EMPLOYMENT TRIBUNALS

Claimant | ***Respondent***
Mr R Doyle | **Sebden Steel Service Centres Ltd**

REASONS OF THE EMPLOYMENT TRIBUNAL

Heard at North Shields **On 19th -21st June 2017**

Before Employment Judge Garnon
Members Ms S Mee and Mr R Dobson

Appearances
Claimant in person
For the Respondent Mr M Howson Solicitor

REASONS (Bold print is ours for emphasis)

1 Introduction and Issues

1.1. The claimant was born on 30th April 1972. His continuous employment started on 13th May 2013 . His dismissal was by letter of 5th February 2016 with six months notice and took effect on 5th August 2016.

1.2. The response accepts the claimant was dismissed and asserts the reason was redundancy. The existence of a redundancy situation is accepted by the claimant. He claims unfair dismissal and direct (possibly also indirect) age discrimination. Slightly re-worded from those set out at a preliminary hearing, the issues are:

1.2.1. What was the reason for the dismissal?

1.2.2. Did the respondent implement a fair selection process and procedure?

1.2.3 Did the respondent apply its mind to the appropriate pool for selection?

1.2.4. Did the respondent engage in meaningful consultation with the claimant?

1.2.5. Did the respondent consider and/or offer alternative employment?

1.2.6. Was the claimant selected for redundancy because of his age? Alternatively did the respondent apply a provision criterion or practice (PCP) which placed him and others of his age group at a particular disadvantage in comparison to those of other age groups?

1.2.7. If either , can the respondent show its actions were a proportionate means of achieving a legitimate aim?

2. The Relevant Law

2.1. Section 98 of the Employment Rights act 1996 (the Act) provides:
"(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 dismissal
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it …
(c) is that the employee was redundant

2.2. Redundancy is defined in s 139. which says dismissal shall be taken to be by reason of redundancy if it is wholly or mainly attributable to the fact the employer has ceased to carry on the business for the purpose of which the employee was employed by him, either generally or in a particular place, or the requirements of that business for employees to carry out work of a particular kind , again either generally or in the particular place , have ceased or diminished or are expected to cease or diminish permanently or temporarily and for whatever reason. The "for whatever reason" part of the definition comes from s 139(6) and means we must not call upon an employer to justify objectively its **commercial** decisions.

2.3 Safeway Stores –v- Burrell, affirmed in Murray-v-Foyle Meats explains how, if there was (a) a dismissal (b) a "redundancy situation" (shorthand for one of the sets of facts in s 139) the only remaining question under s 98(1) is whether (b) was the reason, or if more than one the principal reason, for the happening of (a).

2.4 In Abernethy v Mott Hay and Anderson Cairns LJ said the reason for dismissal in any case is a set of facts known to the employer or maybe beliefs held by him which cause him to dismiss the employee. ASLEF v Brady involved dismissal on grounds of misconduct. The words of Elias P in that case would read as follows, if we substitute for misconduct the words redundancy situation."

"*It does not follow therefore that wherever there is a redundancy situation which could justify dismissal, a Tribunal is bound to find that was indeed the operative reason, even a potentially fair reason. For example, if the employer makes the redundancy situation an excuse to dismiss an employee in circumstances where he would not have treated others in a similar way, then the reason for the dismissal – the operative cause – will not be the redundancy situation at all since that is not what brought about the dismissal, even if the redundancy situation in fact merited dismissal. Accordingly, once the employee has put in issue with proper evidence of basis for contending that the employer dismissed out of pique or antagonism, it is for the employer to rebut this by showing that the principal reason is a statutory reason.*

2.5 Section 98(4) of the Act says:

"Where an 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 all 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
(b) shall be determined in accordance with equity and the substantial merits of the case."

2.6. Langston –v- Cranfield University held we must look at all ways in which a dismissal by reason of redundancy may be unfair. They are (a) inadequate warning and consultation (b) unfair selection and (c) insufficient effort to find alternatives,

2.7. The main case on fair consultation is R-v- British Coal Corporation ex parte Price in which fair consultation was defined as (a) discussion while proposals are still at a formative stage (b) adequate information on which to respond (c) adequate time in which to respond and (d) conscientious consideration of the response. The main case on fair selection is British Aerospace –v- Green , Provided an employer sets up a selection method which can reasonably be described as fair and applies it without any overt sign of bias which would mar its fairness , it will have done what the law requires. Taymech-v-Ryan says in choosing pools for selection an employer has a broad measure of discretion and the important point is that it must give some thought to the matter. Two contrasting results in Lionel Leventhal-v-North and Byrne-v-Arvin Meritor show that a decision whether or not to "bump" , which means dismiss an employee not obviously affected by a redundancy situation in favour of keeping one who is must be looked at in the same way. **Bumping is certainly not compulsory**.

2.8. In considering what, if any ,alternative employment to offer , an employer should not assume an employee will not accept a reduction in status or pay (see Avonmouth Construction –v- Shipway) .**There is no obligation to promote** .

2.9. In all aspects substantive and procedural, the clear rule in Iceland Frozen Foods v Jones (approved in HSBC v Madden) and Sainsburys v Hitt, is that we must not substitute our own view for that of the employer unless its view falls outside the band of reasonable responses. In UCATT v Brain, Sir John Donaldson put it thus:

"Indeed this approach of Tribunals, putting themselves in the position of the employer, informing themselves of what the employer knew at the moment, imagining themselves in that position and then asking the question, "Would a reasonable employer in those circumstances dismiss", seems to me a very sensible approach – subject to one qualification alone, that they must not fall into the error of asking themselves the question "Would we dismiss", because you sometimes have a situation in which one reasonable employer would and one would not.

2.10. A decision to close a place of business is a commercial one. So is a decision that a "satellite office" remote from the place where products are made is not commercially sound. In Samsung Electronics-v-Monte –Cruz the claimant was made redundant following a reorganisation,. The Employment Tribunal found the dismissal

unfair partly due to inadequate consultation. The Employment Appeal Tribunal (EAT) allowing the appeal, held there was no basis for so finding. Underhill P said

The first stage in the reorganisation consisted of the decision to remove the four jobs reporting to the Head of Print, including the Claimant's. ***The merits of the reorganisation as such were not a matter for consultation. What the Claimant was entitled to be consulted about was how it affected him.***

2.11. Section 4 of the Equality Act 2010 (EqA) provides age is a "protected characteristic". Section 13 defines one type of discrimination called "direct"

(1) A person (A) discriminates against another (B) if, **because of** a protected characteristic, A treats B **less** favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

2.12. Section 19 defines indirect discrimination thus:

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

2.13. Unlawful discrimination requires a type and an act of discrimination. Section 39 sets out acts of discrimination and includes:
(2) An employer (A) must not discriminate against an employee of A's (B)—

(b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;

(c) by dismissing B;

(d) by subjecting B to any other detriment.

The main pleaded act is dismissal but (b) and (d) may also be in play.

2.14. One of the best explanations of the difference between direct and indirect discrimination is in a disability discrimination case Stockton Borough Council.–v-Aylott .where Mummery L.J.said:

26. In the case of direct discrimination on a prohibited ground the aim is to secure equal treatment protection for the individual person concerned on the basis that like cases should be treated alike. The essential inquiry is into why the.. claimant was treated less favourably than a person not having that particular disability.

27. In the case of indirect discrimination the aim is to secure equal treatment results for members of a group to which that individual belongs. The essential inquiry is into whether the members of that group, who appear not to have been discriminated against .., have not in fact had equal treatment protection on the basis of the prohibited ground as a result of the disproportionate adverse impact of a neutrally worded provision, criterion or practice.

2.15. As said in Shamoon -v- Royal Ulster Constabulary in direct discrimination we must look for the "reason why" treatment was afforded. Detecting direct discrimination involves a process of fact finding and inference drawing. Unreasonableness of treatment does not show "the reason why" neither does incompetence (see Glasgow City Council –v- Zafar and Quereshi-v- London Borough of Newham). In indirect discrimination we look for an apparently neutral practice which placed the claimant's age group at a comparative disadvantage.

2.16. Section 136 EqA includes
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

2.17. This reversal of the burden of proof is explained in Igen-v- Wong and Madarassy –v- Nomura International but the Supreme Court said in Hewage-v- Grampian Health Board that where the tribunal can make clear findings as to primary fact and draw clear inferences, it is rarely necessary to refer to s136 . The point is best summarised in .Ladele-v-London Borough of Islington by Elias L J

(5) It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the Tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test… The employee is not prejudiced by that approach because in effect the tribunal is acting on the assumption that even if the first hurdle has been crossed by the employee, the case fails because the employer has provided a convincing non-discriminatory explanation for the less favourable treatment.

3 Findings of Fact

3.1. We heard the evidence of the claimant, Mr Mark McCausland, Group Managing Director (MD), Mr Antony Smith, Director of HR and read statements produced by the claimant from Mr Ashley Harrison, Mr Geoff Warren, Mr Steve Brooke, Mr Alan Jesson and Mr Andrew Dore. The written statements were designed to show a point which was conceded that the claimant was a good employee. We also had a document bundle of nearly 500 pages, very few of which are relevant to our decision.

3.2. Sebden Steel are the largest independent stockholders and processors of mild steel strip milled products in the UK & Ireland. They are one of Tata Steel's largest customers. They buy coiled steel which is then cut to order. This process is done at various sites. It is common ground the claimant has a sales background and his

main task is to sell steel to a number of mostly large customers who would repeat orders for steel. Unlike some sales roles, he is not expected to be engaged for much of his time in cold calling on new customers, rather he would be negotiating the sales terms of orders and ensuring the customer got what it ordered . In that sense, his role was similar to what in other businesses may be called an account manager. It requires close liaison with the people responsible for production and the logistics of delivery. There is no more certain way of losing good repeat customers than not to deliver what they want, when they want it, consistently.

3.3 The respondent's head office is in Altringham, Cheshire. Its other sites are Sebden Southern in Chichseter, rebranded to B & D Steel, Brierley Hill in the West Midlands, Pontefract in Yorkshire, known as Northern, Lisburn in Northern Ireland and, until it closed, the North East site at Newton Aycliffe, County Durham.

3.4. In his lengthy statement, the claimant describes the respondent as an antiquated, autocratic business. In February 2012, Mr McCausland became the Group MD and contacted the claimant in the middle of that year to "head hunt" him. The claimant started in May 2013 in the role of Business Development Director which is his job title in the offer letter of 29th April 2013 which reads: -

"I am pleased to confirm our offer of employment to join us at Sebden in the role of Business Development Director, ***based at Sebden Steel North East – Newton Aycliffe."***

Clause 3 says
"You will be ***based at our site in Newton Aycliffe*** *in County Durham, however, you will be expected to travel to other locations (such as customers suppliers and our other sites) as necessary."*

Under clause 4, headed "Hours of Work" it says: -
"You will be employed in the sales office and it is a requirement of the company that this office is open ***from 8.30am to 5.30pm Monday to Friday****, although this may be varied. Your hours of work will need to be flexible in order to ensure that the office is adequately covered and to enable you to carry out your duties."*

3.5. Even after July 2014, the claimant was permitted to sell steel outside as well as within the North East region but Mr McCausland always viewed him connected mainly to that region though if he had an existing contact with a customer, perhaps gained through a previous employment, he could sell to that customer anywhere in the country. There are also no hard and fast boundaries between the regions.

3.6. In July 2014, the claimant took on the additional remit of Divisional Director at Sebden North East in Newton Aycliffe at Mr McCausland's personal request with no additional remuneration or benefits. From then he says his "Group-wide role" as Business Development Director became a dual role with Divisional Director managing the operation in the North East. When we asked, he said the Divisional Director role occupied about 50% of his time. We find that is a major underestimate. We tested the proposition by asking him what other work he did that was not Divisional Director work ie. his Business Development Director role and he was hardly able to give any examples. On balance, we think the truth lies somewhere

between Mr McCausland's perception that the claimant latterly had **no** group wide role and the claimant's 50/50 estimate. He was probably spending no more than 10% of his time on work truly not connected with the North East. We specifically use '*connected with'* because there is no site in Scotland and the claimant was perfectly entitled, and encouraged, to expand into Scotland.

3.7. The claimant lives in Whitburn, a village just north of Sunderland. It is quite a demanding commute to Newton Aycliffe from there but Pontefract is, at least, 70 miles further. There were 11 people based at the North East site, 5 works operatives 5 office staff and Ms Louise Smith who was the Group Credit Controller. The claimant says that "*much like myself*" she was employed in a Group-wide capacity. She worked remotely from her home office 2 days per week, Mondays and Wednesdays and 3 days per week at the Newton Aycliffe site. All staff there were placed at risk of redundancy except Ms Smith. The claimant asks why she was not put at risk when others were. The answer is perfectly simple – hers truly was a Group-wide role and the North East office was simply a handy base from which to work. She did no work that would involve liaising with production and transport staff.

3.8. The claimant too has a full home office facility. We accept he sometimes worked from home and from other sites but not, as he says, "with regularity". **As a matter of contract and in practice his place of work was Newton Aycliffe.** Being the Divisional Director there gave him some flexibility in terms of working hours in that his working week was dictated by the needs of the business. As Mr McCausland readily accepted, if an organisation like Nissan based in Sunderland wanted a meeting with the claimant on any day then, where ever his base was, he would not be required to be there rather than visiting the customer. **As a matter of contract and in practice, his hours of work would have to ensure "cover" for the opening hours of the site sales office.**

3.9. When the claimant started in May 2013, sales were at a low ebb. The North East site had relocated from Darlington to Newton Aycliffe in 1997 to **leased** premises. The processing line which cut thin gauged steel had little preventative maintenance and no upgrading. Despite this, the claimant's efforts improved performance at the site up to, what he describes as, the "tipping point" when the processing line broke down in July 2015. The claimant says as he grew sales he had already became more reliant on production from other sites, particularly the West Midlands, which caused problems as an increasing proportion of sales was being processed and despatched from that site.

3.10. The sales office remained functioning at Newton Aycliffe after the breakdown, and what happened in this period provided an insight into the problems which occur when sales and other office functions operate remotely from the place where production takes place. After the break down the sales performance of the site, in Mr McCausland's words "fell off a cliff". The claimant says. *During this period, sales inevitably suffered, as N.East customers weren't getting the level of support, service and the lead times that they'd experienced from the N.East division, the other sites didn't give the much needed support the N.East site required during this period of disruption, and subsequently customers got increasingly and more regularly let down time and time again.*

3.11. The repairing of the line started in early August and, unexpectedly, did not conclude until early January. Prior to Christmas, the claimant had been instructed to lay off production staff. On returning to work on 4th January 2016, the claimant contacted Mr McCausland with a view to bringing back the laid off staff. He was instructed to wait until Mr McCausland made a visit to site on 13th January.

3.12. On Monday 11th January, Mr McCausland asked the claimant to invite all laid off staff in.on 13th January. Without prior notice and accompanied by the Group HR Director, Mr Smith, Mr McCausland told the claimant, 10 minutes before telling everybody else, it was proposed to close the Newton Aycliffe site ,transfer its work and physically move the production line to Pontefract.

3.13. The Site Director of Pontefract, Mr Matt Styler, the General Manager and the Sales Manager there, are all in the same age group as the claimant, late 30s to early 40s. The claimant says he was a higher earner due his being slightly older, but the evidence does not support that. In our judgment, there was no ulterior motive, let alone one directly or indirectly related to age, for the respondent not to want him to transfer to Pontefract. We reject his argument that there was a conscious plan to distribute his sales amongst existing commercial staff. The respondent's preferred option was for him to transfer to Pontefract to manage light gauge sales. He was not given a firm job description for that role at that time.

3.14. The claimant points out that although the meeting on Wednesday 13th January talked in terms of a proposal, on Saturday 16th January, all the senior managers and directors received a letter dated Monday 18th January that was to be sent to customers, staff and suppliers which announced investment at Pontefract and the transfer of business from the North East site to make Pontefract the "Northern Powerhouse". The claimant says this was prior to the consultation process ever having begun. What happened on 13th January was the giving of information on something that need not be consulted about at all – the commercial decision to cease production at Newton Aycliffe. All the staff, of various ages, at Newton Aycliffe were put at risk of redundancy and all then received individual consultation. There was no less favourable treatment of anyone.

3.15. The Pontefract site was owned not leased. The lease for Newton Aycliffe contained a break clause exercisable in April or October 2017. The evidence is not, as the claimant suggests, proof of a "rushed" process. It takes a long time to move such heavy plant and even longer for it to" bed-in" in its new premises. The timing of exercising the break clause too was a commercial decision.

3.16. The first individual consultation meeting with the claimant was on 18th January. He emphasised to Mr Smith the site had been re-energised since he had taken on a local role as well as a group role. Although his contract said he was entitled to only one months' notice, he said his understanding at the time he had taken the job was that it would be six months. The respondent conceded this point. The claimant said he would consider working from Pontefract two or three times a week if needed, though he believed he could also work from home. He asked for clarity of what the role would be and said if it was more of a group role like Sales Director (which would probably be a promotion) there should be no need for him to be onsite every day or based at Pontefract. However, he said if there was a possibility for him to actually

run Pontefract, he would consider relocating, in the words of Mr Smith's note at page 394F " *for a more senior role as this would be a big opportunity.*" He went on to comment if the Board were to decide Mr Styler and Mr Smith were to run Pontefract, he had "*no problems with this*", but was just "*throwing his hat into the ring*". This was the closest he came to suggesting Mr Styler be "bumped". In his witness statement, the claimant says: -

"I was running the most improved site in the Group. The Pontefract site was haemorrhaging money and had poor controls and a lack of customer focus expectations, so I should have been given ***the first opportunity*** *to run the site or, at least, been given the platform to discuss it but given my age and the higher than average package, they blatently used this process as an affront to push me out."*

He did have a platform to discuss it but at no time did he positively say, nor could Mr Smith have been expected to interpret him as saying, Mr Styler should be 'bumped'. Despite that, the respondent did, in our view, consider throughout whether there was any reason to alter the management team at Pontefract and decided there was not.

3.17. The claimant also asked if it was possible to keep a sales office locally and said there was a precedent for sales people working from home. Everything he said was taken away by Mr Smith for further consideration.

3.18. There were 5 office staff at Newton Aycliffe 3 "commercial" and 2 support. Keeping an office open in the North East would have undoubtedly solved commuting problems faced by the two commercial staff, Carl Green and Andy Dore, who would now have an average commute of 160 mile round trip. The claimant's would have been even longer, a 230 mile round trip. However, this ignores the counter argument by the respondent that what happened between July and December 2015 shows remote office sites simply do not work. The claimant's own evidence corroborates this. Also, the respondent's view that while some home working was acceptable, anyone occupying the claimant's existing or potential new role at Pontefract would have to spend at least half his time on site, is well within the band of reasonable views, even though we accept the claimant disagrees.

3.19. On 22nd January, Mr Smith emailed Mr McCausland. It is clear their minds had been made up against having a satellite sales office. On 24th January, the claimant emailed Mr Smith in advance of his next consultation meeting on 27th January. The claimant seemed to wish to keep all his options open but again demanded a satellite office in the North East and said the number of days he would be prepared to commute to Pontefract depended upon the seniority of the role he was offered there. He said he had not dismissed the idea of relocation. He also pointed out the cost of commuting. His fourth and fifth bullet points read: -

"I was employed on a group wide basis as Business Development Director initially by SSSCL but took on the added responsibility of Divisional Director in mid-2014 for no extra remuneration as I deemed that was the right thing for the business as a whole. This resulted in a huge growth curve in terms of sales, gross margin, in terms of sales gross margin improvement and successful implementation of a range of KPIs.

"With the new Sebden Northern structure potentially trebling/quadrupling capacity ie two additional processing lines, and given the existing business already has a Senior Sales Management and Director structure, what definitive opportunities and positions will arise for me having already gone through something similar personally…"

Mr Smith sent these matters on to Mr McCausland for his comments.

3.20. Mr McCausland's reply is quite strident but what he says is fair and commercially sound. First, the claimant would be responsible for light gauge strip sales and in such a position would be joint No. 2 on site, with Richard Smith who would head up heavy hot rolled steel sales. Both would report to Mr Styler. There would not be a satellite office in the North East. He explains the claimant himself had on many occasions said how difficult it was to have material processed and delivered from another site, so, making that a permanent state of affairs was not sensible. The new Northern office would become the largest in the group. He sticks by his requirement that the claimant attend there 3 days a week. He accepts the claimant was originally employed in a group role until he took control of Newton Aycliffe. He, like ourselves, took the view the claimant was now based at Newton Aycliffe, needed to attend there regularly and in any new role would need to attend regularly at the new base site. He then writes:

"We see a very significant and senior commercial role for Rob at Aycliffe (by which he undoubtedly means Pontefract) *enjoying equal No.2 status…However, Rob very often wants to put the cart before the horse. There exists EVERY opportunity for Rob in this role at Pontefract but just in the same way as everyone else. In time Rob could run the site. He could run the entire UK sales team, he could be Group MD, goodness, he could be Prime Minister one day but all that is in Rob's control NOT MINE. I and we can only help Rob, encourage him, provide him and the team with the tools, machines and steel to do the job but the rest is up to Rob to bring in the results that raise him to the next level and beyond within the company but that can only be achieved by his own efforts. Needless to say, nobody will stand in the way of his career development."*

3.21. The next consultation meeting was on 27th January, the notes are at page 409. The claimant already knew from somebody else's consultation the satellite office had been ruled out and he understood the reason given. Mr Smith told him exactly what Mr McCausland had said about a senior management role. They covered a number of concessions the respondent was prepared to make, including payments for travel, overnight accommodation and a subsistence allowance. Most importantly, Mr Smith said 3 days a week, including a Friday would be a necessary attendance level on site. The reason for Friday is it is a quiet day for actual selling and enables the person holding the role the claimant had, and would have, to confer with production and transport people to ensure the smooth running of deliveries. The claimant running the site by bumping Mr Styler was not pressed by him. At this meeting the claimant's focus was mainly upon the terms upon which he would relocate to Pontefract in the No. 2 role.

3.22. The next meeting was on 2nd February. The claimant was not ruling out a move to Pontefract but still 3 days per week and Friday working was not acceptable to him. The suggestion he could work purely from home when not visiting customers was

raised again by him despite it being explained to him why this was not acceptable. He then made further demands for a salary increase of £5,000 per annum, an uncapped bonus scheme, flexibility not to have to be in the office 3 or 4 times per week, no requirement to be there on Fridays and a travel allowance of £35 per day to recognise his long commute. The only passing reference to the idea the claimant would revert to Business Development Director is on page 415: -

"RD noted that he had taken on managing the site at Aycliffe for the good of the Group and, asked whether this was a temporary or secondary remit to the Group role that he had been originally taken on to do, in effect was his job actually redundant? TS said that his clear understanding was that RD had accepted the role of Divisional Director at Aycliffe and that for this reason the position is being made redundant due to the move to Pontefract.

TS Said that he would write to confirm but following the initial meeting an announcement on 13 January and the one to one meetings since, this was the final meeting of the consultation period.

3.23. On Monday 8th February, the claimant and his colleagues at Newton Aycliffe received letters dated 5th February giving them notice of dismissal by reason of redundancy. He did not read the final line which clearly says there is a 7 day appeal period. The letter confirms the offer of alternative employment would remain open during the notice period. The claimant says in his witness statement it was *"…crystal clear that Sebden weren't going to cede to the two minor concessions that I'd requested over the past 6 – 7 weeks"* In our view they were **not minor** concessions

3.24 The claimant says he was not given a firm job description for the new role but in an email he wrote to Mr Smith on 10th February 2016 at page 418, he says *"**Now that I have got all my proposed working conditions in writing**, and that I can now make a definitive based on these with my wife family can you personally guarantee that you will give me until mid next week to make this decision without my position not being filled at Sebden Northern during the decision making process please?"*

Mr Smith replied the same day: - *"Yes absolutely Rob, the intention was to progress things not to rush you."*

3.25. In his witness statement, the claimant says: -

"Furthermore they said they'd keep the position open for me to take during the notice period provided that it wasn't filled in the interim period. However, I want proof that they advertised a job to replace me. They haven't replaced me nor Andy Dore the other sales person from the North East. In fact, Pontefract lost another sales person during this interim period so they are, in fact, three commercial staff down and they haven't employed anyone else in that department.

We accept Mr McCausland's evidence the respondent would dearly like to recruit people but cannot find people to work in the steel industry which is why they wanted to keep the claimant and other sales staff from Newton Aycliffe. The only one who did agree to transfer was Carl Green. The claimant's sales have been distributed to the existing sale force at Pontefract only because there is no choice to do otherwise.

3.26. We completely reject the proposition that imposing upon the claimant 3 days of on site working was a change in his contract. The respondent always had the right to direct him where to be at certain times. There was no, as he puts it, *“sudden disallowance of the use of my home office facility”.*

3.27. He was **plainly not treated differently** to any other individual in the business in the same, or similar, circumstances. We will deal further with this in our conclusions when explaining why his discrimination claim is misconceived. Another flaw in the claimant’s discrimination claims is that he says he was the only Divisional Director who would question why things were done in a certain way, strive for improvements, production efficiencies, introduce new added value products and diversity into niche markets, push to invest in vastly improved IT, to overhaul the antiquated website etc. We do not accept this was resented, but the claimant is saying he was resented due to professional jealousy. If that were true, it is a motive other than age or any protected characteristic in the EqA.

3.28. The claimant persisted in trying to get Mr McCausland to change his views on “concessions” and, when he would not, said he had no other option than to leave. On Thursday 24th March he met Mr McCausland together with Mr Hill, the Purchasing Director Divisional MD for Sebden Midlands and Mr Styler, the Divisional Director of Sebden North Pontefract. He served out his notice period.

4 Conclusions

4.1. The reason for dismissal was redundancy due to closure of the claimant’s workplace. There was no ulterior motive.

4.2. As for the selection process all staff truly based at Newton Aycliffe were put at risk but no-one else in the company was. This was a considered and reasonable pool for selection. The claimant had an argument he could have put more clearly in the consultation process that he should have been put in a pool for selection with Mr Styler. It was considered but reasonably ruled out.

4.3. The claimant had an argument he should have been returned to the position of Business Development Director with no site base other than his home. That too was considered and reasonably ruled out. So was the idea of a satellite sales office remaining in the North East.

4.4. The respondent engaged in meaningful consultation with the claimant. Indeed, it complied impeccably with all the tests in ex parte Price (see para 2.7 above)

4.5. The respondent not only considered, but offered, alternative employment, on good terms. It did not argue the claimant should lose his right to a redundancy payment under s 141 of the Act because it accepted that although the new job was, in its view objectively suitable, due to the distance of commute, it was subjectively reasonable for the claimant to refuse the offer.

4.6. As for whether he was selected for redundancy because of his age, or whether the respondent applied a provision, criterion or practice (PCP) which placed him and

others of his age group at a particular disadvantage in comparison to those of other age groups there is absolutely no evidence on which we could infer direct or indirect discrimination. The claimant has brought this claim, we think not in bad faith, but rather because he fundamentally misunderstands the EqA.

4.7. His witness statement, written after an order by Regional Employment Judge Reed that he provide further particulars of his age discrimination claim, was a very lengthy, unfocussed attack on the respondent. We explained at the beginning of the first day, as had already been set out by the Regional Employment Judge, what the real issues were. In the unfair dismissal claim we emphasised we are not permitted to second guess commercial decisions. Nevertheless, in many senses, that was what the claimant seemed to wish us to do. We also explained the difference between unreasonable behaviour and discriminatory behaviour. We asked the claimant why he thought any of the treatment of him was on grounds of age, especially as the people he suggested had been more favourably treated wereof roughly the same age as himself. . He said that it was age and "*other things*". By "other things" he said he meant "*discrimination **generally***". There is no such thing. We think he has in mind that the decision to close Newton Aycliffe, which he contends was wrong, had a **greater impact on him**. First, his commute to Pontefract would have been further than anyone else, which is true, but that is due not to age rather to where he lives. Second, we see how he feels that from 2013, and especially from mid 2014, he build up the performance of the Newton Aycliffe site , everything went wrong in 2015 thorough no fault of his own, so that the decision to close that site hit him especially hard and made him feel betrayed . That too has **nothing to do with age**.

4.8. On the morning of the second day, the claimant said that during the first day, when all the evidence was heard, including his cross examination of the respondent's witnesses, which we did not restrict in any way, he felt rushed and there may be matters in the documents to which he had not referred. We explained whilst we would look at all documents to which we had been referred, it was not our task to trawl through the bundle looking for evidence not brought to our attention. Our Employment Judge did see his email timed at 15.06 on 20th June 2017 which starts *I appreciate that the boat may have already sailed, and that this evidence may not be admissible, although it's clearly included in the paginated bundle* but we had already focused on the documents to which he referred. We helped him put his case as best as we can and he did not lose due to lack of advoacy skill but because the law is clear and does not mean what he thinks it means.

T M Garnon EMPLOYMENT JUDGE

REASONS SIGNED BY
EMPLOYMENT JUDGE ON 13th JULY 2017

SENT TO THE PARTIES ON

14 July 2017

P Trewick
FOR THE TRIBUNAL