EMPLOYMENT TRIBUNALS

Claimant: Mr H Yang

Respondent: Amec Foster Wheeler Limited

HELD AT: Manchester **ON:** 20, 21 and 22 June 2017

BEFORE: Employment Judge Horne
Mrs P J Byrne
Mr A J Gill

REPRESENTATION:

Claimant: In person
Respondent: Miss A Smith, Counsel

JUDGMENT having been sent to the parties on 30 June 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Complaints and issues

1. By a claim form presented on 29 October 2016, the claimant brought the following complaints:

   1.1. Unfair dismissal, contrary to sections 94 and 98 of the Employment Rights Act 1996 ("ERA");

   1.2. Direct discrimination because of age, contrary to sections 13 and 39 of the Equality Act 2010 ("EqA"); and

   1.3. Various complaints of unlawful deduction from wages and a claim for damages for breach of contract.

2. At the start of the hearing the respondent consented to judgment on the wages complaint and breach of contract claim, leaving just the unfair dismissal and age discrimination complaints requiring adjudication.

3. It was not disputed that the respondent had dismissed the claimant. The issues for determination were based on the language of section 98 of ERA and were set out paragraphs 3.2 and 3.3 of the case management summary sent to the parties on 1 February 2017.

4. At the start of the hearing, the claimant further clarified his complaint of age discrimination. He was 60 years old at the time of his dismissal. He did not identify himself as belonging to a particular age group, but we took him to be comparing himself to people who were 59 or younger.

5. Although in the 1 February 2017 case management summary the "act of discrimination" was the dismissal, the claimant orally explained to us that the less favourable treatment of which he complained was his score of 2 against the Growth Potential criterion in the redundancy exercise.

6. As the hearing went on, we identified three separate arguments for saying his Growth Potential score was because of his age. First, the Growth Potential criterion was inherently less favourable to older staff than to younger staff. Second, the criterion had been introduced in order to make it easier to dismiss older staff. Third, he was given a low score against this criterion because of his age.

7. Further issues relating to remedy would have arisen had the dismissal been found to be unfair or his Growth Potential score discriminatory.

Evidence

8. We considered documents in an agreed bundle which we marked CR1. We did not read every page of this bundle. Rather, we concentrated on those pages to which the parties had drawn our attention, either in their witness statements or orally during the course of the hearing.

9. We heard oral evidence from Mr Roberts, Mr Bailey, Mr Habberley and Mr Hughes as witnesses for the respondent. The claimant gave evidence on his own behalf but did not call witnesses.

Facts

10. The respondent operates an international project management, services and consultancy business that designs, delivers and supports infrastructure assets for public and private sector customers. Its main markets are oil and gas, Clean Energy, mining and environment and infrastructure. Across these markets the respondent processes some 2,000 to 3,000 new contracts every year.

11. The claimant was employed within the respondent's Clean Energy Division from 13 June 2013 until 13 July 2016 as a Principal Mechanical Engineer.

12. Part of the Clean Energy Division involved providing services to the nuclear power industry. This was described as being part of the Division's core business. In 2015 and 2016, however, this description was rooted more in aspiration than reality. Many of the respondent's business opportunities lay within the New Build Programme: A Government Sponsored Initiative to Commission a New Generation of Nuclear Power Stations within the United Kingdom. As at 2015 and

2016, this programme had largely been put on hold. Partly for this reason, and partly because of lower energy prices across the sector, the calendar year 2015 was a particularly difficult year for the Clean Energy Division. A cost cutting programme was put in place, including pay freezes, an office closure and some 57 compulsory redundancies.

13. For the purposes of the 2015 redundancy exercise, the respondent followed a written procedure known as the "UK redundancy procedure". Here are some of its relevant provisions:

> 2.2 **Avoidance of Redundancies**
>
> In order to avoid or minimise a potential redundancy situation the company may consider any or all of the following measures where appropriate and reasonably and/or commercially practicable to do so in the relevant circumstance…
>
> - Flexible working
> - Career breaks
>
> 2.6 **Individual consultation**
>
> …Minutes of all formal individual consultation meetings will be taken; these will document the key points discussed and will not be a verbatim record.

14. For the purposes of the 2015 redundancy exercise, written guidance to managers on following the redundancy policy was issued in the form of a "Manager Guidance Pack".

15. On 12 March 2015, the claimant had his annual Performance and Development Review (PDR). Part of the PDR template required the claimant to state his goals for the coming year. Under this heading, the claimant stated, "P2 or managerial role". The claimant's current grade was P3, Principal Engineer. There is a dispute as to what was involved in a promotion to grade P2. In my view, the most reliable evidence on this topic comes from Mr Bailey. A P2 role was essentially a Managing Consultant. The post holder would be expected not only to carry out fee earning work but to win new fee earning work for themselves and for their subordinate colleagues. The claimant had no PDR objectives requiring him to win new business for others.

16. In 2015 the claimant was assigned to carry out some consultancy work for the Office of Nuclear Regulation ("ONR"). This work was related to a project on which the respondent was engaged in substantial fee earning work for the client, Hitachi. The project was known as the Advanced Boiling Water Reactor ("ABWR") Nuclear Power Plant. To avoid conflicts of interest, there was an established protocol requiring that the claimant would not carry out any fee earning work for Hitachi on that project. A commercial decision had been made by his then line manager to prioritise the claimant's work for ONR above the

prospect of his future deployment into the ABWR project directly for Hitachi. As a result, the claimant declined an offer to work directly for Hitachi in late 2015.

17. In January 2016, the claimant was due to begin phase 4 of the ONR work. Unfortunately for him, at the beginning of January 2016, phase 4 was postponed until the summer. As a result, the claimant was left with a large gap in his work programme. He was placed on the Available Staff List, which was a clearing system designed to allocate underutilised professionals to available work within the Clean Energy business.

18. One area into which the claimant was deployed was a concept known as the "U-Battery". The project was pioneered by a company called Urenco. A relatively junior Urenco engineer had been given a nine month design project. Mr Andrew Bailey, Director of Specialist Consultancy and Defence for Clean Energy, identified approximately 15 consultants to provide support to this junior engineer from time to time. The claimant was one of them. He attended regular meetings at which he reviewed the junior engineer's work and offered guidance. Overall, the fee earning work carried out by the claimant on this project was measurable in a small number of days rather than weeks. This is not to say that the claimant did not feel busy; it was just that his work was not recorded against active projects other than for a few days.

19. Another piece of work done by the claimant in January 2016 was on a Chinese nuclear power plant project known as "HPR1000". The claimant was asked to review a document. This took him a couple of weeks. The potential value of securing fee earning work with the Chinese company was tens of millions of pounds. As at January 2016, however, no active project had been established. The Chinese company was seeking out a number of potential business partners of which the respondent was merely one.

20. On 27 January 2016, the claimant had his next annual PDR. The record of that PDR included a statement that "future development could include CDM training which would help to make [the claimant] marketable to wider range of projects". The claimant expressed an interest in undergoing CDM training, but it was never provided to him. We think that the most likely explanation for this is the freeze on training budgets that was put in place in 2015.

21. The January 2016 PDR also recorded that, as a result of the delay in the ONR work, there had been a period of "underutilisation" which they had tried to use productively. At the time of completing this PDR the claimant's line manager was Heather Beaumont.

22. On 28 April 2016, Mr Clive White, the President of the Clean Energy Division, emailed all staff to notify them that there were likely to be redundancies. The financial results for Quarter 1 (January to March) and the revenue forecasts for the remainder of the year, in Mr White's opinion, showed that the 2015 cost saving measures had not been sufficient to make the business profitable. The number of proposed redundancies was 120. This email did not reach the claimant at the time it was sent. This was because, at the time, the claimant was absent from work on sick leave.

23. Amongst the roles requiring headcount reduction were a number of mechanical engineers across the Clean Energy business. A decision was made to pool all the mechanical engineers together for selection regardless of which part of the Clean Energy business they worked in. The group as a whole would then be divided into smaller pools based on the engineer's grade. One consequence of this decision was that mechanical engineers within each pool were likely to have different line managers and were likely to have been assigned to different projects. The pooling decision was not made based on job title but rather on the engineer's core discipline.

24. On 28 April 2016 a collective consultation meeting took place. Participating in the meeting were representatives of the respondent's management, the Prospect and Unite trade unions and direct employee representatives. This collective panel was known as the Partnership Panel. It was agreed during the collective consultation meeting that the respondent would use the same pools and selection criteria as in the previous 2015 redundancy exercise. No challenge was raised to the process. Agreements were reached as to the source material upon which performance and behaviour criteria should be assessed. There was also agreement as to the reference period to be used for comparing utilisation statistics.

25. Team briefing meetings took place on 29 April 2016 to inform affected employees that they had been placed in a pooled for redundancy selection. The claimant did not attend because he was on sick leave.

26. Unknown to the claimant at this stage a new Manager Guidance Pack was issued to those managers administering the redundancy process. This guidance pack echoed the previous Manager Guidance Pack and provided for largely the same procedure to be followed. No representations were made that a different procedure ought to be adopted.

27. Here are some relevant extracts from the 2016 Manager Guidance Pack:

    27.1. The process envisaged five separate conversations between management and individuals at risk of redundancy. The first was "breaking the news" to employees who had been placed in a pool for selection. This briefing was intended to take place before the individual had been selected from within the pool. The next conversation was described as a "first consultation meeting". By this point individuals were to be informed that they had been selected and were now at risk of redundancy. Consultation meetings 2 and 3 were intended to discuss in more detail the rationale for the redundancy and how to mitigate its effects. There would then be a final consultation meeting (CM4) confirming the redundancy and explaining the right to appeal. The guidance provided that "step 4 takes place after the formal consultation process has concluded".

    27.2. The guidance provided in bold type that "employees that are off sick...should still be consulted".

27.3. The procedure provided for a first consultation meeting on approximately 5 May 2016 “as soon as scoring is complete”.

27.4. There was nothing in the manager guidance pack that required the respondent to send notes of a consultation meeting to the individual for agreement prior to the following consultation meeting taking place.

28. The Manager Guidance Pack also contained detailed guidelines for completion of selection criteria forms. It is necessary to set these out in some detail. It started with a general overview of the scoring system. Scores against each criterion range from 1-6. The overview explained that “a score of 3 indicates an individual who is performing at an appropriate level in their current role”.

29. The first selection criterion was headed “Technical Skills”. The narrative provided:

> “This is intended to measure not just an individual’s level of technical expertise against the requirements of the role, but also to measure how well their current skill set matches the particular needs of the company at this point in time…Where an individual has a high level of expertise in a skill area for which there is limited/low demand they will potentially be given a low rating in this section.”

30. The score (1-6) against this criterion was multiplied by a weighting factor of 30.

31. The third Criterion was headed “performance and Personal Contribution”. It was split into three subcategories. The scores against each subcategory were added together and the aggregate score (maximum 18) was given a weighting factor of 20. One of the subcategories was headed “Commitment to Success of Department/Company”. To achieve a score of 3 within this subcategory, an employee was expected to demonstrate commitment to the success of both their department and the company, to perform what was expected of them personally and actively contribute to team/department success, and be collaborative and usually have a helpful and positive attitude towards work and the success of the business. A score of 4 was appropriate for a candidate who openly demonstrated commitment to the success of both their department and the company. They would meet and sometimes exceed expectations of them personally, and actively contribute to team/department success.

32. Criterion number 4 was headed “Utilisation”. The scores within this criterion were awarded according to utilisation figures for the agreed reference period. Fee earning work was included. Also included was non fee earning work provided that the individual had been assigned those duties based on their skills and capabilities rather than their availability. The score (1-5) was multiplied by a weighting factor of 15.

33. The fifth criterion “Interpersonal Skills and Potential” was divided into four subcategories, one of which was “Growth Potential”. This criterion is the focus of the claimant's complaint of age discrimination. We set it out in full here:

"Level to which individual demonstrates abilities which are likely to enable them to progress further within Amec Foster Wheeler and willingness/ability to take advantage of these opportunities.

'Progress' can include promotion to higher levels in the Amec Foster Wheeler hierarchy or significant further development of their current role."

1	…
2	Currently meets the main needs of their role and adequately keeps their skills and knowledge up-to-date BUT at or near the ceiling for development and/or unlikely to find opportunities to develop further within [the respondent]; and/or employee's personal preferences, or attitudes mean that they are likely to remain at their current level.
3	Currently meets the needs of their role and adequately keeps their skills and knowledge up-to-date.
4	Able and willing to develop themselves and likely to progress further within the business
5	Proactive in developing themselves to meet current needs and likely to make significant further progress within the business
6	…

34. The aggregate score from all the subcategories of Interpersonal Skills and Potential was multiplied by a factor of ten.

35. On 5 May 2016 Mr Bailey telephoned the claimant, who was still at home on sick leave, to inform him of the reduction in headcount among the mechanical engineers. He did not share with the claimant the selection criteria or scoring methodology.

36. The task of assigning scores to the claimant against these criteria was given to the claimant's then line manager, Mr Codling, and to Mr Bailey. Mr Codling had only recently taken over line management responsibility for the claimant and had

little direct knowledge of the claimant's work. He consulted the claimant's PDRs and curriculum vitae. It was Mr Codling's opinion, shared by Mr Bailey, that the claimant's main skill set lay in the field of power turbines and steam turbines in particular. Within the Clean Energy business, these skills would only be in demand if they could be used in the nuclear power industry. Mr Codling and Mr Bailey thought that there as little prospect of substantial nuclear power steam generation work going forward. The claimant therefore received a score of 2 against the heading "Technical Skills".

37. The scoring rationale was recorded on a template selection criteria form. On this form Mr Codling used an unfortunate phrase. He described the claimant as having "a wealth of mechanical engineering skills (particularly in **steam generation**)". The phrase "steam generation", which we have emphasised, was a technical term within the nuclear power industry. It meant making steam. One look at the claimant's CV would be enough for Mr Codling to have realised that that was not the claimant's area of expertise. I accept the evidence of Mr Bailey that what Mr Codling really meant was not making steam, but generating power from steam.

38. The claimant received a score of 3 for commitment to success of the department.

39. Against the utilisation criterion, the claimant was also given a score of 3. It is not entirely clear which set of figures was used to underpin this score. One set of figures was supplied on 13 June 2016, after the scoring process was complete. The claimant's utilisation figure for Quarter 1 of 2016 was 35% and for Quarter 4 of 2015 was 46%. Mr Codling, however, believed that the claimant's utilisation rate was 33%. I do not know what source material he used to come to that belief. On either set of figures, however, the appropriate score was 3.

40. The claimant was given a score of 2 for growth potential. The initial feedback on the template form stated:

> "It is considered that [the claimant] would be unlikely to progress further in the company, given his high grade."

41. We return to Mr Bailey's reason for giving the claimant such a low score later in these reasons.

42. The claimant received an aggregate score of 259.17. This placed him at the bottom of the pool. In all, four employees from the pool were selected to be at risk of redundancy. Five employees within the pool escaped selection. The initials of the fifth placed employee (the lowest scoring "safe" employee) were DM. His aggregate score was 441.50. Second from bottom in the pool was employee MD. He received an aggregate score of 417.50.

43. The highest score for growth potential given to any employee in the pool was 4. This score was shared by four employees. They were NM, MD, JA and JM. One of these four, NM, was 60 years old. Three candidates within the pool were given

a score of 2 for growth potential. One of these employees was PR, whose age was 52. He was the second youngest in the pool.

44. The employees who escaped selection for redundancy ranged in age from 42 to 60 years old. Of those selected for redundancy, the youngest was 43 and the eldest was 61.

45. The claimant was informed of his score in a telephone call on 9 May 2016. In that conversation he was also told that he had been selected to be at risk of redundancy. The same day, the claimant emailed Mr Bailey. He expressed his surprise at having been selected. His email drew Mr Bailey's attention to two projects on which the claimant expected to be working. One of these was the ONR work. The other was the HPR1000 project. The claimant drew Mr Bailey's attention to the fact that he was still on sick leave and not in a position to discuss the issue straightaway. He proposed instead to discuss the matter in the office when he returned to work on 23 May 2016. In the meantime, his email requested a copy of the scoring criteria. These were duly sent to him on 10 May 2016.

46. On 23 May 2016 the claimant returned to work. The same day a meeting took place between the claimant and Mr Bailey to discuss the proposed redundancy. This meeting was treated by the respondent as being the second consultation meeting (CM2), although in reality there had not been any face-to-face meeting before that day. The claimant was accompanied by Ms Rachael Brewer, a trade union representative. Mr Codling and a note taker were also present in the room.

47. At the meeting, the claimant challenged the scores that he had been given against the selection criteria. He identified eight criteria where he should have been given a higher score. Growth potential was not one of them. The same day, the claimant signed the typed notes of the meeting.

48. There is a dispute as to whether Mr Bailey made a particular remark at this meeting. It is the claimant's case that Mr Bailey said that the growth potential criterion favoured the young staff. That is how the remark was described in the claimant's witness statement. The version that was put to Mr Bailey in cross examination was that Mr Codling had said at the meeting that the claimant's low score was due to his age and grade. Mr Bailey denied both versions.

49. For our part we were unable to make a precise finding as to exactly what was said. It may be that either Mr Bailey or Mr Codling did say something along the lines that the growth potential criterion might favour a more junior member of staff. It is even possible that one of them mentioned "younger" staff as being more likely to achieve promotion. We were unable to find what the precise context for such a remark was if it was made and whether it was in answer to a direct question from Ms Brewer. We are, however, satisfied that neither Mr Bailey nor Mr Codling told the claimant at this meeting that he had been given his low growth potential score because of his age. We have reached this view for the following reasons:

    49.1. The version put by the claimant does not appear in his own witness statement or Ms Brewer's notes of the meeting.

49.2. Had either Mr Bailey or Mr Codling made a direct admission that the claimant's score was due to his age, we would have expected Ms Brewer to have insisted that that remark appeared in the notes of the meeting. As it was, the claimant signed the notes asking for one amendment to be made but with no suggestion that the disputed remark had been uttered.

49.3. Had a direct admission been made of age discrimination, we would have expected Ms Brewer to have challenged it at the meeting and for either the claimant or Ms Brewer to have raised the matter at one of the subsequent meetings. This was not done.

49.4. The claimant subsequently prepared written grounds for challenging his scores. He did not challenge the growth potential score.

49.5. The claimant has explained to us that his reason for keeping h is silence over the growth potential score was because he wished to concentrate his efforts on challenging those scores that had the highest weighting. We did not accept this to be the reason. It does not explain why the claimant did challenge scores which were given equal weighting to the growth potential score but did not challenge growth potential.

50. On 27 May 2016, the claimant submitted his written grounds for challenging his selection scores. His grounds were well structured, identifying each disputed criterion in a separate heading and developing his arguments in a series of subheadings. The heading for each criterion followed the same format. Next to the criterion itself, the claimant stated his actual score followed by his expected score. Against some criteria, the expected score was prefaced by the word “minimum”. For example, the first heading read, “Technical skills; scored: 2, expected: minimum 5”. Against other criteria, the heading omitted the word “minimum”. For example, “Team working; scored: 4, expected: 5”. The criteria under challenge were the same as those he had mentioned at the CM2 meeting. Growth potential was not one of them.

51. We have calculated what the claimant's revised score would have been had all his grounds of challenge been successful. Had he been given all his expected scores and expected minimum scores (as the case may be) his aggregate score would have been 409.17. This score would not have been enough to lift him off the bottom of the pool. He would still have been six points adrift of MD (second from bottom), and 32 points short of DM’s score (the lowest placed “safe” employee).

52. The claimant is a modest man. It is quite possible that he thought that his scores should have been significantly higher than the expected minimum. He did not make this fact clear to the respondent in his grounds of challenge.

53. The claimant's grounds of challenge were passed to Mr Rob Habberley, the Head of Profession for Mechanical Engineering. Mr Habberley considered all scoring challenges from all mechanical engineers. He did not line manage any of them, but oversaw their activities in what he described as a “dotted line”.

54. Mr Bailey chased Mr Habberley for his feedback on the scoring challenge by email dated 7 June 2016. Mr Habberley replied the following day. His email expressed the following conclusions:

    54.1. The score of 2 for technical skills was upheld. Essentially, Mr Habberley's reasoning was that the claimant had spent over 200 days on the available staff list and the next opportunity to utilise the claimant's skills appeared to be more than six weeks away.

    54.2. Mr Habberley agreed with the claimant that the appropriate score for qualification and experience was 5.

    54.3. The score of 4 for achievements was upheld. Mr Habberley did not interfere with the claimant's score of 3 for commitment to success of department/company. The reasoning was sparse: "Others in the pool have strived to be actively involved in TDM and mentoring support to the capability."

    54.4. The score for utilisation was upheld at 3.

    54.5. Mr Habberley was prepared to moderate the claimant's score for interpersonal skills and potential up to 4.

    54.6. As a result of Mr Habberley's decision, Mr Bailey elevated the claimant's aggregate score from 259 to 276. He was still bottom of the pool.

55. The next consultation meeting (CM3) took place on 10 June 2016. The main participants and companion were the same as in CM2. Mr Williams of Human Resources also attended. There was a discussion of Mr Habberley's feedback. The claimant did not at this stage have Mr Habberley's decision in writing; nor did he have a revised written scoring form. Mr Bailey agreed to provide the claimant with these documents the same afternoon. The claimant did not mention the growth potential score. He suggested, as an alternative to being made redundant, that he could consider part-time working, for example four days a week, or take unpaid leave until his ONR work restarted. There was a discussion of proposed work for Rolls Royce on a project known as "the Small Modular Reactor" ("SMR"). Mr Bailey explained that the SMR project was still at a very early stage and still in the tendering process. The claimant was encouraged to submit his CV to Mr Andrew Sinclair, the chief technologist working on the project. This the claimant did the same day.

56. The final consultation meeting (CM4) took place on 14 June 2016. The claimant did not receive the notes of CM3 until 30 minutes before the meeting. He did not receive the written feedback from Mr Habberley or the revised score sheet until ten minutes before the meeting. The claimant did not ask for the meeting to be postponed. At the meeting the claimant was informed that he was to be dismissed for redundancy.

57. The claimant raised his utilisation score. He pointed out that the data on which he had been scored appeared to have been different from the data provided to him

by email the previous day. Mr Bailey explained that all employees who had been scored had been scored within the same time reference period and that providing further utilisation data would not have any impact on the current situation. There was a discussion about the claimant's proposal to work part-time or take unpaid leave. Mr Bailey explained that they were unable to discuss these alternatives because no opportunities for alternative work had been found. Much of the discussion was about the mechanism by which the claimant's employment should be terminated. The claimant elected to work his notice.

58. By a letter dated 16 June 2016 the respondent confirmed the decision to terminate the claimant's employment. Notice was given until 13 July 2016.

59. In an undated letter written shortly after 16 June 2016, the claimant appealed against his redundancy. The first ground of appeal was unfair scoring. He seized upon the phrase “steam generation” that had been used to underpin his low score for technical skills. Characterising his skills and experience in this way was without foundation. The claimant also challenged his scores for performance, contribution and utilisation, supporting each challenge with reasoned arguments.

60. The second ground of appeal was that the growth potential score had been discriminatory. As he put it, there was an “inherent disadvantage in the process for older staff”. He believed that this criterion had directly targeted him.

61. The third ground of appeal was based on being informed of the consultation period by telephone conversation on 5 May 2016 whilst he was off sick. He also complained about the inadequate time between receiving written feedback and the notes of CM3 and the start of the CM4 meeting.

62. A fourth ground of appeal reminded the respondent of the forthcoming ONR work. The claimant was the only mechanical engineer work who could carry out such work.

63. On 11 July 2016 the claimant received an email from Mr Peter Moore, Head of Regulatory Support Directorate. The email concerned the ONR work on which the claimant had been engaged in 2015. The email acknowledged that there had not been much potential work that aligned with the claimant's capabilities. Given, however, that there was a significant volume of work for ONR expected to start in the New Year, Mr Moore suggested that one potential option might be for the claimant to take unpaid leave for “a few months”. As an alternative, Mr Moore proposed to re-engage the claimant as a contractor when the work came in.

64. The claimant's appeal hearing was chaired by Mr Mike Hughes, Vice President, Commercial. The claimant was accompanied by two union representatives. There was a discussion about the claimant's grounds of appeal. The claimant pointed out that his low utilisation score was due in part to his being unable to do any fee earning work that conflicted with his work for ONR. He stated his belief that the technical skills score had been based on a false premise in order to get rid of him. The reason for doing so, in the claimant’s view, was his age. The claimant also complained about not having been given the scores of the other people in

the pool. He reminded the panel of his offer to reduce his working hours or take unpaid leave.

65. Following the appeal meeting, the panel made further enquiries. Mr Hughes discussed with Mr Habberley why the claimant had been given such a low score for technical skills. Mr Habberley confirmed to Mr Hughes that steam generation had not been seen as the claimant's core skill. Rather, the claimant had a breadth of experience. Mr Habberley did not explain the distinction between making steam and generating power in steam turbines.

66. Mr Hughes considered whether the claimant had been unfairly underscored because of his conflict of interest arising out of his ONR work. In Mr Hughes' view the conflict of interest was not as pronounced as the claimant thought it was. The claimant had been free to carry out further work for Hitachi on projects outside ABWR provided his skills were in demand. The real problem was that there as an insufficient demand for his skills.

67. Mr Hughes gave active thought to the claimant's proposal to reduce his hours or take unpaid leave. In Mr Hughes' opinion, the forthcoming work was too speculative to justify taking this course. He did not want to leave the claimant "hanging" for a lengthy period of time when the prospects of an upturn in work were so uncertain. Overall, Mr Hughes and the panel decided to uphold the dismissal. The claimant was notified of this fact by a letter dated 24 August 2016.

68. Phase 4 of the ONR work finally started in December 2016. The claimant worked for the respondent as a consultant carrying out such work until the end of March 2017.

69. We have attempted to take a snapshot of the respondent's workstream in August 2016 when the appeal process was reaching its conclusion. There are essentially four areas where the claimant says that he could have been deployed:

    69.1. Rolls Royce

    69.2. ONR

    69.3. U-battery

    69.4. China HPR

    We look at each in turn.

    Rolls Royce

70. As at August 2016 there were only two people doing fee-earning work for Rolls Royce. They were both Managing Consultants. They were not mechanical engineers. There was a memorandum of understanding between but no written scope of work. Later in the year purchase orders were raised for specific pieces of work just before that work started. The main purpose of the documentation was the regularise billing. With hindsight, it may well be that the claimant could have done some of that work. The position in August 2016, however, was that the obtaining of that work was very speculative.

ONR

71. The next category of work was the ONR work and in particular stage 4. As at August 2016 it was not clear when stage 4 was going to be implemented and what the delay was going to be. It was relatively clear that if that work were to materialise the claimant would be the preferred person to do it. It was not clear, however, when it would be done. There was a budget for that work. That could have covered a substantial period of the claimant's working year, but we do not know how much of that budget was actually going to be for the kind of work that they needed the claimant to do. As we have already recorded, we now know that the claimant eventually did approximately 3-4 months' work on this project as a contractor.

U-Battery

72. The third area was the U-Battery. Only two small pieces of work were done in this field. It was not clear as at August 2016 whether that work was going to be needed or not. Even if it was clear that there would be work for a mechanical engineer in that field it would have been open to the respondent to decide that one of the higher scoring employees within the pool was capable of doing that work instead of the claimant. Just because he had been advising a junior engineer from Urenco on an earlier piece of development work did not mean that it had to be the claimant that would go on to do the fee earning work.

HPR1000

73. That leaves us with the China HPR work. By August 2016, this venture still very speculative. The respondent was one of a number of providers who were in conversation with the Chinese company. No project had been set up and there was no fee earning work to be done. The potential rewards were in the region of hundreds of millions but there was no certainty and no reliable prospect of that work actually being landed.

74. With the exception of the reasons why the claimant was given his Growth Potential score (to which we return), this concludes our findings of fact.

Relevant law

75. Section 98 of ERA provides, so far as is relevant:

98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is … a reason falling within subsection (2) …
(2) A reason falls within this subsection if it….(c) is that the employee was redundant…
(4) Where the employer has fulfilled the requirements of subsection (1), 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.

76. Section 139 of ERA defines redundancy. It reads, relevantly:

> (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…. Have ceased or diminished or are expected to cease or diminish.

77. "That business" means the business for the purposes of which the employee was employed by the employer: s139(1)(a).

78. Where the reason for dismissal is redundancy, the tribunal must consider whether the employer acted reasonably or unreasonably in treating redundancy as a sufficient reason to dismiss. In *Williams v Compair Maxam Ltd [1982] IRLR 83*, the EAT set out the standards which should guide tribunals in determining whether a dismissal for redundancy is fair under s 98(4). Browne-Wilkinson J, giving judgment for the tribunal, expressed the position as follows:

> "… there is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:
>
> - The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.
> - The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.
> - Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.

- The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.
- The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.

The lay members stress that not all these factors are present in every case since circumstances may prevent one or more of them being given effect to. But the lay members would expect these principles to be departed from only where some good reason is shown to justify such departure. The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as is reasonably possible should be done to mitigate the impact on the work force and to satisfy them that the selection has been made fairly and not on the basis of personal whim."

79. It is not for the tribunal to substitute its view for that of the respondent. The tribunal can intervene only where the respondent has acted so unreasonably that no reasonable employer could have acted in that way.

80. An employer dismissing for redundancy must act reasonably in deciding on which employee or employees should be "pooled" for selection. In *Capita Hartshead Ltd v Byard [2012] IRLR 814,* Silber J summarised the relevant legal principles in this way:

"Pulling the threads together, the applicable principles where the issue in an unfair dismissal claim is whether an employer has selected a correct pool of candidates who are candidates for redundancy are that

(a) "It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted" (per Browne-Wilkinson J in *Williams v Compair Maxam Limited [1982] IRLR 83*);

(b) "…the courts were recognising that the reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn" (per Judge Reid QC in *Hendy Banks City Print Limited v Fairbrother and Others* (*UKEAT/0691/04/TM*);

(c) "There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem" (per Mummery J in *Taymech v Ryan EAT/663/94*);

(d) the Employment Tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has "*genuinely applied*" his mind to the issue of who should be in the pool for consideration for redundancy; and that

(e) even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it."

81. Tribunals cannot substitute their own selection criteria for those of the employer. They can interfere only if the criteria adopted are such that no reasonable employer could have adopted them or applied them in the way in which the employer did (see eg *Earl of Bradford v Jowett (No 2)* [1978] IRLR 16, [1978] ICR 431; and *NC Watling v Richardson* [1978] IRLR 255, [1978] ICR 1049).

82. Having devised selection criteria, the employer must then fairly apply those criteria fairly to the individuals within the pool. Again, the tribunal must not substitute its own view for that of the employer. It is an error of law for tribunals to subject scoring decisions to microscopic analysis (or "over-minute investigation"): *British Airways plc v. Green* [1995] IRLR 437, CA. As explained by Pill LJ in *Bascetta v Santander* [2010] EWCA Civ 351:

> "… it is sufficient for the employer to show that he set up a good system of selection and that it was fairly administered, that ordinarily there will be no need for the employer to justify the assessments on which the selection for redundancy was based."

83. An employer will not usually dismiss fairly for redundancy unless it makes reasonable efforts to consult its employees. In *R v British Coal Corporation and Secretary of State for Trade and Industry ex parte Price and Others* [1994] IRLR 72, Glidewell LJ said this:

> "24. It is axiomatic that the process of consultation is not one in which the consultor is obliged to adopt any or all of the views expressed by the person or body whom he is consulting. I would respectfully adopt the tests proposed by Hodgson J in *R v Gwent County Council ex parte Bryant*, reported, as far as I know, only at [1988] Crown Office Digest p19, when he said:
>
> 'Fair consultation means:
>
> (a) consultation when the proposals are still at a formative stage;
>
> (b) adequate information on which to respond;
>
> (c) adequate time in which to respond;
>
> (d) conscientious consideration by an authority of the response to consultation.'"

84. Where the employee appeals against dismissal, the tribunal must examine the fairness of the procedure as a whole, including the appeal: *Taylor v. OCS Group Ltd* [2006] EWCA Civ 702.

Conclusions – age discrimination

85. We start with the complaint of age discrimination. The claimant was treated less favourably than others when he was given a score of 2 for Growth Potential. We have to ask ourselves, first, whether the criterion was introduced in order to make it easier to dismiss older workers. Second, we must consider whether Mr Codling and Mr Bailey gave the claimant a low score because of his age.

86. The scoring methodology for Growth Potential was not ideal. It appears to have conflated different factors:

    86.1. Ability was conflated with willingness. An employee might be enthusiastic to be promoted, but in his manager's opinion he might lack the skills and experience to achieve the promotion.

    86.2. Development within the role was conflated with promotion to a different role. An employee might show the utmost commitment to developing within their own role but have little ambition to be promoted.

    The scoring methodology offered little if any assistance in deciding what scores should be given in these circumstances.

87. It is right, therefore, that we should examine the surrounding evidence closely to see if this rather opaque criterion was introduced for a more sinister purpose. Having done so, we are satisfied that the choice of this criterion had nothing to do with any improper considerations of dismissing older employees. We are also satisfied that in no sense whatsoever was the score given to the claimant motivated by the claimant's age.

88. The age profiles and scores of employees within the claimant's pool strongly suggest that age was not a factor in the selection process. The respondent was not trying to get rid of its older employees. Our views are confirmed by the fate of the more junior mechanical engineers. At least as many individuals were selected for redundancy from within those pools as from the claimant's more senior pool.

89. Mr Bailey gave the claimant a score of 2 because he did not think that the claimant had the ability to be promoted to level P2 – Managing Consultant. He was looking at prospects of successful promotion rather than desire to be promoted. For the purposes of scoring, he thought promotion to a higher-graded role was more important than progression within the existing role. This meant that, whilst the claimant was demonstrating a willingness to expand his skills within his existing role, and had ambitions to be promoted to P2, these factors carried relatively little weight. Mr Bailey's belief may not have been *correct,* but that does not mean it was not genuinely held. So for those reasons we are satisfied that the claimant's age was no factor at all in the score of 2 for growth potential.

90. It is therefore unnecessary for us to decide whether the claimant's score of 2 was a proportionate means of achieving a legitimate aim. This would not have been an easy question to decide. We heard brief submissions about it from the respondent. We did not hear submissions about it from the claimant. We think it best not to express a concluded view on that topic. In particular, this being a claim of direct discrimination, we would have wanted to have heard further submissions as to whether the aim that was relied on by the respondent was one of sufficient public policy importance to make it capable of justifying direct age discrimination. That, however, is by the by. Our main conclusion is that the claimant's score had nothing to do with his age and his claim for age discrimination therefore fails.

Conclusions – unfair dismissal

Reason for dismissal

91. We are satisfied that the reason for dismissal was redundancy. The claimant was dismissed because the respondent had a reduced need for employees to do the work of mechanical engineering.

Reasonableness - general

92. We have asked ourselves whether the respondent acted reasonably or unreasonably in treating that reason as sufficient to dismiss.

93. The starting point is that the respondent is a large employer. We would expect an organisation of this size:

    93.1. to devote considerable effort and resource to consulting its employees collectively and individually;

    93.2. to adopt a high standard of decision-making in the identification of the pool for selection and selection criteria;

    93.3. to take human resources advice, or be held to the standards expected of an organisation that had taken such advice; and

    93.4. and to devote considerable effort and resource to exploring alternatives to dismissal.

Reasonableness of the decision to make redundancies

94. The claimant does not dispute that the respondent decided that it needed fewer mechanical engineers. He accepts that this decision was a response to the economic situation in which the respondent found itself. It is his case, however, that this state of affairs only came about because of the respondent's mismanagement of the business. In our view this is not a ground for finding that the dismissal was unfair. We have two reasons for coming to this view. The first is that our focus is on the decision to dismiss for redundancy and not on the management of the business that brought about the redundancy situation. The second is that, for public policy reasons, it is not open to a tribunal to question an employer's decision to make redundancies. It was for the respondent to decide how many mechanical engineers it needed.

Consultation

95. Taking an overview, we would regard the overall process of consultation as being reasonable. There was collective consultation with staff-side representatives and three effective consultation meetings with the claimant. He was provided with his scores, the selection criteria, the scoring rationale and an explanation of how he had been scored against the criteria. He had an opportunity to challenge his scores. The consultation process was followed by an appeal.

96. The claimant makes 5 criticisms of the consultation process. We address each one in turn.

    (1) Consultation started whilst claimant absent on sick leave

97. If this is a criticism of the decision to inform the claimant that he was at risk whilst he was on sick leave, it is unfounded. By providing advance warning of redundancy whilst the claimant was absent, the respondent was following its own management guidelines. It was sensible of them to take this course. Had the

respondent kept absent employees in the dark, it would have been open to accusations of treating ill employees unfavourably in comparison with those who were well enough to attend the workplace.

98. In fact, formal consultation with the claimant did not start until 23 May 2016. This was a quite reasonable time to begin. The claimant had asked for the first meeting to take place when he was well enough to return to work.

(2) Delay in providing the claimant with the criteria and his individual scores

99. The second area of criticism is that the claimant was not given the criteria and the score before he was informed that he was at risk of redundancy. This, we find, is asking too much of the respondent. There was collective consultation about the criteria before the scoring took place. There was nothing in the respondent's own written procedures that required the respondent to provide that information before informing employees that they were at risk. Indeed the management guidelines expressly provided for individual consultation to begin once the scoring exercise had taken place.

(3) Inadequate time to respond to the notes of Consultation Meeting 3 and the scoring challenge feedback

100. The claimant received the written notes of Consultation Meeting 3 only 30 minutes before the start of Consultation Meeting 4. He received the scoring challenge feedback only 10 minutes prior to the start of that meeting. We find that for a large employer such as the respondent this was a regrettable shortcoming. Although there was nothing in the respondent's written procedures specifying the timescales within which these documents should be provided, we think that, as as matter of good practice, employees should be given an opportunity to comment on feedback to the challenge to their scores before a decision is taken to dismiss them. Effective challenge to the scores was important. Significant elements of the scoring process were based on the subjective opinion of a manager. Different employees within the pool had different managers. Some might be generally more harsh or generous than others. Mr Habberley's role in moderating the scores was pivotal. His reasoning was therefore an important piece of information which the claimant should have had more opportunity to digest.

101. Had there been no appeal, we might well have found that this defect rendered the overall process unfair. As it happened, the appeal put it right. At the appeal, the claimant had the opportunity to put forward all the points that he would have chosen to present at Consultation Meeting 4 if he had received the notes in sufficient time.

(4) Failure to send the appeal meeting notes to the claimant

102. The respondent's written procedures did not provide for notes of appeal to be sent for agreement. Nor did they provide for the notes to be agreed prior to the appeal decision taking place. It is common even for large employers to make decisions following disciplinary or appeal meetings without waiting for the minutes of those meetings to be approved. Even if the respondent should have sent the notes, to the claimant, the omission to do so had no impact on the decision to dismiss. There was no inaccuracy in the minutes that actually had a bearing on Mr Hughes' decision to turn down the appeal.

(5) Failure to inform the claimant of the identity and scores of other employees in the pool

103. The claimant was not told who else was in the pool for selection or what their scores were. We understand why this was a source of frustration to the claimant. Without knowing his rivals' scores, he had no sense of how far his own score would have to improve before another employee could be selected for redundancy in his place. Put more simply, he had no benchmark against which to pitch his own challenge. He did not know whether the scores he put forward would make him successful or unsuccessful within the pool. We do not find, however, that this takes the consultation outside the range of reasonable responses. We must remind ourselves that this was a collectively-agreed consultation process that had already been followed in a previous redundancy exercise. There was no staff-side call for individuals to be informed about their colleagues' scores. We are not surprised by the absence of such a challenge. In our experience it is not uncommon for employees at risk to be kept ignorant of who the other people were in the pool and what scores they had received. When individuals start arguing about their colleagues' scores it introduces additional complexity and risks spreading disharmony.

Pool for selection

104. In this case we are satisfied that the respondent genuinely applied its mind to the problem and chose a selection pool that a reasonable employer could have chosen.

105. As we have found, all the employees in the claimant's pool were, by discipline, mechanical engineers. It was appropriate to compare them within the same pool. Even if there were others within the claimant's pool who should not have been there, we do not see how their inclusion worked to the claimant's disadvantage. The more people there were in the pool, the better the claimant's chance of survival.

106. It was reasonable to separate the pools by grade. The claimant suffered no disadvantage by splitting the pools. Amongst the lower-grade pools, the proportion of employees selected for redundancy was the same or higher than in the claimant's pool. Had the claimant been pooled alongside the more junior engineers, he could only have been worse off.

Choice of selection criteria

107. The selection criteria and scoring methodology were collectively agreed. With the exception of the Growth Potential criterion they were hard to fault.

108. The exception is the Growth Potential criterion. Just because we have found that the criterion was not inserted to make it more likely that older employees would be dismissed, that does not mean that we agree with it. The methodology made it hard to give a meaningful score.

109. We have asked ourselves whether this unhelpful criterion took the whole of the selection criteria outside the range of reasonable responses. We do not think we can go that far. Most of the criteria were robust. One imperfection did not mean that it was not open to a reasonable employer to choose them.

Application of criteria to the claimant

Process by which scores applied

110. We now look at how the criteria were applied to the claimant. The claimant's first criticism is that he was assessed by the wrong people. The structure adopted by the respondent was for the line manager and the "dotted line manager" to act as assessors, with moderation being provided by the Head of Profession. That in principle appeared to us to be an appropriate structure for a pool of employees who had the same discipline but worked in different departments and within different management structures. What it meant was that the moderation process had to be rigorous. We note that this was a way of applying the criteria that had been done in previous exercises and in the collective consultation meeting there was no point raised by the union to say that things should change. The claimant did not say in the consultation process or the appeal that the wrong people had assessed him, and when asked in his oral evidence to suggest somebody who was better placed to do the assessment the claimant could not say who such a person was.

111. We have considered whether the respondent should have consulted Mr Moore before attributing particular scores to the claimant, either in the initial scoring process or during the consultation process. We accept Mr Habberley's evidence that he did speak to Mr Moore and formed the view that the demand for the claimant's ONR work was still speculative. We also take into account that the claimant did not actually suggest in the consultation process that anybody should go and speak to Mr Moore, although he did provide emails from Mr Moore and commented on what those emails tended to show.

Overview of scores

112. Turning now to the scores themselves, we first of all take an overview. The respondent was entitled, in our view, to proceed on the basis that the claimant was saying that he should have been given the "expected minimum" scoring that was set out in his written challenge. We accept that the claimant was a modest man and would not seek to overblow his skills and experience. But we cannot expect the respondent to think that the claimant was arguing for scores substantially in excess of those for which he contended in his challenge. The claimant's expected minimum scores were already significantly higher than the scores he had been given. Mr Habberley needed a reasoned basis for preferring the existing scores to the claimant's expected minimum. He did not need a reasoned basis for not going beyond that minimum.

113. This presents the claimant's case with something of a difficulty. Had the respondent given the claimant the minimum expected scores provided in his written challenge, the claimant would still have been rated at the bottom of the pool. He would still have been three places adrift of the lowest-placed employee who was safe from redundancy.

Technical skills

114. It was reasonably open to the respondent to give the claimant a score of 2 for technical skills. The score had a rational basis. In particular, Mr Bailey was entitled to take the view that, whilst the claimant was highly skilled, his skill set was in an area that was low in demand. It may be that the claimant's skills fell within the respondent's "core business" in the sense that the respondent aspired

to be able to carry out substantial amounts of work in the field of power generation, especially within the nuclear industry. At the time of this redundancy exercise, however, the work in this area was more of an aspiration than a present reality. We accept the evidence of Mr Habberley that the New Build programme within nuclear power was proceeding much more slowly than had initially been expected and there were no current projects in place requiring the deployment of those particular skills.

115. We think that it is unfortunate that Mr Codling did not have a particularly good knowledge of the claimant's skill base. He was in the main proceeding on the basis of what he heard from others and what was set out in the claimant's CV rather than personal experience. This was a product of the fact that the initial assessor was chosen to be the line manager and Mr Codling had only recently been appointed in post. We accept the evidence of Mr Bailey that Mr Codling's description of "steam generation" was not intended just to refer to the process of producing steam: it was an understanding from the claimant's CV that his expertise was in the field of generating power from steam, by the use of steam turbines.

Commitment

116. Turning now to the score for commitment to the success of the department, we think that the score of 3 was unduly harsh on the claimant. We think that the evidence that he provided in support of his challenge was clear evidence that merited a score of 4 or more.

Utilisation

117. The claimant advances two criticisms of his utilisation score:

117.1. There was a discrepancy between the figures provided by Human Resources and those relied on by Mr Habberley. We were not able to reconcile the two figures, but nor were we sure that they were irreconcilable. It may be that they related to slightly different time periods. At any rate, they all pointed to the claimant having been significantly under-utilised.

117.2. It was not the claimant's fault that he was underutilised. We have some sympathy for the claimant's predicament. The main reason for his underutilisation was that he had declined a substantial piece of work for Hitachi on the basis that he was already committed to doing work for ONR which was a priority of the respondent. An important phase of that work was cancelled at short notice and it was difficult for the claimant to find work to replace it. We do, however, think that there was a rational basis for the respondent to conclude that underutilisation was a hazard that all employees faced. Any engineer's work could suffer from last-minute cancellations. Those engineers whose skills were heavily in demand would find it easier to replace the work than those for whom demand was weaker.

Growth Potential

118. We would not necessarily have given the claimant a score of 2 for Growth Potential. A reasonable employer could quite easily have awarded a higher score. Much would depend on which of the various conflated factors took prominence in the employer's reasoning. An employer looking for signs of

development within the role and ambition to be promoted would have found evidence justifying a score of 4 or higher. But it was open to a reasonable employer to concentrate on evidence of the candidate's *ability* to be promoted, as well as their ambition. Viewing the evidence through that lens, a reasonable employer could have thought a low score appropriate. Mr Bailey genuinely held the view that the claimant had not demonstrated the ability to rise to the level of P2 Managing Consultant.

119. The claimant disagrees. He says that he was already doing the kind of work that Mr Bailey expected a Managing Consultant to do, namely selling the skills not just of himself but of other members of the team. We do not think that this was a core part of his role because of the absence of relevant PDR objectives in this area.

Overall scores

120. Overall we have looked at the scoring exercise to see whether it was done in a way that no reasonable employer could have done. We are not prepared to go that far. We think that it was open to the respondent to give the claimant scores against the criteria that meant that he was well within the group of employees who were at risk within the pool.

Alternative employment

121. We now turn to whether there were reasonable efforts to find alternatives to dismissing the claimant.

122. We have looked at the four areas of work that the claimant says he could have done. Our findings at paragraphs 69 to 73 set out what the prospects of fee-earning work were in those areas.

123. Against that backdrop we have looked to see whether the respondent should have done more to investigate the claimant's proposal of taking unpaid leave or reducing his working hours. We would not necessarily have taken the same view as the respondent did. In the respondent's position we might well have made further efforts to establish what work was available in the next six months and whether the claimant would object to being kept waiting for that long. But that is not the test we must apply. We think that it was open to a reasonable employer to decide that the work was so speculative that it would be unfair to leave the claimant hanging. Mr Hughes that he did take some steps to investigate this proposal and considered that the work would be too speculative. For those reasons we think that it was not outside the reasonable range of efforts to find alternatives for dismissal for the claimant.

Reasonableness - conclusion

124. We have asked ourselves, therefore, the overall question: did the respondent act reasonably or unreasonably in treating this redundancy as a sufficient reason to dismiss the claimant? We find that the respondent did act reasonably and the dismissal was therefore fair.

Employment Judge Horne

Date 13 July 2017

REASONS SENT TO THE PARTIES ON

19 July 2017

FOR THE TRIBUNAL OFFICE