



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

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**Case No: 4100819/2016**

**Hearing Held at Glasgow on 25, 26, 28 October 2016; 20, 21, 22 February and  
19 April 2017**

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**Employment Judge: I McFatridge (sitting alone)**

**Mr David Wren**

**Claimant  
Represented by:  
Mr RA Sandeman  
Solicitor**

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**Interserve Industrial Services Limited**

**Respondents  
Represented by:  
Mr R Bradley  
Advocate**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Tribunal is that the claimant was not unfairly dismissed by the respondents. The claim is dismissed.

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**REASONS**

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1. The claimant submitted a claim to the Tribunal in which he claimed that he was unfairly dismissed by the respondents. Initially he also claimed that he was due holiday pay however this claim was withdrawn by agreement. In addition he had at one stage indicated that he was claiming in respect of unpaid bonus however during the course of the hearing it was clarified that in fact the claim for bonus was

predicated on his unfair dismissal claim succeeding on the basis that had he not been unfairly dismissed he would have become eligible for bonus and this sum should be included in his compensatory award. The respondents' position was that the claimant had been dismissed by reason of redundancy and that the dismissal was procedurally and substantively fair. The hearing was originally due to take place over three days in October 2016 however on those days it proved impossible to complete the evidence within the time allowed. The claim was then heard over a further three days in February 2017 and continued to 19 April 2017 due to the unavailability of the claimant's witness. Evidence was led on behalf of the respondents from Darren Paul Williams, their Operations Director for Hard Services; Stephen Norris, the Respondents' HR Business Partner; Darren Greenall, a Divisional Commercial Director with the respondents. The claimant gave evidence on his own behalf and also led evidence from Robert McLemon, a former colleague of the claimant. The respondents had initially indicated they would be leading evidence from Mr Scott Hardie however they decided to dispense with calling him. Both parties lodged a joint set of productions. On the basis of the evidence and productions I found the following facts relevant to the claim to be proved or agreed.

## **Findings In Fact**

2. The respondents are a substantial company which operates in a range of markets internationally. Part of the company deals with what are called support services and one element within that part is known as industrial and infrastructure services. Within industrial and infrastructure services there are three businesses which are described as hard services, access and power. The company operates on a substantial scale and within hard services there are usually between seven and 900 employees or contract workers. The precise number fluctuates. Hard services generally provides support to companies involved in construction or maintenance projects. These can include scaffolding, thermal insulation, painting and blasting and heavy industrial cleaning. Within the UK hard services were managed up to April 2015 on a regional basis.

3. Generally speaking the company's business model involves obtaining contracts from other companies to provide support to them in their contract or carry out certain parts of such contracts themselves. Sometimes the principal contractor is another company within the Interserve group. Contracts can be priced either on the basis of a priced schedule of works or on a cost plus basis.
4. The claimant commenced employment with the respondents in April 2013. He had worked in the construction and engineering sector for around 25 years by this point. He was interviewed by Paul Cotham who at that time was the respondents' Operations Director and the claimant was appointed to the role of General Manager for the Scottish Industrial Business Unit. At that time the company was providing a range of services including industrial scaffolding, thermal insulation, shot blasting and painting. Shortly before the claimant's appointment however the respondents had lost a major contract they had with Ineos. Ineos operate a petrochemical plant in Grangemouth and are a major operator within the Scottish industrial engineering scene. It had been a considerable blow to the respondents when they lost this contract. As a result of the loss of the contract many staff were made redundant.
5. At the time the claimant took over the respondents operated from a 10,000 square foot manufacturing facility in Falkirk. Immediately on his appointment the claimant required to deal with a number of issues. The contracts which the respondents had at that time included three blasting and painting contracts together with a substantial scaffolding contract at Dalry. They were also involved in carrying out work on a contract for a fire main and interceptor vessel on Ascension Island. Although the eventual customer for this work was the Ministry of Defence the respondents were carrying out work for one of the sub-contractors which was another company within the Interserve group. The claimant required to take immediate steps to turn round the existing contracts many of which were unprofitable and did not provide sufficient margin to pay for the office and staff in Scotland.
6. A decision was made to relocate from the premises in Falkirk which were no longer suitable. The claimant arranged for hard services to move their Scottish office to

Grangemouth. The office there was adjacent to the office of Tom Gray who was a Senior Commercial Manager for Interserve Defence. Interserve Defence are another company within the Interserve group. They carry out a considerable amount of work where the end customer is the Ministry of Defence although occasionally there are other contractors who are interposed between them and the Ministry of Defence. Interserve Defence were one of the customers for whom the respondents were carrying out work for in Ascension.

7. When the claimant took over he identified that because of the various issues with the contract in Ascension there was unlikely to be much scope for growth there however he discussed with Mr Gray the possibility of the respondents carrying out work in the Falklands. The claimant developed a good relationship with Mr Gray and over the course of the next couple of years the claimant was instrumental in obtaining a number of contracts for the respondents to carry out work in the Falklands Islands for Interserve Defence. During this time the claimant also was successful in obtaining work on a contract for the respondents at Polmadie. The claimant hoped that the move to Grangemouth which was closest to Scotland's industrial heartland would allow the respondents to attract further new business in Scotland. In particular the claimant began to cultivate a company called Syngenta for whom other parts of Interserve carried out work. The claimant also made various personnel changes so that the Scottish division would be ready going forward. He also tendered for work on a contract with a company called Versalis. Although he was successful in obtaining some work from Versalis he did not obtain the major contract he was aiming at.

8. In 2014/15 the claimant along with Mr Gray identified that there was likely to be further work available for the company working for Interserve Defence in the Falkland Islands. In order to assist in obtaining this work the claimant arranged for some scaffolding and other materials to be transported to the Falklands Islands where it would be available for use by the respondents.

9. One of the jobs being carried out by Interserve Defence in Ascension involved the installation of a water deluge system at the airport for the Ministry of Defence. This was a system of pipes designed to hold water under pressure where it could be

readily deployed to put out fires in the event of an emergency. The respondents carried out work on this project for Interserve Defence. An issue arose with this contract due primarily to difficulties with the design. During 2014/15 it became apparent that the system was not operating correctly and the customer refused to sign off an acceptance with Interserve Defence. Additional work required to be carried out to put the project right. An issue arose as to allocation of the costs of this work between Interserve Defence and the respondents. The respondents submitted their bill to Interserve Defence and an internal adjudication took place within the Interserve group of companies. The end result of this process was that the respondents' bill was paid in full and Interserve Defence required to suffer the financial consequence of carrying out the additional work to the extent they could not recover this from the designers.

10. In the Falklands Islands work for the Ministry of Defence was tendered for and usually awarded on the basis of projects which required to be carried out within a particular financial year or years. By the end of 2015 the respondents had completed the major project which involved hangar doors. This work had been due to complete in 2014 but dragged on into the beginning of 2015. By April 2015 there were two painters and one supervisor still involved in the Falklands project. They were in the process of finishing up and being brought home. Although at this point the claimant and Mr Gray had anticipated that the respondents would be obtaining further work from Interserve Defence this did not materialise. The work in Ascension Island was complete albeit that final payment had not been made because the adjudication process had only recently been finally terminated. Work needed to be done on getting final sign off in respect of some of the work in the Falklands before payment would be made.

11. In April 2015 Mr McLemon who had been the claimant's direct Line Manager left the business and was replaced by Darren Williams. Within the respondents it was usual for there to be a monthly meeting attended by all regional managers and the Operations Director. The meeting normally takes place within the first four days of each month. Mr Williams commenced employment in April and attended the first meeting in May. Mr McLemon was present for the first half of the meeting but then left leaving Mr Williams in charge. Mr Williams then spoke to the remaining

managers. He drew a picture of the UK and asked those present what we should be doing with the business. He gave the choices of; stay as we are, go to sectors or go to trade. After discussion it was agreed that the business would continue to organise itself as it had before on the basis of geographical regions. The only change which was to take place was that up to then there was a region called East England. This was to be divided into Midlands region and North East England region. The Scottish region remained as it was with the claimant in charge of Operations in Scotland and the South Atlantic. There were however other changes due to the additional region being created and the fact that the post of Regional Manager of the North West region was vacant. These appointments were made during the month of May and became effective on 1 June although they were not announced to other managers within the business until later. James Taylor was appointed Regional Manager North East, John Hackett was appointed Regional Manager for Midlands and IES and Brian Shields a Regional Manager for the North West. These appointments were only advised to other managers in an e-mail from the Managing Director's PA Nicky Wood on 13 July 2015 (152B). Although this was a matter disputed by the claimant I found as a fact that these appointments had in fact been made effectively from 1 June 2015.

12. During his first few weeks Mr Williams visited all of the regions in the UK. He also visited the Scottish Region. With regard to the Scottish region Mr Williams decided that he wanted to visit the Falkland Islands as soon as possible to assess for himself the possibility of obtaining additional work. At that time it would appear, based on the evidence, that Mr Williams had formed a less rosy view of the prospects for the Scottish region of the respondents than that held by the claimant. Mr Williams understood that the work which the respondents had to carry out within the Scottish region comprised the following:

1. Demobilisation of the South Atlantic. His understanding was that the jobs there were complete. His understanding was that due at least in part to the issues which had arisen over the adjudication regarding the Ascension Island works there was a big question mark as to whether the respondents would get any more work in the South Atlantic from Interserve Defence. He saw a potential issue in that the respondents had a certain amount of equipment

and scaffolding in the Falkland Islands which would require to be transported back to the UK.

5 2. Dalry. His understanding was that the respondents had 15-20 operators on the Dalry site. There was an onsite management structure there. These two Onsite Managers reported to Mr Wren. The contract was for a company called DSM. Mr Williams' perception was that the rates which had been negotiated for this job meant that it was unlikely that the respondents would make a significant amount of money from it.

10 3. Polmadie. With regard to the job at Polmadie this was work on a specific project which was due to complete. There were around 20 employees working on this. During his visit to Scotland Mr Williams discussed the project with the onsite management there.

15 13. Mr Williams' view regarding the two contracts which the respondents were currently working on in Scotland was much less rosy than that of the claimant. With regard to the South Atlantic he also had concerns. The respondents currently had two painters and an engineer who were in the process of demobilising. Mr Williams was in personal contact with the management at Interserve Defence on the island. They were putting pressure on him to get the remainder of the respondents' equipment and their personnel off the island as soon as possible. He was also aware that Interserve Defence were themselves reducing their footprint on the island due to a reduction in the budget from the Defence Estates department. He spoke to Mr Tom Gray. He was aware that there were some issues regarding sign off of quality documentation for the work which had been done. The respondents would not be paid for the work they had done until this documentation was provided.

20 25 30 14. Mr Williams developed his view on what was happening in the Falkland Islands over a period which included a visit to the Falklands which took place in May. Mr Williams was accompanied on this visit by the claimant and by Scott Hardie. During the visit the claimant felt that Mr Williams was very impersonal with him. The claimant had organised a flight and met with Mr Williams and Mr Hardie at Brize Norton on 10 June. The visit to the Falkland Islands lasted one week. On the island there were various discussions with local managers from Interserve

Defence. Various issues had arisen in the past including the fact that the respondents were on their second General Manager there and that they had had a failure with one member of staff that Interserve Defence had asked them to remove in June 2014. Thereafter a Craig Stevens had been the new manager onsite and had worked fairly successfully however he left in February 2015 and following that there was no management presence there. The claimant's perception was that he felt Interserve Defence would provide the respondents with further work if the respondents "improved their level of service". There were a number of discussions regarding snagging works and the sign off of the safety documents which was required. The claimant felt that during this trip Mr Williams concentrated on the problems and did not appear to appreciate that the respondents had had two years of extremely profitable work to look back on. The claimant felt that Mr Williams continued to be difficult with him on the journey back. There was very little dialogue which took place between them.

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15. On his return Mr Williams visited Andrew Roddens the Head of Interserve Defence at West Bromwich. By this point Mr Gray had advised Mr Williams in categorical terms that the respondents would not be receiving any further work in the South Atlantic from Interserve Defence. Mr Williams' purpose in visiting Mr Roddens who was Mr Gray's boss was to confirm this. Mr Roddens duly confirmed that this was the case. In addition he said that Interserve Defence management were under considerable pressure to get the respondents demobilised and off the island as soon as possible. He wanted the respondents to down-man and get their stuff off the island as soon as possible.

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16. By this point Mr Williams was having serious doubts as to the viability of the Scottish Region. As he saw it the Dalry contract was negotiated in such a way that the respondents would not make any money on it. The Polmadie contract was a day works contract where they were paid for the hours worked and it would be profitable but the job would come to an end. At that time he understood the end date for the Polmadie contract was likely to be December 2015 although it was anticipated that there might be some slippage of this and such slippage did in fact occur. He was aware of the opportunities which the claimant was pursuing. The respondents have a system whereby managers report back on their "pipeline" of



work and the stage at which pre-contract enquiries, tenders, acceptances etc have reached. This information is provided on a monthly basis. Several of these contract sheets were lodged. Documents lodged at page 238/239 are internal documents produced by the claimant showing the approximate value of these contracts and other work which the claimant was seeking. The respondents were at the pre-qualification stage in attempting to seek an order from Versalis. As noted above this did not in fact materialise. There was also an opportunity in Peterhead with Shell UK. There was a small job at Dunbar with Interserve Construction, there were also other contracts with Interserve Industrial and Devner Projects which the respondents were unsuccessful with. Over a period Mr Williams came to the view that there was insufficient footprint left in the Scottish operation of the respondents to justify having a Regional Manager for Scotland.

17. At some point on or about 30 June Mr Williams contacted the claimant and told him to go back to the Falklands to supervise return of the scaffolding and other equipment from there. His instructions were to arrange for the respondents' equipment to be taken away from the various sites where it was stored and stockpiled at the harbour so that it could be returned to the UK on the first available shipping. He was told to demobilise as much as he could. The claimant went out to the Falklands on 1 July and returned on 8 July. Following his return from the Falklands the claimant was able to arrange for final sign off on one of the respondents' contracts for hangar doors. He also arranged to bring the scaffolding back and brought all the keys to the remainder of the respondents' equipment. Shortly after the claimant's return he opened an e-mail from Neil Starkie who was a Manager who reported to Mr Williams. He noted that the profit forecast for the Scottish region had been increased. He felt it odd that this had been increased without his agreement. The reason for the increased profit forecast was that Mr Williams now believed that the respondents would be paid for the work they had done on Ascension. Although this work had been done in previous years it would be put to profit in the current year.

18. The claimant was then invited to attend a Business Forum in Preston. This is a forum which the respondents hold from time to time at which managers are asked to give their forecast for the coming year. Having returned to Scotland from the

Falklands on 8 July the claimant was required to drive down to Preston for the morning of 10 July. He anticipated that he would be attending the Business Forum. Instead Mr Williams had decided that he should advise the claimant that the job of General Manager was being made redundant and that the claimant was therefore at risk of redundancy. On arriving at the venue the claimant was taken into a meeting room by Mr Williams and Stephen Norris of the respondents' HR department. They advised the claimant that due to the reduction in the overall footprint within the Scottish industrial business there was a reduced need for a General Manager of the Scottish Industrial Business Unit role going forward and that on that basis the claimant was being placed at risk of redundancy. A note of this meeting was produced. This note was not forwarded to the claimant for some weeks however on 27 August 2015 the claimant produced additions or amendments to the note. The original note was lodged at page 71 and the claimant's amendments at page 72. I considered that the notes produced at page 71 together with the additions at page 72 are a reasonably accurate record of what took place at this meeting. The claimant having been advised that his role was at risk of redundancy became upset and was told that in the circumstances he was no longer expected to attend the Business Forum. He then left and drove back up to Scotland.

19. Following the meeting on 10 July Darren Williams reported to various of his managers to the effect that the claimant had been placed at risk. His letter doing this was lodged (page 73). One of the matters raised was that the claimant was required to similarly advise two of the painters working in the Falkland Islands that they were themselves at risk of redundancy. This was duly done. The claimant's letters to these individuals were lodged (pages 78, 80).

20. The claimant fundamentally disagreed as to why there was a reduced need for a General Manager. His view was that even if there was a temporary difficulty in obtaining work in the Falklands this would shortly finish and there were still very good prospects for the company there. At this stage he was unaware that Mr Williams had met with Mr Roddens and been told that no work would be forthcoming. He felt that whilst there was a challenge to grow the business that the possibility was there he believed that Interserve Defence would be told to start

using the respondents again and that once this happened there would be further work in the South Atlantic.

21. The claimant was told that he should not return to the office in Grangemouth but to use an office in the Glasgow Access Centre. The Glasgow Access Centre is a facility maintained by the respondents in the centre of Glasgow. The office is upstairs from another facility operated by the respondents and contains six or seven hot desks. It is used for document storage and by managers who require an office to use from time to time. Stephen Norris of the respondents' HR department also operates from there from time to time. The hot desks which the claimant could access did not have a landline albeit there is wifi in the office. The claimant retained his laptop. He was also told that he shouldn't contact any staff on current projects in particular the managers at Polmadie and Dalry.
22. By this stage the claimant was the only member of the respondents using the Grangemouth office and Interserve Defence had indicated that Tom Gray would no longer be operating from there either. In the circumstances Mr Williams had decided that a cost saving could be made by terminating the lease on the Grangemouth office and this was duly done. The claimant continued to work from the Glasgow Access Centre from the date he was advised that he was at risk of redundancy until his final dismissal from the company. The claimant felt isolated and believed that he was not given enough work to do. He expected to receive financial information and up to then in his role as a Regional Manager he had received such information regularly. He ceased to receive such information after he was placed at risk of redundancy. He asked Mr Williams for access to financial information on various occasions and was not given it. He was told that his job was to concentrate on the wind up of operations in the Falkland Islands. The claimant no longer had access to the respondents' CRM Salesfloor system which was a sales database. He no longer received monthly cost reports giving invoice details and general financial information regarding the running of projects within the Scottish area. As his work on winding up the operation in the Falkland Islands included reconciling purchase orders and paperwork relating to the Falklands he continued to arrange for the demobilisation of the respondents' operations in the South Atlantic and the return of items. Work such as the reconciling of purchase

orders was not something which he had previously done nevertheless the claimant carried out the work which was required of him. The claimant considered that the work he was doing was of an administrative nature and did not require a Regional Manager. In general terms the claimant did not feel that he was given enough to do. The claimant received a letter dated 21 July 2015 formally confirming that he was at risk of redundancy and advising him that he should contact Stephen Norris if he had any queries. This letter was lodged (page 83). The letter states

*“The reason for your position placed at risk is due to the reduction of the footprint of the Scottish industrial business most recently with the reduction of businesses in the South Atlantic.”*

The claimant was told that his consultation period would end on 10 August.

23. As requested the claimant provided Mr Norris with a CV and this was circulated around the company. The respondents operate a redeployment register and the claimant was placed on this on 24 July. Mr Norris' letter confirming this was lodged. The way the redeployment register works is that it is a live system which gives access to vacancies throughout the Interserve group. What basically happens is that HR will provide those on the redeployment register with a list of vacancies which are generated automatically. The vacancies are from the whole of the companies trading in the UK and overseas although there is a provision to filter this. The respondents are a global company employing 70,000 people worldwide. It is not a proactive system in that no-one was specifically tasked with checking the claimant's CV and trying to match him up with any roles. The system was basically one which provided the claimant with a list of vacancies. It would then be up to the claimant to proceed with these. The claimant continued to receive such lists of vacancies on a regular basis up to the point of his dismissal.

24. Within the respondents' policies there was a provision to the effect that the consultation period for a redundancy would normally be 30 days. During the time the respondents were making redundancies at their Falkirk base following the termination of the Ineos contract the trade union involved had referred to the "Woolworth" case and indicated that because the respondents operated from

various sites they should be aggregating the number of redundancies across all sites for the purposes of the rules regarding redundancy consultation. As a result the respondents' legal advisers had advised management that they should provide a 45 day redundancy consultation period. For a time the respondents had been in the habit of giving a 45 day consultation period for all redundancies however shortly before July 2015 the respondents' HR department had changed their advice and gone back to suggesting a 30 day consultation period. The claimant had been involved in other redundancies from the management side and was familiar with the consultation requirements. He also had recent experience of sending out the redundancy risk letters for the two painters. The respondents saw the purpose of consultation as giving the claimant the opportunity to raise any alternative to redundancy. This could be another project or something in the pipeline which the respondents' managers had not considered. The position of Mr Norris and Mr Williams was that if anything like that was raised they would look at it and if it was viable it might avoid the need for redundancy. An example of this took place in relation to one of the painters who had been employed in the Falkland Islands – Mr McKinnon. Although he had been placed at risk of redundancy he suggested that he would be prepared to work at Polmadie and was redeployed to that contract. The respondents expected the claimant to advise them of any other work or anything which would strengthen the case for having a General Manager role within the Scottish Industrial Unit. Mr Norris' position was that although the onus was on the claimant to highlight vacancies if he came across anything which he thought might help he would usually refer this to the employee.

25. Shortly after the claimant received his letter of 21 July he approached Mr Norris in the Glasgow office. He raised a number of issues with him. It was at this point that Mr Norris gave the claimant the copy of the minutes of meeting of 10 July referred to above. He advised Mr Norris he considered that there was plenty of work at Polmadie and that it would not end on the end date. He raised an issue regarding holidays. There was a discussion regarding the consultation meeting which Mr Norris had intended to hold the following week. The claimant indicated that he was on holiday in Lanzarote for two weeks from 25 July. He confirmed that these holidays had been authorised by Mr Williams' predecessor. Mr Norris advised the claimant that because of his absence it might be necessary to extend the

consultation period. Mr Norris reported these matters to Mr Williams and Scott Hardie in an e-mail dated 24 July 2015 which was lodged (page 88). The issue of the claimant was the subject of an e-mail exchange between Mr Norris and Mr Hughes the respondents' Human Resources Director on 24 April. This exchange was lodged (page 90). Mr Hughes stated

*"See attached e-mails from DW reading his holidays for 2014, you will see I told him to take them in December, he and Robert were to liaise. I believe we are still in touch with Rob so it's worth checking with Scott. If you believe he was not invited correctly to the first meeting let me know why? And if so let's start the process again, this chap is getting nothing additional than he is owed."*

26. Mr Norris responded

*"He was at the Regional Meeting and we took the opportunity to speak to him about the proposed business changes in Scottish Industrial and that he would be placed at risk of redundancy. Ultimately, we would extend the consultation period for a further 30 days due to the fact that we haven't been able to meet with him due to ongoing annual leave commitments on both sides."*

27. Eventually on 10 August 2015 Mr Williams wrote to the claimant confirming that due to the intervening holiday period the consultation process had been placed on hold until the claimant returned on 10 August. Mr Williams stated that he would then arrange to meet with the claimant again to recommence the 30 day consultation process. This letter was lodged (page 95). The letter had been drafted by Mr Norris on 5 August and sent to Mr Williams for approval.

28. On 25 August Mr Norris invited the claimant to a redundancy consultation meeting with himself and Mr Williams to take place on 27 August. The meeting took place in the access offices in Glasgow and was attended by the claimant, Mr Williams and Mr Norris as note taker. Mr Norris produced a note of the meeting which was lodged (page 117-118). Following the meeting the claimant submitted various

amendments to the minutes. These took the form of additional notes. I considered Mr Norris's statement to be an accurate record of what took place at the meeting. I considered the claimant's additions also to be a broadly accurate record of discussions that had taken place from his point of view. There was a discussion regarding work. The claimant made the point that the Scottish region was profitable. He felt it was a mistake to pull out of the South Atlantic. There was a discussion regarding various issues at Dalry where the claimant's view was more optimistic than Mr Williams'. There was also a discussion regarding the extent to which the Polmadie project would be completed in December 2015.

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29. Following this meeting the claimant was required to travel to Grangemouth to hand over the keys of the Grangemouth office. At Grangemouth he met John Hackett who had been appointed General Manager for the Midlands Region with effect from 1 June. When Mr Hackett told the Claimant of his appointment the Claimant assumed that Mr Hackett had only just been appointed.

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30. At the meeting with Mr Williams the claimant had questioned when the consultation period commenced. Initially there had been some confusion because Mr Norris referred to a letter from him dated 5 August however it became clear that Mr Norris' letter had been sent to Mr Williams as a style and that Mr Williams' letter had been sent to the claimant on 10 August and the claimant confirmed that he had received this. The respondents wrote to the claimant on 1 September 2015 confirming that his consultation process had commenced on 10 August and would end on 8 September. They also enclosed the minutes (page 123).

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31. A final consultation meeting was held on 8 September 2015. This took place in Ellesmere Port. It was again attended by the claimant, Mr Williams and Mr Norris. A note of this meeting was produced (page 125-126). Mr Williams confirmed that the respondents would not be proceeding with the Dalry project for DSM at the current rate. There was a discussion regarding stock losses at Polmadie which Mr Williams indicated he was still investigating. Mr Wren again referred to the possibility of obtaining business from the South Atlantic however Mr Williams confirmed his earlier view. He stated that Mr Gray had indicated that they should *"let the dust settle before tendering for more work with Interserve Defence Ltd"*.

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There was a discussion regarding the ongoing work the claimant was doing relating to accounts and invoicing. The claimant confirmed that his mother had died over the weekend and it was confirmed that he was entitled to five days' bereavement leave. Mr Williams confirmed that at the end of the meeting that the claimant was now on notice of redundancy and that this would be confirmed to him in writing. The respondents wrote to the claimant on 8 September confirming that his consultation period had commenced on 10 July but then been extended and ended on 8 September. They confirmed that he was now on formal notice of dismissal and that his last day of work would be 11 December 2015. He was expected to continue at work. He was advised of the amount of redundancy payment he would receive. He was also advised regarding holiday pay.

32. The claimant was advised of his right of appeal. On 16 September he wrote to the respondents indicating that he wished to appeal. This letter was lodged (page 135). The respondents acknowledged this letter on 11 September (page 137). They advised that his letter had been forwarded to Scott Hardie who would arrange for the appeal to be heard at an Appeal Hearing.

33. In the event Scott Hardie asked Darren Greenall who at that time was Senior Commercial Manager for three business units who supported Scott Hardie to deal with the appeal. This was the second appeal which Mr Greenall had carried out. So far as management was concerned one of the three business units which Mr Greenall had responsibility for was Hard Services and Scottish Industrial was one of the regions within Hard Services. Mr Greenall was Mr Hardie's commercial lead for the three business units. Mr Williams was Operations Manager of one of the business units. Mr Williams reported to Mr Hardie rather than to Mr Greenall since the Commercial Manager stood outside the straightforward management hierarchy.

34. Mr Greenall was passed the claimant's letter of appeal and wrote to him on 25 September 2015 inviting him to an appeal meeting which was to take place on 2 October 2015 at Ellesmere Port. The claimant was advised of his right to be accompanied. He was also advised that he could submit a written statement in advance of the hearing and told that if he wanted a copy of the company appeal



policy he could contact Mr Williams. The letter was not signed by Mr Greenall as it was sent out electronically by HR but he had agreed the content with David Mountain of the respondents' HR department. The Appeal Hearing duly took place on 2 October in Ellesmere Port. The claimant attended. He was not accompanied. Mr Greenall was present along with David Mountain of the respondents' HR department. The claimant brought to the meeting on the day of appeal a document comprising nine numbered paragraphs. This document was lodged (pages 147(a), 147(b), 147(c)). This set out his reasons for his appeal. Mr Greenall agreed that they would use this document as the basis for discussion at the Appeal Hearing. He went through each point in turn. Point one and two were dealt with first and related to whether or not Mr Greenall was the appropriate person to conduct the appeal and what information would be before him. Mr Greenall's position was that he had full authority to overturn any previous decision made by Mr Williams. He did not consider himself to be subordinate to Mr Williams.

35. Points 3, 4 and 5 dealt with criticisms of the redundancy consultation process. Point 6 related to the background reason for the redundancy. Point 7 related to the claimant's contention that there ought to have been a pool including the other General Managers. The claimant also indicated that his understanding was that the appointment of Mr Hackett as General Manager for the Midlands had been made on 24 July. The claimant indicated that he did not consider that his post should be at risk of redundancy on the basis that others were taking over certain aspects of the role and if they had time to do this then it meant that their posts should be at risk of redundancy. The final point made was that the Scottish Division was profitable and that there was work to be obtained which was still being obtained. The claimant referred to information about tendering for other work at Grangemouth and at Glasgow Airport which he had passed on but not been advised of the outcome and a contract with Viridor at Dunbar. The claimant also expressed the view that there would be further work in the Falklands in 2016.

36. At the end of the meeting, having gone through the various points, Mr Greenall agreed that he would investigate matters and get back to the claimant as soon as he could.

37. Following the appeal meeting Mr Greenall contacted Stephen Norris in order to confirm the date of appointment of Mr Taylor, Mr Hackett and Mr Shields as Regional Managers. Mr Norris confirmed to Mr Greenall that these appointments were all made on 1 June. He attached an e-mail sent by Nicki Wood to all Interserve Industrial Services users on 13 July confirming that the appointments had been made with effect from 1 June 2015. The claimant had based his belief that Mr Hackett had been appointed on 24 July because he had met Mr Hackett on 24 July in Grangemouth and Mr Hackett had told him of the appointment on that date. The claimant had simply assumed that Mr Hackett had been appointed on 24 July and had no other basis for saying that this was the date. Mr Mountain also wrote on behalf of Mr Greenall to Mr Norris and Darren Williams seeking additional information regarding the claimant's redundancy in an e-mail dated 15 October 2015. This e-mail was lodged (pages 156-157). Mr Norris prepared responses which were approved by Mr Williams and these are included in the e-mail. Mr Williams made it clear that the rationale for redundancy was due to a decrease in overall footprint. Mr Williams accepted that Mr Wren referred to turnover and increases in turnover but was clear that the issue was reduction in footprint not turnover. He outlined the consultation process which had taken place. He confirmed that the claimant had been asked to focus completely on the South Atlantic project shut down to allow him to do this Mr Williams would overtake the running of the Scottish Industrial Business in the interim.
38. On 19 October Mr Mountain wrote to the claimant indicating that investigations were taking longer than anticipated but that a response would be made no later than 6 November. This letter was lodged (page 158a). Mr Norris' final letter to Mr Greenall is dated 19 October and is lodged (pages 158b, 158c). Mr Greenall also obtained the minutes of the consultation meetings from Mr Norris. These were the minutes of the at risk meeting plus the letter between the claimant at risk together with the minute of the consultation meeting and the letter that went with it plus the claimant's CV. As a result of this Mr Greenall formed the view that the reason for placing the claimant at risk of redundancy had been due to the reduced footprint and not turnover as the claimant suggested. He was aware from his work that a project could potentially have a very large turnover but low margin that does not require any management input. Other contracts would be different. He

believed that Mr Williams had put in front of him evidence of a reduction in footprint. The respondents' Scottish region was exiting from the South Atlantic and it appeared to Mr Greenall that the other projects pretty much ran themselves. He did not specifically look at the turnover of the Scottish region since he did not consider this to be relevant. He was aware from his work as a Commercial Manager that the respondents were struggling to find more new work. He was aware in general terms of the profitability of the Scottish region. He was aware by November that the figure for 2015 was acceptable but that this was built up mainly because of the successful claim for payment in respect of the previous year's work done in Ascension Islands. He considered that the situation was that there was a profitable unit with a reducing footprint. He did not find any of the claimant's other points to be particularly relevant. The claimant had alleged that his mobile phone contract had been ended. On investigation Mr Greenall became aware that there was a company wide migration of mobile phone provider from one to another. As a result of this many of the company Blackberrys had ceased to work for a time and the claimant's was in this category. He accepted that there was a business rationale for closing the office in Grangemouth.

39. Mr Greenall decided that he would uphold the decision to dismiss. He wrote to the claimant in a letter dated 10 November 2015 confirming his decision and setting out his reasons in full. This was lodged (page 177a-177c). A previous version of this letter which had originally been produced at an earlier stage by David Mountain was also lodged (page 173-175).

40. The claimant continued to work his notice period. Again he felt there was little work for him to do. He was involved in the final rundown of the claimant's operation in the Falklands.

41. The claimant's last day of work was 11 December 2015. The claimant remained on the respondents' redeployment register up to this point. Very shortly after the claimant's final day of employment he was advised by Mr Norris of a position which had arisen as General Manager in Newcastle. He applied for this post. The respondents' normal procedure where an external candidate is applying for a post is that candidates whose application is to be considered require to complete an

online psychometric test as a first stage in the assessment of their application. The claimant had successfully completed this psychometric test when he joined the respondents in 2013. Had this role come up and the claimant applied for it while still employed by the respondents he would not have required to sit the test. Since the claimant submitted his application after he had left the respondents' employment he was required to complete the psychometric test. The claimant was invited to sit the test on several occasions but did not do so and his application therefore went no further. In any event by this point the claimant had successfully interviewed for a position with Ainscough albeit he had not been formally appointed.

42. The claimant's salary as at the date of dismissal was £68,000 per annum. He had also received an additional £6000 on top of salary for additional hours he had worked in the South Atlantic in November 2014. The respondents operated a bonus scheme and in 2015 the claimant was paid £4000 bonus. The bonus scheme was 25% linked to aged debtor days. Of the other 75%, 50% was awarded for achieving budget. There was a complex arrangement for calculating the remaining part of the bonus based on any increase in turnover over budget. It was a condition of the respondents' bonus scheme that employees required to be in employment as at the date the bonus was paid. The claimant left before the payment date for the 2015 bonus. The claimant was accordingly not entitled to any bonus for the year 2015 and none was paid. It was the claimant's view that had he remained in employment for a further 20 days he would have obtained a bonus equivalent to around 30% of salary.

43. The claimant was successful in obtaining new employment with Ainscough commencing work with them on 1 February. His salary and benefits with Ainscough are less than with the respondents. The claimant received a statutory redundancy payment as at termination and in evidence he accepted that as a result he would not be entitled to receive a basic award should his claim of unfair dismissal be successful.

**Observations on the Evidence**

44. The claimant's representative pointed out correctly that much of the respondents' case depends on the Tribunal accepting Mr Williams as a credible and reliable witness. I understood the claimant's position to be that I should not accept Mr Williams' evidence as credible and reliable and that this was demonstrated by the timing of the case. He pointed out that Mr Williams had taken over on 22 May and that by June he was already visiting the sites in Scotland without reference to the claimant. He refers to the trip to the South Atlantic and that no reason was given for this. He also referred to the fact that after 10 July the claimant was told to have nothing more to do with the job he had previously been doing. I understood the claimant's position to be that rather than the rationale for these matters being that given by Mr Williams that there was some other ulterior motive. That having been said no ulterior motive was ever given by the claimant or expressed even as an allegation in the claimant's evidence. At the end of the day I did not consider the claimant's attack on Mr Williams' credibility to be well-founded. It was clear that the claimant genuinely disputed Mr Williams' analysis of matters and that if he had been in Mr Williams' job he would have made different decisions. At all times however it was clear to me from both Mr Williams' evidence in chief and his answers in cross examination that Mr Williams had a clear business rationale for the decisions he was making. I did not see any trace of any ulterior motive. Mr Williams' evidence was backed up by the contemporary documents and by the evidence of the other respondents' witnesses which I also found to be credible and reliable. The claimant's representative sought in particular to suggest that it was incredible that the respondents would have appointed the three new regional managers with effect from 1 June but not promulgated this until 13 July. I found the explanation given for this to be entirely credible. The claimant's suggestion that one of the appointments had only been made on 24 July was based, even on his own evidence, on an assumption which he made and not on any definite information to the contrary. With regard to the reasons for the claimant's role being made redundant the documentation throughout was clear in referring to the reduction in footprint of the Scottish area. Nevertheless the claimant's continued assertion was that issues of turnover and profit were relevant. I did not find the claimant's evidence to be credible and reliable on this and other points. I felt that

throughout his evidence he was clearly attempting to give answers which suited his case rather than reflected his genuine belief or what had happened at the time. That having been said there were substantial parts of the claimant's evidence which concurred factually with that given by the other respondents' witnesses and I accepted this. I also accepted that the claimant had felt isolated and ostracised following being placed at risk of redundancy on 10 July. I did however accept the respondents' evidence regarding the issue arising with regard to the claimant's Blackberry. I also accepted Mr Williams' evidence to the effect that he had a genuine commercial logic for his decision to ask the claimant to concentrate on winding up the operations in the South Atlantic after 10 July and not to concern himself any further regarding the ongoing Scottish area projects at Polmadie and Dalry.

### **Discussion and Decision**

45. The parties were agreed as to the relevant law. In terms of Section 98 it is for the respondents to show the reason for dismissal and in this case the respondents' position was that the reason for dismissal was redundancy. Although the claimant did not put forward any alternative reason I understood that he disputed this. I was referred to Section 139 of the Employment Rights Act 1996 which provides the definition of redundancy. This states

*“(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –*

*....*

*(b) the fact that the requirements of that business –*

*(i) for employees to carry out work of a particular kind, or*

*(ii) 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.*

*(2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in*

*paragraphs (a) and (b) of that subsection would be satisfied without so treating them)."*

5 Section 139(6) goes on to state that in subsection (1) cease and diminish means cease and diminish either permanently or temporarily and for whatever reason.

46. I was satisfied on the basis of the evidence that the respondents had established that the reason for dismissal was redundancy. I accepted their contention that the requirements of the business for employees to carry out work of a particular kind  
10 that is as General Manager of the Scottish Industrial Unit had ceased or diminished. I accepted the evidence that the work in the South Atlantic had been completed. I also accepted Mr Williams' evidence that he had satisfied himself that there was no reasonable prospect of any future work in the South Atlantic materialising. I was satisfied that he had reasonably come to the conclusion that  
15 given this reduction in footprint it was no longer viable for there to be a Scottish General Manager. I was satisfied that this was the reason for the Claimant's dismissal. As mentioned above, although the Claimant appeared at times to be suggesting there was some ulterior motive the Claimant did not lead any evidence regarding this and his own evidence did not suggest another motive. The high point  
20 really came in his representative drawing the attention to the Tribunal to the email from Mr Hughes, the Respondents' HR Director at page 90 which refers to the claimant not receiving more than he is entitled to. This, with nothing further, did not lead me to seriously question the clear and cogent evidence from the other witnesses regarding the existence of a genuine redundancy situation.

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47. Section 98(4) of the Employment Rights Act 1996 requires me to consider whether in the circumstances (including the size and administrative resource of the employer's undertaking) the employer acted reasonably or unreasonably in treating the reason as a sufficient reason for dismissing the employee and I am required to  
30 determine this in accordance with equity and the substantial merits of the case. The claimant was critical of the fact that effectively he had been placed in a pool of one. It was his view as I understood it that he ought to have been placed in a pool along with the other Regional Managers. Whilst no doubt some employers might have decided to deal with matters in this way it did appear to me that the

respondents were acting entirely within the range of reasonable responses when they decide to create a pool of one. It was the claimant's role as Scottish General Manager which was redundant. They had just carried out a reorganisation which had resulted in the appointments made with effect from 1 June. It was clear that the managerial positions were regionally based. There would be clear logistical difficulties in putting some or all of the other managers into the pool. In my view the fact that the respondents did not do this would not render the dismissal unfair.

48. It is clear that procedural fairness is an important part of overall fairness. In this case I did not consider any of the claimant's criticisms of the procedure adopted by the respondents to be well-founded. The claimant was placed at risk of redundancy. Whilst he felt aggrieved that he received no warning of this I do not consider that this amounted to procedural unfairness. It was reasonable for Mr Williams to consider it to be important that he tell the claimant face to face. Mr Williams has a geographically diverse area of responsibility and speaking to the claimant at the beginning of the meeting on 10 July was while certainly not best practice, something which was understandable. The consultation period then commenced. Due to holidays no consultation took place during the initial 30 days and the consultation period was extended. The claimant was put on the redeployment register from the beginning of the time he was put on risk and because of the extended consultation period and the fact he was entitled to three months' notice spent much longer on the redeployment register than others did. It is clear that in addition to the formal redeployment register the respondents' HR department continued to look out for jobs for the claimant as can be shown by the fact that Mr Norris drew his attention to a role which came up shortly after he left the company. It was clear to me that the decision not to proceed with his interest in that role was one which the claimant made and could not be laid at the door of the company.

49. With regard to the consultation I quite accept the claimant's evidence to the effect that he genuinely believed the company were making a big mistake. I can also see that he feels aggrieved that having delivered an increased turnover and good level of profit for the company from the successful completion of the work in the South Atlantic he was then made redundant. Unfortunately the nature of redundancy



dismissals is that perfectly good, indeed exemplary employees might well lose their jobs. In this case I am satisfied that there was a genuine redundancy situation and I am satisfied that the respondents' reaction to this in dismissing the claimant was reasonable. I do not consider that there was any procedural irregularity such as would render the dismissal unfair. Whilst I have considerable sympathy for the claimant's position I cannot uphold his claim and it is therefore dismissed.

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Employment Judge: Ian McFatridge  
Date of Judgment: 24 May 2017  
Entered in register: 25 May 2017  
and copied to parties

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