Case Number: 2301855/2016

EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr J Skerritt	and	Schneider Electric Limited

Held at Ashford on 23 and 24 May 2017

Representation	**Claimant:**	In person
	Respondent:	Mr T Brennan, EEF Advisor

Employment Judge Wallis (Sitting alone)

Reasons for Judgment sent to parties on 1 June 2017

Oral reasons were given at the end of the hearing. The Claimant requested written reasons. These are prepared from the recording of the oral reasons.

Issues

The issues were set out in a list prepared by the Respondent and agreed by the Claimant.

Documents and Evidence

1. I had an agreed trial bundle to which two pages were added on the first day and a further 5 pages on the second day reflecting the Claimant's performance in field quotes and his productivity levels. The Claimant was given time to consider those documents before questioning of witnesses resumed. I also had a chronology and a list of issues and a cast list prepared by the Respondent. The Respondent also produced written closing submissions and a copy of Nicholls v Rockwell Automation Limited EAT-0541-11 and Mitchells of Lancaster (Brewers) Limited v Tattersall EAT-0605-11.

2. I had written statements from the witnesses who gave evidence. I heard from the Respondent's HR business partner Miss Susanne Redmond; Mr Ray Green, the Claimant's line manager; Ms Tracey Holder, field services

operations manager and the person who considered the Claimant's grievance; Mr Phillip Layland, southern fields services operations manager and the person who made the decision to dismiss the Claimant; and Mrs Fiona Bowden-Powell, divisional contract manager and the person who considered the Claimant's appeal against the dismissal.

3. I also heard from the Claimant himself Mr J Skerritt.

Findings of Fact

4. I think it is right to say that there is no doubt that Mr Skerritt was genuinely aggrieved by the fact he was made redundant and I think it is also right to say that as a litigant in person he has found it difficult to put his case and his claim has varied to some degree over the course of the hearing. For example at the start of the hearing he agreed with my list of the matters that I drew out of the claim form which he thought indicated that he had been treated unfairly and as late in the day as in his closing statement he added something to that list. He suggested that there had been no redundancy situation which had not been suggested previously and certainly he had not cross examined the Respondent's witnesses about that, but I have looked at that and I have made findings about that. I think it is also useful to emphasise that the Tribunal, and that is just myself in these claims sitting without members, has to apply the law in respect of unfair dismissal claims. I set those out at the start of the hearing and they were captured in the list of issues prepared by Mr Brennan. Mr Skerritt does have a list of those to look at, and we agreed those at the start of the hearing.

5. Turning to the facts of the matter, it is right to say that there is no real dispute about the chronology of events. Mr Green was Mr Skerritt's manager for several years although not in 2015 but he again became his manager in 2016 and it is clear from Mr Skerritt's evidence that he thinks Mr Green has a problem with him, but I have found that there was no evidence put forward to support Mr Skerritt's view that Mr Green in some way engineered the redundancy situation or the selection for redundancy.

6. I have noted that in April 2016 Mr Green spoke to Mr Skerritt about two complaints that he had received from Mr Skerritt's customers and there was an investigation into that. The decision was that there would be no disciplinary action but Mr Skerritt was placed on a performance plan and in the circumstances I was satisfied that could not be considered to be an unreasonable decision. Certainly Mr Skerritt himself did not complain about that at the time. In evidence Mr Skerritt said he couldn't complain about that but I found clearly he could have done so because he could have raised a grievance and we know that later on he did raise a grievance about the situation.

7. By June 2016 it was becoming clear to the Respondent company that certain parts of its business were reducing, some of the engineers including Mr Skerritt were not fully employed. In other words their productivity rates had reduced because there was sometimes insufficient work for them and this was partly because some of the aspects of the work involved some units that were to become obsolete in due course. Mr Skerritt spent some 70 days of his time in 2015 with a different team, the Continuum team, rather than his own Satchwell team. I am satisfied that there was a redundancy situation.

8. I am satisfied that the Respondent made a decision to reduce the staffing levels by way of redundancy and they were looking at the Satchwell teams and the Vista teams. They were satisfied that the Continuum team had sufficient work to do. In passing I do note that there was no dispute that there had already been some redundancies in 2013 and at that time although Mr Skerritt was placed at risk of redundancy he was not selected for redundancy, although his manager at that time was Mr Green.

9. There was no dispute that an announcement was made to the engineers who were affected by the proposal early in July 2016. Mr Skerritt was not on that conference call because he had not responded to the invitation. So he was called on an individual basis on that day by Mr Layland and he was given the same information about the business difficulties and the process that the Respondent proposed to follow and that was all sent to Mr Skerritt in writing.

10. The Respondent has a redundancy procedure that is comprehensive and was largely followed by the Respondent in this case. I say largely because no notes were taken of the consultation meetings and as Mr Skerritt pointed out it does say in the procedure that this is important. There was a checklist of what the Respondent said in that meeting, they ticked the checklist as they said it to Mr Skerritt and therefore we know the items that were told to Mr Skerritt and there was a brief note of action to be taken. But as is often the way, the notes would have been useful because the Claimant said he raised objections to his scores and the Respondent denies that he did at that early stage. So a more precise note could have perhaps resolved that issue.

11. In any event, I find that although Mr Skerritt may think he did object and certainly Ms Redmond's email to him on the 19th July does refer to Mr Skeritt raising objections at the meetings, he certainly I found was not very clear about it in the same way that he has not been very clear at the Tribunal. I accept the Respondent's evidence that certainly Mr Green and Ms Redmond at that early stage did not understand what those objections were in precise terms.

12. There was a suggestion by Mr Skerritt that there should have been an invitation for voluntary redundancies. Certainly the Respondent's

procedure suggests that it would be good practice to seek volunteers. I noted in the grievance minutes that Ms Holder had told Mr Skerritt that the Respondent had decided not to seek volunteers and I had noted Mr Layland's evidence that it was his understanding that the Respondent had wanted to retain a balanced workforce in the terms of skills. I found that this was not unreasonable in the circumstances.

13. It was therefore clear that not only was there the telephone call to the engineers and the separate call to Mr Skerritt and one or two other colleagues, there was also a selection process on 1 July. I found that the managers of the teams who were at risk met and discussed the engineers who were in the pool and allocated scores to them in accordance with the assessment matrix. We know there were 22 engineers in the pool and the Respondent was looking to reduce the headcount by 2. I was concerned by the imprecise nature of Mr Green's evidence about this process, it did sound chaotic in respect of the way he had described it and as if the scores were allocated almost at random and without any reference to any documents such as appraisals which could have provided a basis for those scores.

14. I was, however, reassured by the evidence of Mr Layland who explained, and I so find, that he monitored the process with the managers, that the appraisals were available and that he then collaborated with the managers on the last 4 in the list once the scores had been allocated. I also noted that Mrs Redmond then played a role in checking and benchmarking the scores to ensure fair play.

15. The first consultation meeting took place on the 4 July 2016. I was satisfied that the Respondent in the form of Mr Green and Mrs Redmond explained the process to Mr Skerritt and referred him to the vacancy list. I am still not clear whether it was at that meeting or the next meeting on the 18 July that Mr Skerritt was shown his scores on the redundancy assessment matrix. But I am satisfied that at either of those meetings he was shown those scores and he was sent a copy of them. I accepted his evidence that he did not agree with the scores, but I find at no point during the process did he explain with any clarity why he disagreed with them and how he would have scored his performance giving examples of his work and so on to support his own scores.

16. I have noted that in evidence Mr Skerritt said that he couldn't do that and it was up to the Respondent to prove or justify the scores. I was satisfied that Mr Skerritt had perhaps misunderstood the procedure and that he had every opportunity to dispute those scores and explain why they should be higher.

17. The second consultation meeting took place on the 18 July and he was sent the assessment sheet with the scores after that meeting. It was also on that date that he raised a grievance; on the face of it the grievance was

a complaint about Mr Green and the way in which he had handled the two customer complaints in April 2016. Mr Skeritt clarified by email that the grievance was not about the redundancy process but about matters leading up to the redundancy process. What Mr Skerritt says now at the Tribunal is that he meant Mr Green was unduly influenced by those complaints. I found that Mr Skerritt had not made this clear in his grievance and so I find it not surprising that the Respondent did not understand that Mr Skerritt was trying to make this point. Quite reasonably Mrs Redmond urged Mr Skerritt to explain why he disagreed with the scores and to raise his points with Mr Green and she suggested he gave specific reasons as to why he disagreed, but Mr Skerritt did not do this.

18. The grievance meeting took place on the 25 July 2016 with Ms Holder and I have had a look at the notes of that meeting, it was quite a lengthy meeting; over 2 hours and I find that Ms Holder tried very hard to understand the nature of the grievance and asked Mr Skerritt to provide some evidence of what he thought was Mr Green’s negativity towards him so she could investigate that. I note that he did not do that. I find that she did what she could and in a detailed decision on 29 July she set out her decisions about the points that he had raised and she was unable to uphold his grievance.

19. Ms Holder’s recommendation echoed Mrs Redmond’s recommendation, that Mr Skerritt should raise points about the scores with Mr Green and a meeting was arranged by telephone so that Mr Green could explain the scores, even if the Claimant could not put forward his own arguments. I noted that before that meeting Mr Skerritt again declined to produce his own assessment and said that he just wanted Mr Green to justify the scores that he had been given.

20. The telephone meeting took place on 27 July 2016 between Mr Skerritt, Mr Green and Mrs Redmond and there are notes of that meeting. I find that Mr Green gave an explanation of the scores, some of which it appears Mr Skerritt accepted. Mr Skerritt put forward an example of a complex programming task that he had undertaken and a result Mr Green increased his score under the technical scores heading.

21. I do note that Mr Skerritt according to the notes of that meeting did not understand the category ‘risk to business’ in perhaps the same way that I had misunderstood it when hearing evidence about that. I also noted that when giving evidence Mr Green seemed unable to explain it and the note from that meeting shows that he offered no explanation or certainly does not record that he offered an explanation to Mr Skerritt about that category. I was concerned that Mr Green did not fully understand the assessment matrix but again, as I have said, I was reassured by the evidence of Mr Layland and Mrs Redmond that they had monitored the process and all managers who knew Mr Skerritt’s work had some input into the process.

22. On 29 July 2016 there was the third and final consultation meeting, this time with Mr Skerritt, Mr Layland and Mrs Redmond. Again we have a checklist by way of a note of what was said, but the brief note in terms of the action to be taken does not show that Mr Skerritt raised any further or continuing objections. That same day a letter of dismissal was handed to Mr Skerritt and that included information regarding his right to appeal. Mr Skerritt did appeal against the decision and he again suggested that Mr Green had invented the customer complaints that had been dealt with in April 2015 and suggested that Mr Green had referred only to those complaints when explaining Mr Skerrit's scores. But I find that the notes of the meetings show that there was in fact a more wide-ranging discussion and explanation from Mr Green.

23. The appeal was heard on 8 August 2016. I was satisfied that Mr Skerritt had the opportunity to raise all of his points and that Mrs Bowden-Powell investigated those points. In her outcome letter of 20 September she gave a detailed explanation of why the appeal was not upheld.

24. In respect of the law to be applied, I am not going to trouble you with that too much. We did discuss it at the start of the hearing, Mr Brennan has set it out in his skeleton argument and it is well known.

Conclusions

25. Having made those findings of fact what I have to do is consider the issues that have been raised, and applying the relevant law and taking into account the submissions made, I have to draw my conclusions.

26. The first issue was what was the reason for the dismissal. I am satisfied that the reason was redundancy. No other reason has really been put forward with any particular vigour by Mr Skerritt and it is clear to me from all of the evidence and the documents that that was the reason.

27. What we then have to look at was whether there was a fair procedure given that that was the reason for the dismissal. As I have indicated I was concerned about Mr Green's evidence as it seemed to paint a picture of seven managers in a room, pressed for time, swapping anecdotal information to support scores for vague criteria. I concluded that the evidence of Mr Layland and Mrs Redmond and the documentation in the trial bundle gave quite a different perspective. I concluded that even if Mr Green conducted the exercise in a shambolic way, there were checks and balances that ensured that fairness was achieved. I should add I did not consider that there was any evidence to suggest that Mr Green had deliberately given Mr Skerritt low scores. My concern was the manner by which the selection process was conducted and as I say my concerns were allayed by Mr Layland and Mrs Redmond.

28. I considered the procedure in more detail. There are a number of elements we have to consider. First, the selection criteria. I do note that the redundancy procedure followed by the Respondent sets out examples of criteria and they were the ones that were largely used for this redundancy exercise. I had some concern about the core values being used as selection criteria because I considered, as Mr Brennan has alluded to in his skeleton argument, they were arguably subjective. However I have concluded that the other criteria also contained in the assessment matrix were more solidly based on objective facts and so this is not a case where the scores merely reflected the personal opinion of the selector. If this had been a case where only the core values were used then I might have been more concerned if they were used without reference to objective documentation to support those scores.

29. In looking at those core values, I should note that there was a dispute as to whether or not Mr Skerritt was trained in respect of those. He said he was not, the Respondent said he was. There was no documentary evidence, perhaps not surprisingly as this arose quite late in the hearing. On balance I do accept that the Respondent was likely to ensure training on those values. They are contained within the examples of redundancy process set out within their formal procedure and I accepted Mr Layland's evidence that he monitored the training process.

30. I should also note that Tribunals should not conduct an over-minute scrutiny of selection criteria. The question for us to look at is whether the method of selection was not inherently unfair and was it applied in a reasonable fashion.

31. Looking at the scores themselves, of course Mr Skerritt complains that he was given low scores and again there is a limit as to the extent by which a Tribunal can scrutinise an individual's scores. Certainly what we cannot do is substitute our own view in respect of those scores.

32. Here, there was evidence before Mr Green and before Mr Layland that there were two customers that had complained about Mr Skerritt; evidence that his performance in fields were "reducing" despite those being mentioned in his appraisals and targets about those being set in his appraisals. He was on a performance plan to encourage better performance at the time his performance was being considered with reference to the selection criteria. I concluded that all of that was likely to have an impact on the scores given to him in the redundancy process. On balance therefore, given the careful overview of the scoring process provided by Mr Layland and Ms Redmond, I concluded that the selection criteria were applied fairly and reasonably.

33. As far as consultation is concerned I concluded that it was meaningful and that there was ample consultation with Mr Skerritt and that gave him

plenty of opportunity to put forward any evidence in order to challenge his scores.

34. In terms of whether alternative employment was considered by the Respondent I concluded that they did provide all of the information that they had about vacancies and they offered the assistance of a placement company that Mr Skerritt declined.

35. I am satisfied that the procedure was fair in all the circumstances. The next issue leads us to the band of reasonable responses. In other words, the law recognises that there could be different responses to different situations, and what we have to look at is whether the decision was one that a reasonable employer could have reasonably have made. One of the factors we have to consider is the size of the employer's undertaking. It is a large company and I understand from the response form that there were around 4,000 employees. Clearly there is a human resources department to provide advice so one would expect a proper and clear procedure to be followed.

36. I concluded that a reasonable employer with those resources, having followed the procedure that I have outlined, could reasonably have decided that the process indicated that the two lowest scoring employees were the ones to be selected for redundancy. In other words I could not say that no reasonable employer would have dismissed the Claimant in these circumstances. Putting all those points together I have come to the decision that the dismissal was not unfair; the claim is unsuccessful and so it is dismissed.

Employment Judge Wallis
4 August 2017