it also owns Kensey Foods which factory was only about 20 minutes away. Mr Bell did not wish to lose the engineering skills and experience of either the claimant or Mr Firth.
8. The respondent then commenced a consultation period with the claimant and Mr Firth and there were a number of meetings. The claimant had access to and was represented by his chosen trade union representative during this process. The claimant and Mr Firth were told that they were at risk of redundancy by letter dated 30 June 2016, and the first formal consultation meeting with the claimant was on 12 July 2016. The claimant put forward some alternative proposals, and also suggested that there should be "bumping" whereby the Engineering Team Leaders should be "bumped" and made redundant in order to retain the Process Engineering Managers, who could then take their place. The respondent did not consider it desirable or necessary to consider bumping, but it became clear that there were engineering vacancies at the respondent's sister company Ginsters. There was a further consultation meeting with the claimant on 19 July 2016 at which the claimant produced a pack of documents and emphasised his significant contribution to the respondent's business over many years. The respondent recognised this, but at that stage there were no suitable vacancies remaining at Tamar Foods. The respondent agreed to defer any further meeting pending the claimant's consideration of alternative employment at Ginsters.

9. There was then a further development on 19 July 2016 when Mr Steve Hendry resigned. He was the Engineering Team Leader on the four night shift. His resignation letter cited bullying and unsatisfactory management from his superiors. In any event this created a vacancy in his position, and both the claimant and Mr Firth were given the opportunity to apply for that one role. Mr Bell decided that it would be inappropriate for him to be involved in the decision process as to which of them should be offered a position, and he delegated the matter to his two Engineering Managers namely Mr Jackson and Mr Rufus, and they were supported by Alison Jeffrey in the personnel team.
10. The respondent decided to use a written test and an interview and Mr Bell prepared a written assessment question paper which tested a wide range of engineering skills. The claimant and Mr Firth both completed the assessment and Mr Bell and a project manager Mr Hallett marked their papers. Their results were remarkably similar and they both did well. It was clear that they each had the engineering knowledge necessary to undertake the Team Leader role successfully. Their marks on the written paper were so similar that they were discounted, and the respondent decided to determine which of them should be offered Mr Hendry's vacant role by way of the interview process only.
11. Towards the end of July 2016 the claimant and Mr Firth both completed trial shifts at Ginsters. The relevant manager Mr Arthur had known the claimant for some years and would readily have taken him on. Equally he was impressed with Mr Firth. In the event the claimant declined to pursue the opportunity of that role further. He gave his reasons in an email dated 2 August 2016, in which he stated: "It is therefore with regret that due primarily to the simple fact that I am being prohibited from appealing the redundancy decision unless I accept dismissal, I am unable to progress with employment at Ginsters." In addition it was clear that the claimant did not wish to work the shifts on offer, which were three days over every weekend, because this would have been disruptive to his personal life.
12. Mr Rufus and Mr Jackson carried out the interviews of the claimant and Mr Firth. With the help of Alison Jeffrey from the HR department they prepared a set of questions which were put to both candidates. The interviewers had known each of the candidates for some years and knew them to be competent and knowledgeable engineers. The role for which they were recruiting was for a team leader role which required the ability to inspire and develop a team of engineers. Practical engineering knowledge was clearly important but the priority was to select someone with the right people management skills. They were of the view that Mr Firth's engineering skills were slightly higher than the claimant's, but on the other hand the claimant's knowledge of health and safety and the relevant regulations was probably better. They perceived the claimant's knowledge to be based more on mechanical engineering, and Mr Firth's to be based more on electrical engineering. However engineering skills were not the main priority and they agreed that each of the candidates had sufficient engineering skills to undertake the team leader role. The difference between them was that on occasion the interviewers knew the claimant to be difficult and obstructive. He had been known to make sarcastic comments to others including external contractors, and had a tendency on occasion to belittle his engineering colleagues rather than helping them to develop. In addition, during the interview process, Mr Firth was the more impressive when explaining what he might be able to do to make improvements in the health and safety and related culture. Mr Firth came across as having a facilitative leadership style, and whereas the claimant was able to demonstrate that he knew what was required to undertake the team leader role, the claimant admitted that his leadership style could occasionally cause offence. The interview panel concluded that following redundancy of both Process Engineering Managers, it was appropriate to offer the vacant Team Leader role to Mr Firth, who had performed better at interview.
13. The claimant asserts that Mr Firth had an unfair advantage by virtue of having recently attended a training course on X-ray diagnosis. However, this did not prove decisive or influential in the selection process. The claimant's engineering skills and expertise were fully recognised. It was his potential management style and occasionally abrasive attitude which cause Mr Firth to be preferred. In addition the claimant complains that his role as a PUWER Inspector had been removed and his role therefore eroded, as had been just

become apparent from a change of documentation made about a year previously. Again, this did not seem to feature because no-one seemed to have acted upon this suggested change of role, not least the claimant and his supervisors because the claimant continued to carry out that role. This was not the reason why Mr Firth was preferred.

14. The respondent then had a further consultation meeting with the claimant on 2 August 2016. By this stage there had been another resignation of an engineer at Tamar Foods on the four night shift. This was offered to the claimant but he rejected this opportunity as well. This was for the four night shift, and again the claimant did not wish to work these nightshifts which he says would have been disruptive to his personal life (even though it was the same shift pattern as the vacant Team Leader role for which he had applied).
15. It is clear that the claimant also had some health issues, and from 2014 had engaged with the respondent's Occupational Health department. There was clearly some physical restrictions on the duties which the claimant could undertake. Nonetheless two things are clear. First, the respondent was prepared to consider and adopt whatever reasonable adjustments might have been necessary. Secondly, it is clear that the claimant did not wish to pursue the possibility of alternative employment with either of the two roles offered because he said that they would have been disruptive to his personal life, and not because he was restricted physically from carrying out the role of engineer. Indeed, he has since obtained alternative employment elsewhere in that role.
16. In any event Mr Bell then met with the claimant on 4 August 2016 by way of a final consultation meeting. He informed the claimant that stage that the respondent intended to terminate his employment by reason of redundancy and this was confirmed by letter on the same date. The claimant was afforded the right of appeal, and his appeal was heard by the respondent's finance director Mrs Alison Stamp, from whom I have heard. She was senior to and independent of the earlier decision making process.
17. The appeal hearing was held on 19 August 2016. The claimant was again represented by his chosen trade union representative. The grounds of appeal related to the selection for redundancy and then his failure to be offered the Team Leader role. In addition, the claimant asserted that he had been wrongly selected for redundancy because he had raised concerns about health and safety matters, which are explained further below. At that stage the claimant had also accepted the offer of alternative appointment with another employer as an engineer. It seemed clear to Mrs Stamp that there was no obvious health reason why the claimant could not undertake an engineer's role, as he had suggested during the consultation process. What was not clear however was what the claimant wished to achieve by way of the appeal process given that he had already accepted employment elsewhere. He just wished to complain further about the health and safety matters and Mrs Stamp agreed to investigate the position. Having considered all the relevant information she concluded that the claimant's redundancy was for economic and operational reasons and was not personal in any way. She rejected his allegations that he had been targeted for redundancy and/or that there had been a deliberate reduction and then removal of his role. Mrs Stamp readily agreed that the claimant was an experienced engineer but that there was no reason to believe that he had been dismissed because he had raised health and safety issues. If he had wanted to stay with the respondent company then he could have remained as an engineer at either Tamar Foods or Ginsters as an alternative to redundancy. She therefore rejected the claimant's appeal and confirmed the decision to terminate his employment by reason of redundancy.
18. The claimant asserts that the principal reason for his dismissal was that he had raised protected disclosures regarding health and safety matters. In particular this relates to the removal of belly plates from Pie Line 3730. A pie line is a type of conveyor belt made of stainless steel which moves in stages rather than continuously. Foil pie cases are put in a stainless steel sheet with holes in it to receive the pie cases, which are known as platens. There are steel belly plates underneath the platens which are there to stop the products falling into the inner workings of the pie line and to stop employees putting their hands into the inner workings of the line, or otherwise risking entrapment in the process.

19. The respondent has three such pie lines. One of them was designed without belly plates. In the summer of 2014 the Production Director Mr Ormerod asked Mr Bell to arrange for the removal of the belly plates from pie line 3730 because of cleaning issues. Mr Ormerod told Mr Bell that he was satisfied that it was safe to do so.
20. The claimant clearly considered that this created a serious health and safety risk, because the belly plates protected the underside of the platens from other moving parts in the line, and the removal of the belly plates made it easier for operatives to come into contact with dangerous moving parts. He considered this to be a significant risk and repeatedly raised his concerns. The claimant's views were not in isolation and in August 2015 Mr Rufus, who was then the Packing Engineering Manager, carried out a very detailed written risk assessment on the entire pie line. It was sent to a number of other engineers including the claimant, and copied to Mr Bell. The severity of the identified risks was graded from 1 to 15. Mr Rufus recognised the risk caused by the removal of the belly plates and graded it as 11. He also identified a number of other potential risks which he graded equally severely or even more seriously, with the highest grade of 15 going to the variable functionality of the emergency cut-off switch. The point is that the potential risk resulting from the removal of the belly plates had been identified and discussed in August 2015, and other professional engineers took a different view from the claimant as to the potential severity of that risk.
21. In any event the claimant asserts that he made a number of protected disclosures in this respect, as a result of which he became unpopular and was ultimately dismissed. The claimant has produced a schedule of 15 disclosures which he asserts are protected disclosures. Some are conceded by the respondent. I deal with each of these in turn.
22. The first four disclosures all relate to the claimant's expressed concerns about the danger of the removal of the belly plates from pie line 4730 in 2014. Disclosure 1 is that the claimant spoke to Mr O'Hara, who was the respondent's Engineering Manager, on or about 13 or 14 August 2014, to the effect that the removal of the belly plates caused significant risk to employees. Mr O'Hara left the respondent's employment on either 19 or 20 August 2014. The respondent has no record of whether Mr O'Hara was told this as the claimant asserts, and in any event the remaining managers deny that Mr O'Hara informed them of this. I have no reason to doubt the claimant's recollection that he did discuss this matter with Mr O'Hara. I find therefore that the claimant did raise concerns with Mr O'Hara about the unsafe nature of the removal of the belly plates.
23. Disclosure 2 is identical to Disclosure 1 and occurred on the same date save that the information was given verbally to the Engineering Stores Controller. Neither the claimant nor the respondent has been able to identify who that person is. Similarly, I have no reason to doubt the claimant's recollection that he did raise his concerns with this person at that time.
24. Disclosure 3 is very similar in that at some stage in 2014 the claimant says that he complained about the unsafe removal of the belly plates to Mr Geoff Phillips the Health and Safety Coordinator. The respondent accepts that the claimant did make this disclosure some time in 2014.
25. Disclosure 4 is unfortunately very vague. The claimant claims to have disclosed "All matters covering whistle-blowing head of department behaviour" between 2014 and August 2016. These disclosures are said to have been made to the claimant's various GPs during that time. The respondent has no knowledge of this.
26. Disclosure 5 is said to have been made between April and July 2015, to the Engineering Manager Mr Rufus, to the effect that Mr O'Hara had been dismissed because he had challenged the removal of the belly plates. The respondent accepts that this conversation took place but thinks that it was on or about 20 October 2014. The respondent also denies that Mr O'Hara was dismissed as alleged.
27. Disclosures 6 and 7 are said to have been made on 6 July 2015 when the claimant raised what he calls: "My concern of dismissal for raising head of department breach of ALL known duty of care and statutory welfare regulations" with firstly "Community Legal Advice", and secondly ACAS. The respondent knew nothing of either disclosure and accordingly is unable to comment on what the claimant said.

28. None of the alleged Disclosures 8 to 10 were made to the respondent, but are said to have been raised by the claimant with his trade union UNITE. Disclosures 8 and 9 are said to have been made on 6 July 2015 and 31 July 2015, and are said to have disclosed the same information as raised in Disclosures 6 and 7 (namely "My concern of dismissal for raising head of department breach of ALL known duty of care and statutory welfare regulations"). The respondent knew nothing of either disclosure and accordingly is unable to comment on what the claimant said. Disclosure 10 is said to have disclosed "perception of being managed out of the business for challenging removal of belly plates and other safety matters." Again the respondent knew nothing of this disclosure and accordingly is unable to comment on what the claimant said.
29. Disclosure 11 relates to a conversation on 25 February 2016 which the respondent accepts took place between the claimant and Ms Nicky Taylor the head of training at Ginsters. The claimant had sought advice about what he calls a "serious concern of health and safety matter". The respondent suggests that insufficient information was passed to Ms Taylor. However, I have not heard from Ms Taylor, and I have no reason to doubt the claimant when he says that he explained his concerns about the danger of the removal of the belly plates as explained above.
30. Disclosures 12, 13 and 14 all relate to a meeting between the claimant and Ms Taylor and Ms Julie Roberts, who is the respondent's Production Director from whom I have heard, on or about 18 May 2016. The claimant explained to them in detail his concerns about the health and safety risks of the pie line. However, the claimant insisted that neither Ms Taylor nor Ms Roberts should divulge the fact that he had disclosed this information, and they did not do so. Ms Roberts agreed that it was a serious matter and arranged for modifications to be made to the pie line in such a way that the claimant could not be identified as the source of information. On 18 May 2016 the claimant then forwarded his previous letter/health and safety report on the pie line to Mr Rufus dated 15 August 2015 to Ms Taylor, who also passed it to Ms Roberts. In each case the claimant passed on to his employer his specific concerns about the health and safety risks of the production process.
31. Finally, with regard to Disclosure 15, the claimant passed on the same information to Mrs Alison Stamp, the respondent's Finance Director from whom I have heard, at his appeal hearing on 19 August 2016.
32. Having established the above facts, I now apply the law.
33. The reason relied upon by the respondent for the dismissal was redundancy which is a potentially fair reason for dismissal under section 98 (2) (c) of the Employment Rights Act 1996 ("the Act").
34. The statutory definition of redundancy is at section 139 of the Act. This provides that an employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (section 139(1)(b)) "the fact that the requirements of (the employer's) business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish"
35. I have considered section 98 (4) of the Act which provides "…. the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".
36. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which

he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

37. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.
38. Under section 48(2) of the Act, on a complaint to an employment tribunal it is for the employer to show the ground on which any act, or deliberate failure to act, was done.
39. Under section 103A of the Act, an employee is to be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.
40. I have considered the cases of Williams & Ors v Compair Maxam Ltd [1982] IRLR 83; Safeway Stores v Burrell [1997] IRLR 200 EAT, and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT; Kilraine v London Borough of Wandsworth EAT/0260/15 Fecitt and Ors v NHS Manchester [2012] ICR 372 CA; Kuzel v Roche Products Ltd [2008] ICR 799 CA; Blackbay Ventures Limited t/a Chemistree v Gahir UK/EAT/0449/12/JOJ. The tribunal directs itself in the light of these cases as follows.
41. In the first place I deal with the claimant's alleged public interest disclosures, and whether these amount to protected disclosures. I find that Disclosure 1 was made on 13 to 14 August 2014 to the claimant's Engineering Manager to the effect that the health and safety of other employees was likely to be in danger. I find that this was a protected disclosure by virtue of subsections 43B1(b) and (d) and 43C(1)(a) of the Act. With regard to Disclosure 2 I have not had sufficient information about the person to whom the alleged disclosure was made to enable me to conclude that the provisions of section 43(1)(c) are satisfied. I cannot therefore find that this was also a protected disclosure. Given that Disclosure 1 has been held to have been a public interest disclosure at the same time, I do not see that this adds anything to the overall factual matrix in any event. Disclosure 3 is almost identical to Disclosure 1, and is conceded by the respondent. I agree that for the same reasons this was a protected public interest disclosure. Disclosure 4 is just too vague to allow me to conclude that the provisions of the relevant legislation are satisfied, and accordingly I cannot find that this amounts to a protected disclosure.
42. On balance I agree with the respondent's contention that Disclosure 5 was not a qualifying disclosure and therefore was not protected. It did not disclose information which tended to show any of the matters set out in section 43B(1), and even if it were true, which the respondent denies, it does not appear that the claimant reasonably believed that this disclosure complied with section 43B(1) or was in any way in the public interest (which was a necessary constituent element of the legislation at that time).
43. With regard to Disclosures 6 and 7, "My concern of dismissal for raising head of department breach of ALL known duty of care and statutory welfare regulations" made to "Community Legal Advice" and to ACAS is not a disclosure of "information" and neither does it tend to show that any matters set out in section 43B(1) are engaged, or that it was in the public interest. I find therefore that Disclosures 6 and 7 were not protected disclosures.
44. Similarly, I cannot accept that Disclosures 8, 9 and 10 were protected disclosures. I am not satisfied that the claimant had a reasonable belief that these disclosures tended to show any of the matters set out in section 43B(1) and even if he did, and they were qualifying disclosures, they were made confidentially to his trade union adviser and could not have become protected disclosures under any of the provisions of sections 43C to 43H.

45. With regard to Disclosure 11, on balance I accept that the claimant did disclose to Ms Taylor his concerns about the health and safety risk of the removal of the belly plates on or about 25 February 2016. Similarly, I find that Disclosures 12, 13 and 14 all amount to protected disclosures because the claimant passed to his employer specific details about his concerns about the health and safety risk of removing the belly plates from the pie line, and the provisions of sections 43B(1)(b) and (d) and 43(1)(c) are satisfied.
46. Finally, the claimant passed on the same information to Mrs Alison Stamp, the respondent's Finance Director from whom I have heard, at his appeal hearing on 19 August 2016. In this respect, with regard to this information at least, the provisions of sections 43B(1)(b) and (d) and 43(1)(c) are satisfied. Accordingly I find that the claimant also made a protected disclosure to Mrs Stamp at this time.
47. In conclusion therefore the alleged disclosures numbered 1 and 3 of 13/14 August 2014, 11 of 25 February 2016, 12, 13 and 14 of 17/18 May 2016, and 15 of 19 August 2016 are all held to have been public interest disclosures which are protected, and in respect of which the claimant is able to rely in support of his assertion that they were the reason, or if more than one, the principal reason, for his dismissal.
48. I now turn to my findings with regard to the dismissal process.
49. Against the background of substantial losses, the respondent decided to reduce its overheads, and each department was asked to contribute to this aim. Mr Bell considered the matter in detail and determined that the necessary savings in the engineering department could best be made by the removal of the two Process Engineering Managers. He decided that this would have the least impact on the functioning of the factory whilst delivering the required salary savings. It is clear to me that the provisions of section 139(1)(b) of the Act are satisfied. The requirements of the respondent's business for employees to carry out work of a particular kind (namely the Process Engineering Managers) had clearly ceased or diminished.
50. The respondent then adopted a process at which the two relevant employees, namely the claimant and Mr Firth, were at risk of redundancy, and indeed their jobs were made redundant. The claimant makes no complaint about the process adopted by the respondent. He is right not to do so: the respondent carried out a number of consultation meetings at which the claimant had the opportunity to be represented by his chosen trade union representative; the reasons for the redundancy were discussed; and the respondent made genuine efforts to seek to avoid compulsory redundancy by way of offers of alternative employment. The claimant does now criticise the respondent for not having considered "bumping", but there is no requirement for an employer to adopt such a process, and in any event it was considered. Mr Bell decided that it would be least disruptive to remove the two Process Engineering Managers, and to retain existing Engineering Team Leaders and other junior engineers. He was entitled to reach that conclusion, which cannot be said to have been unreasonable or capricious. There cannot be said to have been any unreasonable or capricious conduct by the respondent in connection with unfair selection or wrongly identifying the pool of employees who might be made redundant. The respondent identified the two Process Engineering Manager positions for potential redundancy, and both positions were made redundant.
51. There was then a complication within the process, which proved helpful. This was the resignation of Mr Hendry which had unexpectedly freed up a Team Leader position in the Engineering Department. The claimant and Mr Firth were invited to apply for that position, and when they both wished to do so, the respondent decided to determine the matter by way of competitive interview. Again the respondent adopted an entirely fair process by requiring them both to answer the same written examination paper with the same questions, and to attend an interview at which again they faced the same questions. There was nothing between the candidates following the written examination stage, but the panel of two managers namely Mr Jackson and Mr Rufus preferred Mr Firth's performance at interview. Mr Firth was perceived to be more of a team player and a more suitable leader, whereas the claimant was perceived to have less facilitative and constructive management skills. That conclusion is entirely consistent with the claimant's own evidence, and a written reference upon which he has chosen to rely at this hearing,

in which it is clear that he sometimes exhibits the character trait of being difficult and obstructive, and "not suffering fools gladly". The decision to offer Mr Firth the recently vacant Team Leader position after this process seems to me to be entirely reasonable and not a decision that could be said to be unreasonable or capricious.

52. The respondent still went on to offer the claimant two further opportunities for alternative employment at both Tamar Foods, and its sister company Ginsters. When there was some doubt about the claimant's medical condition he was reassured that adjustments could be made. The claimant declined to take these opportunities and chose to accept alternative employment elsewhere. If he did not like the proposed shift patterns with the respondent, or alternatively found himself unable to continue to work with them, then he is of course perfectly entitled to make that decision. Nonetheless it seems to me that the respondent did all that it could with regard to exploring potential alternative employment in the attempt to avoid the claimant's compulsory redundancy.
53. The claimant was then afforded an independent appeal before the respondent's Finance Director Mrs Stamp, again in the presence of his chosen trade union representative. By that stage he had accepted an offer of alternative employment elsewhere, and it was not clear to Mrs Stamp why he pursued his appeal. Nonetheless Mrs Stamp dealt with the matter responsibly, satisfied herself that the earlier decision was reasonable, and agreed to investigate and pursue the claimant's ongoing complaints about health and safety.
54. In my judgment, against the background of the need to make savings in the engineering department, it is clear that the respondent undertook a procedure which could hardly be criticised and which was fair, thorough, reasonable and responsible. The question which remains is the extent to which the claimant's protected disclosures had any impact on the decision to dismiss him by reason of redundancy.
55. The decision to make savings was made at Board level in about April 2016, and because of recent financial losses. Mr Bell reviewed his department and for entirely logical reasons decided that it could do without the two Process Engineering Managers. I have no hesitation in discounting the 2014 disclosures from two years previously (Disclosures 1 and 3) as being entirely irrelevant to this process. They were too far removed in time. In any event Mr Bell, who took the decision, was not successfully challenged in his evidence that he knew nothing about claimant's expressed concerns with regard to the removal of the belly plates and the health and safety risks of running the pie line without them. He was equally unaware of Disclosure 11 to Ms Taylor in February 2016, and Disclosures 12, 13 and 14 of May 2016 to Ms Taylor and Ms Roberts who kept them confidential as requested by the claimant.
56. Similarly, by the time of the final Disclosure number 15 at the appeal hearing in August 2016, the decision to dismiss the claimant had already been taken, and the claimant had already declined offers of alternative employment to pursue an alternative position elsewhere.
57. The claimant's assertion that he was dismissed by reason of raising protected disclosures relies on a conspiracy involving a number of the respondent's managers, and at this hearing the claimant did indeed accuse them of contrivance and/or a conspiracy. This wholly improbable explanation is rendered even more improbable when one considers two factors. The first is that this theory relies on Mr Hendry to resign his employment independently at exactly the right time so that the respondent can then manufacture a biased interview process for the newly vacant Team Leader position so as to retain Mr Firth at the expense of the claimant. Secondly it completely fails to take into account the extensive and reasonable efforts by the respondent to find alternative employment and to retain the claimant with his experience and expertise at either Tamar Foods or at Ginsters. If the respondent wanted to be rid of the claimant because of his awkward views and/or for being a whistleblower, as he alleges, they would hardly have gone to such lengths to seek to retain his services and experience by way of the repeated offers of alternative employment.
58. I have no hesitation in concluding for the above reasons that the protected disclosures made by the claimant had no impact on his dismissal which was solely by reason of redundancy. It was a genuine redundancy situation, and the claimant's dismissal was

attributable to that fact. None of his protected disclosures were the reason or principal reason for his dismissal. The respondent undertook a fair and responsible process under which there was a clear need for redundancy, full and fair consultation, a fair competitive process for the Team Leader position which had surprisingly become vacant, and a genuine and thorough attempt to find suitable alternative employment to avoid the claimant's compulsory redundancy.

59. It is not for the tribunal to substitute its view for that of the employer, and I do not do so. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair. It is clear to me that the claimant's redundancy in these circumstances was within the band of responses reasonably open to the respondent when faced with these facts. Even bearing in mind the size and administrative resources of this employer, the claimant's dismissal was fair and reasonable in all the circumstances of the case. Accordingly the claimant's unfair dismissal claim is dismissed.
60. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 31; a concise identification of the relevant law is at paragraphs 33 to 40; how that law has been applied to those findings in order to decide the issues is at paragraphs 41 to 59.

Employment Judge N J Roper
Dated 12 April 2017

Judgment sent to Parties on

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