



EMPLOYMENT TRIBUNALS

Claimant: Mr A Rawlinson

Respondent: Imtech Engineering Services North Ltd

HELD AT: Manchester

ON: 25 & 26 April 2018

IN CHAMBERS: 31 May 2018

BEFORE: Employment Judge Porter

REPRESENTATION:

Claimant: In person

Respondent: Miss H Bell, of counsel

RESERVED JUDGMENT

The claimant was fairly dismissed. His claim of unfair dismissal is not well-founded and is hereby dismissed.

REASONS

Issues to be determined

1. At the outset it was confirmed that the issues were as identified by EJ Howard at the preliminary hearing on 10 January 2018 namely:

- 1.1 The reason for dismissal being redundancy, falling within section 98(1)(b) of the Employment Rights Act 1996, did the respondent act reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the claimant for the purposes of section 98(4) of the Employment Rights Act 1996?

- 1.2 In the event that the claimant had been unfairly dismissed, do the Polkey principles apply?
2. The claimant confirmed that he accepted that the financial downturn was the reason for dismissal. However, his main contention was that his selection for redundancy was a sham.

Orders

3. A number of orders were made for the conduct and good management of the proceedings during the course of the Hearing. In making the orders the tribunal considered the overriding objective and the Employment Tribunals Rules of Procedure 2013. Orders included the following: -

3.1. The claimant sought to rely upon the written evidence of Mrs J Whitehead, Mr David Pierrie and Mr Paul Mann. The tribunal agreed to consider that evidence, noting that it was a question of how much weight it was prepared to attach to the evidence of a witness who had not attended tribunal and could not be questioned on the veracity of their evidence.

3.2. An application to consider the claimant's audio recording of the meeting which took place on 3 July 2017 was refused because:

3.2.1. an agreed transcript was contained within the bundle;

3.2.2. the claimant could cross-examination the relevant witnesses based on the agreed transcript;

3.2.3. the listening to the audio evidence would take some time, contrary to the overriding objective;

3.2.4. neither party's right to a fair hearing was prejudiced by the tribunal's failure to consider the audio evidence.

Submissions

4. The claimant made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence, it was asserted that: -

4.1. the respondent has failed to provide a compelling reason for his selection for redundancy. The whole process was a sham;

4.2. the respondent's managers decided on the pool by looking only at the job title: they should have looked at the job function;

- 4.3. the respondent knew that if the claimant had been placed in a pool with Alastair Rowe then the claimant would have scored much higher. The pool was chosen on a personal basis to secure Alastair Rowe's continued employment;
 - 4.4. when considering redundancies the senior leadership team was involved. That included the managing director Steve Milnes. He was clearly involved in the decision. Alastair Rowe was his friend;
 - 4.5. both Nigel Hemsall and Hazel Pursey had worked with Alastair Rowe previously. They were biased towards him;
 - 4.6. the managers who chose the pool had no knowledge of the claimant's value to the business. They did not know that the claimant had done the subcontractor role before Alastair Rowe took over those responsibilities;
 - 4.7. the contents of Nigel Hemsall's witness statement should be dismissed because its contents are based on assumptions and inaccuracies;
 - 4.8. the claimant had argued from day one that Alastair Rowe should be in the same pool. When they offered that process they did not act on the offer;
 - 4.9. Alastair Rowe has fulfilled a Procurement Management role. He attended all procurement managers meetings. No other senior buyer did that. There was a procurement manager email address group. Mr Rowe was part of that group. Mr Rowe was included in all emails at manager level. Mr Rowe was described as a Procurement manager on the company's website. His salary, including a commuter allowance, was similar to the claimant's salary.
5. Counsel for the respondent made a number of detailed submissions which the tribunal has considered with care but does not rehearse in full here. In essence, it was asserted that:
 - 5.1 the reason for dismissal was redundancy. That is not challenged;
 - 5.2 the claimant asserts that he should have been placed in a pool for selection with Mr A Rowe;
 - 5.3 In **Taymech Limited v Ryan EAT/663/94** the EAT confirmed that:

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.

5.4 This was confirmed in the case of **Capita v Hartshead Limited v Byard 2012 IRLR 814**, which confirmed the applicable principles in deciding whether the employer has selected a correct pool of candidates for redundancy as follows:

5.4.1 it is not the function of the 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 Brown – Wilkinson J in **Williams v Compair Maxam Limited 1982 IRLR 83**);

5.4.2 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 (2005) All ER (D) 142**);

5.4.3 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 Limited v Ryan EAT/663/94**);

5.4.4 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

5.4.5 Even if the employer has genuinely applied his mind to the issue of who should be in the pool consideration for redundancy, then it will be difficult, if not impossible, for an employee to challenge it;

5.5 there is no rule that an employer must always consider bumping in order to dismiss fairly in a redundancy case, not least where, as here, this might involve the employee in question being moved into a subordinate and less well-paid role, that might not be seen as something that the employer should reasonably be expected to initiate (as per Judge Eady QC in **Dr H Mirab v Mentor Graphics (UK) Limited EAT/0172/17/DA**);

- 5.6 the claimant asserts that the decisions were motivated by malice especially on the part of the Managing Director, Steve Milnes. There is no evidence that Mr Milnes had any input in the decision;
- 5.7 the claimant's assertion that he should have been in a pool of two with Alastair Rowe is inconsistent with his own evidence. The claimant accepts that Alastair Rowe was incapable of doing the claimant's role of Procurement Manager. Alastair Rowe was a Senior buyer with responsibility for subcontracting under the management of the claimant as Head of the Procurement team;
- 5.8 the decision that the claimant was in a unique position, a pool of one, fell within the band of reasonable responses;
- 5.9 the claimant had worked with Alastair Rowe for two years and at no stage before the redundancy process did the claimant complain that Alastair Rowe was doing his role. The claimant would have raised this if he had genuine concerns at the time. The claimant delegated some of his authority to Alastair Rowe while, at the same time, regarding him as a subordinate;
- 5.10 The evidence is clear that Alastair Rowe was a buyer and was designated internally as a buyer. The claimant has searched the website to find one incorrect description of Mr Rowe as a Procurement manager. However, that was clearly a mistake;
- 5.11 The claimant was Alastair Rowe's line manager as confirmed by the documentary evidence. The mere fact that Alastair Rowe took instructions from directors is not enough to say that he had a managerial position;
- 5.12 written evidence produced by the claimant from employees who no longer work for the respondent should be given very little weight;
- 5.13 The fact that Alastair Rowe attended procurement meetings is irrelevant. These were not managing management meetings, not all the attendees were managers. The respondent's witnesses have explained Alastair Rowe's presence at those meetings;
- 5.14 There is no satisfactory evidence that Alastair Rowe was included in an email address for Procurement managers. Mr Hampson did not use any such email address to send his emails to the claimant, Alastair Rowe and other attendees at procurement meetings;
- 5.15 the respondent explored the possibility of offering the claimant alternative employment to avoid his redundancy. He was provided with

a vacancy list and details of vacancies. The claimant was only interested in vacancies in the North West. The respondent offered to put the claimant's CV forward to other companies within the same group;

5.16 The question of bumping, that is, moving the claimant into the role of Senior buyer, was not pursued by the claimant with any urgency. There was a big difference in pay and when the claimant was asked if he was interested he did not reply. By 13 July 2017 the claimant gave a clear indication that he did not want to be considered for the Senior Buyer position;

5.17 A fair procedure was followed. It has not been challenged by the claimant;

5.18 Further and in any event, had a fair procedure been followed it would have made no difference to the outcome. Had Mr Rowe been included in a pool with the claimant there is no guarantee that the claimant would have been selected. This was not put the respondent's witnesses. The claimant would not have agreed to bumping and in any event, it is Mr Hemsall's evidence that the claimant was not suitable for the role of Senior Buyer.

Evidence

6. The claimant gave evidence. In addition, he relied upon the written evidence of: -

6.1. Mrs J Whitehead, formerly employed by the respondent as a Buyer in the Procurement department;

6.2. Mr David Pierrie, formerly employed by the respondent as a Senior Buyer in the Procurement department;

6.3. Mr Paul Mann, formerly employed by the respondent as a Buyer in the Procurement department.

7. The respondent relied upon the evidence of: -

7.1. Mr Neil Brackenridge, former Regional Director of the respondent company;

7.2. Mr Nigel Hemsall, Head of Procurement of the Imtech Group;

7.3. Mrs Hazel Pursey, Head of Human Resources of the respondent company;

7.4. Mrs Anita McFarlane, Commercial Director of the respondent company.

8. The witnesses, other than Mrs J Whitehead, Mr David Pierrie and Mr Paul Mann provided their evidence from written witness statements. They were subject to cross-examination, questioning by the tribunal and, where appropriate, re-examination.
9. Agreed bundles of documents were presented. Additional documents were presented by the claimant during the course of the Hearing with consent, and were marked C1-C6. References to page numbers in these Reasons are references to the page numbers in the agreed Bundle.

Facts

10. Having considered all the evidence, the tribunal has made the following findings of fact. Where a conflict of evidence arose the tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.
11. The respondent is part of a group of companies known as the Imtech group, a large construction and engineering group.
12. In the first half of 2017, the respondent was falling behind its financial target for turnover, and it became clear that there would be a shortfall against its budgeted turnover of £80m for 2017.
13. In May 2017, the senior leadership team decided that if the respondent was unlikely to achieve its 2017 budget by the mid-year point, it would have to implement cost savings and consider making compulsory redundancies. The senior leadership team comprised Steve Milnes, Managing Director, Anita McFarlane, Commercial director, Hazel Pursey, head of HR, and Neil Brackenridge, North West Regional director. Hazel Pursey joined the respondent in March 2015. She had worked with Alastair Rowe, a Senior Buyer, in her previous employment. Mr Brackenridge joined the company in August 2016. He was not the claimant's direct line manager.
14. The respondent put together a financial analysis of its overheads and various cost saving and redundancy options (page 526 – 534). The management team used this document to calculate the cost savings that could be generated and how many roles would be affected, as well as to identify the other cost saving measures that could be implemented, such as recruitment freezes.

15. One of the departments affected by the redundancies was Procurement. This team was led by the claimant, Procurement manager. The other members of the team were:
- 15.1. David Pierrie and Alastair Rowe, both of whom were described in the respondent's Organogram as Senior buyers;
 - 15.2. one buying coordinator, Amanda Lea, who was on maternity leave at the time;
 - 15.3. a part-time buyer, Julie Whitehead
16. The claimant, a qualified engineer, was appointed to the position of Procurement manager in October 2009, before the respondent joined the Imtech group. The specific tasks within his remit included the overall management of all suppliers and subcontractors to the business.
17. In January 2015, Mr Alastair Rowe was appointed to the position of Senior Buyer by Mr Milnes, Managing Director, against the recommendations of the interviewers, the claimant and the Procurement Director of the UK business at the time, Mr Jim Goodhead. Both the claimant and Mr Goodhead agreed that Mr Rowe was not a good fit to meet the needs of the business and that, given his salary expectations, the respondent would be better looking for a more suitable candidate.
18. By letter dated 11 December 2014 (p 67) Mr Milnes offered Mr Rowe the position as Senior Buyer. Attached to the offer letter was a schedule of employment terms, which described Mr Rowe's job title as Senior buyer and indicated that he would be reporting to the Procurement manager. Mr Rowe's contract of employment (p 69) confirmed that Mr Rowe was employed in the position set out in the letter of appointment.
19. The claimant was disappointed by the appointment of Mr Rowe, a friend of Mr Milnes, because the claimant had understood that any appointment would only be made with the claimant's consent. The claimant did not make any complaint about the appointment of Mr Rowe at the time in 2015.
20. As Procurement Manager the claimant had responsibility for running the procurement function within the company and ensuring that the procurement team was operating efficiently and effectively. The claimant had a broad range of responsibilities including ensuring that framework agreements were put in place with suppliers and subcontractors, managing the members of the procurement team, designing and managing relevant KPIs, approving orders of significant value and providing reports and statistical data to the respondent and to the Head of Procurement of the Imtech group. One of his

specific tasks was the overall management of all suppliers and subcontractors to the business.

21. At the time of the redundancy exercise the claimant was directly line managed by the Commercial director and had a dotted reporting line into the Head of Procurement for the Imtech group, Nigel Hemsall, who had held that position since April 2015. He had regular contact with the claimant and Alastair Rowe and had a good knowledge of the scope and quality of their work. As Head of Procurement of the Imtech Group he had a good knowledge of the structure and function of the respondent's Procurement Department.
22. As Head of Procurement the claimant had authority to sign off orders of significant value up to £250,000. As senior buyer Mr Rowe had authority to sign off orders up to £25,000.
23. In his designated role as Senior buyer, Alastair Rowe did not carry out any line management responsibilities. He was under the direct line management to the claimant. This line management was set out in the Organogram (p 260), a contemporary document which accurately reflected the respondent's genuine understanding of the line management of the Procurement department at the time of the redundancy exercise. The claimant carried out Mr Rowe's appraisals, approved Mr Rowe's holiday requests, and approved Mr Rowe's expenses. The claimant did not give Mr Rowe instruction on his day-to-day activities. The directors, including Mr Brackenridge and Mr Hemsall, instructed Mr Rowe directly. The claimant did not complain about this, or question his managerial position over Mr Rowe, until after the redundancy exercise had begun.

[Whereas the claimant does not accept that he was Mr Rowe's line manager, the Organogram (p260) does indicate that Mr Rowe fell under the claimant's line management. The tribunal accepts that the Organogram was a contemporary document which accurately reflected the respondent's genuine understanding of the line management of the Procurement department at the time of the redundancy exercise. The claimant's assertion that he had not seen that document prior to the redundancy exercise does not cast doubt on the respondent's evidence or the authenticity of the document. There is no merit in any assertion that the Organogram was created for the purpose of this hearing. The claimant accepts that he did carry out appraisals and approval of holiday requests and business expenses for Mr Rowe.]

24. Shortly after his appointment Mr Rowe was given responsibility for maintenance of the subcontractor database, and supporting site teams with the execution of subcontract orders. This had previously fallen within the claimant's responsibility. Whether it was the claimant or Mr Milnes who decided on that re-allocation of duties to Mr Rowe, the claimant raised no objection to it prior to the redundancy exercise.

25. In April 2016 the claimant conducted an appraisal of Mr Rowe (page 186) which set out Mr Rowe's main activities as:

- 25.1. ensuring order placed minimise commercial risk to Imtech. Scope of works/compliance with specification etc;
- 25.2. maintenance of subcontractor database;
- 25.3. support role to QS and project site teams in regard to the execution of subcontract order;
- 25.4. bid team support;
- 25.5. supply chain relationship/maintenance/vetting of new

26. Mr Rowe, as Senior buyer, did carry out part of the role of Procurement manager, as identified in the above appraisal, under the delegated authority of the claimant. By reason of those delegated duties, which were now regarded as part of Mr Rowe's main activities, Mr Rowe was treated differently to other Senior buyers, including Mr Pierrie. Mr Rowe very rarely placed any orders for purchasing, and regularly attended group procurement meetings organised by Mr Nigel Hemsall, Head of Procurement of the Imtech Group. The directors, including Mr Brackenridge and Mr Hemsall, instructed Mr Rowe directly.

27. Part of Mr Hemsall's duties as Head of Procurement is to coordinate the procurement function across all of the businesses within the Imtech group. Mr Hemsall set up and ran the procurement meetings, and regular conference calls, and invited what he considered to be the most appropriate members of the procurement teams across the Imtech group. The attendees and agendas for these meetings were entirely a matter for Mr Hemsall. Mr Rowe did not attend the meetings at the bequest of Steve Milnes. Mr Hemsall invited Alastair Rowe to attend these meetings because Mr Hemsall wanted to have input from someone who had dealings with subcontractors. He also found it helpful to have Mr Rowe at the procurement meetings as he worked closely with site teams on the respondent company's projects. The claimant was largely office-based and spent little time on site. Mr Rowe's knowledge of the issues on site helped Mr Hemsall get a better picture of the procurement issues arising on projects. A further reason for asking Mr Rowe to attend procurement meetings was that he was involved in supporting the bid's team, and therefore could provide updates on potential new business opportunities. David Pierrie, the other Senior buyer in the Procurement department, did not deal with subcontractors or conduct site visits, and so was not invited to these procurement meetings.

[On these matters the tribunal accepts the evidence of Mr Hemsall. The tribunal does not reject the evidence of Mr Hemsall in its entirety, as suggested by the claimant.]

28. Mr Hemsall corresponded with attendees at the procurement meetings by way of individual email addresses. He did not address the attendees by using a procurement manager email group.

[On this the tribunal accepts the evidence of Mr Hemsall]

29. There was no procurement manager email group with Mr Alastair Rowe listed as a member.

[There is no satisfactory evidence to support the claimant's assertion that Mr Alastair Rowe belonged to any such an email grouping. The claimant has been unable to point to any documentary evidence to support this assertion.]

30. Mr Alastair Rowe was described in the vast majority of documentation as Senior buyer. He did not in emails identify himself as Procurement manager. He is referred to in the company's intranet as senior buyer. He was described as procurement manager in one page of the intranet (p433), which provides a description of members of the procurement team.

31. The claimant never raised any issue with Alastair Rowe attending the procurement meetings prior to being put at risk of redundancy.

32. Mr Hemsall had worked with Mr Rowe in a previous employment.

33. Mr Rowe did not have the skill set or ability to carry out the full role of Procurement Manager.

34. The claimant was a highly conscientious employee who continually met and achieved all targets and received repeated recognition from within the business.

35. At the time of leaving his employment the claimant was paid £68,475 per annum. His P60 shows that in the tax year ending April 2017 the claimant received taxable pay of £74,431.44. Mr Rowe was on an annual salary of £49,750 and in the tax year ending April 2017, Mr Rowe received £58,704.24. The difference in taxable pay in the tax year ending April 2017 was therefore £15,727.20. The claimant was eligible to be considered for a bonus. Mr Rowe was not. The claimant received substantial bonus payments during his employment. Mr Rowe received a non-taxable commuter allowance of approximately £8500 per annum to reimburse him for the cost of travelling between the office and home, which was a 120 miles round trip. The claimant was not paid a non-taxable commuter allowance.

36. The claimant did not at any time prior to the redundancy exercise complain that Mr Rowe had been appointed as the claimant's replacement.
37. When the Procurement department was noted to be at risk of redundancy it was decided that Mr Neil Brackenridge, North West regional director, should take responsibility for how best to restructure the department in light of the reduction in work and the needs of the business. Anita McFarlane, Commercial Director, managed the claimant and had responsibility for the Procurement department. However, she had only joined the respondent company six weeks earlier on 3 April 2017. It was decided that she did not, at the time, have enough knowledge of the business to assess the options for restructuring the procurement team.
38. Mr Brackenridge's initial proposal was to make the two senior buyers (David Pierrie and Alastair Rowe) and the buying coordinator (Amanda Lea) redundant. Before reaching his decision, Mr Brackenridge decided to seek the views of Mr Hemsall.
39. Mr Hemsall did not consider the proposal to remove the two Senior buyers and Coordinator roles workable. His expressed view was that:
- 39.1. the procurement function with a procurement manager and a part-time buyer (Julie Whitehead) would not have been able to deliver an acceptable service to the business;
 - 39.2. it would be preferable to remove the Procurement manager role and leave the two Senior buyers and coordinator roles unaffected. This would leave a more balanced procurement function overall and was more appropriate for the size of the business following the reduction in volume of the business;
 - 39.3. The two Senior buyers could report into the Commercial director, Anita McFarlane, on strategic issues, and have a dotted line to Nigel Hemsall on procurement matters;
 - 39.4. an important aspect of the claimant's role as Procurement manager was to report on a range of procurement measures such as the amount of spend, rebate secured and supplier performance. The adoption by the respondent of the new Enterprise Resource Planning (ERP) system would mean that he, Mr Hemsall, could obtain the relevant information directly from that system, thereby diminishing the claimant's workload.
40. After discussing the options with Mr Hemsall, Mr Brackenridge agreed with his view that removing the role of Procurement manager was the better option for the business. Mr Brackenridge therefore made the genuine business

decision that it was in the best interests of the business that the required cost-cutting in the procurement department be achieved by removing the position of Procurement manager.

[On this the tribunal accepts the evidence of Mr Brackenridge. There is no satisfactory evidence to support the claimant's assertion that Mr Brackenridge's decision was either directed by Mr Milnes and/or Mr Hemsall or Mrs Pursey, or was based on a personal preference by senior managers to retain the employment of Mr Rowe, who was Mr Milne's friend and had been a former work colleague of a number of senior management in a different establishment.]

41. The redundancy planning exercise was carried out in June 2017, with HR advice from Hazel Pursey. As part of the planning exercise Mr Brackenridge and Mrs Pursey considered whether any of the roles affected by the redundancy proposal should be placed in a selection pool. They decided that the claimant's role was a stand-alone position as he was the only designated Procurement manager within the respondent company.
42. In May and June 2017 the respondent finalised the redundancy proposal and prepared a staff announcement to be used to communicate the potential redundancies (page 585). The respondent initially intended to announce the redundancies to all staff, but subsequently decided instead to use the pre-prepared text at individual meetings with the affected staff. The announcement had alternative wording for those employees within a selection pool, and those who were in stand-alone positions.
43. On 29 June 2017 staff were placed at risk of redundancy using the pre-prepared wording and were provided with at-risk letters. Mrs McFarlane, Commercial Director, accompanied by Hazel Pursey, met with the claimant to confirm that his role was at risk of redundancy. The claimant was provided with a letter (p602) which confirmed that there was a proposal to make the role of Procurement manager redundant and therefore that the claimant's position was at risk of redundancy. It was stressed that this was only a provisional decision and that the company would now commence consultation to identify any ways of avoiding or mitigating the redundancy. The claimant was advised that a first consultation meeting would be held on Monday 3 July 2017. The claimant was advised of his right to be accompanied by a colleague or trade union representative. The letter enclosed a list of current vacancies in the group across the UK and asked the claimant to give some thought as to potential job roles in locations where he would be willing to work.
44. The claimant attended a first consultation meeting on 3 July 2017, when he was accompanied by a work colleague, Phil Boyham. The meeting was conducted by Mr Brackenridge, accompanied by Hazel Pursey. Notes were

taken of the meeting. In addition, the claimant was permitted to record that meeting. An agreed transcript of the recording (p 611-623) appears in the bundle.

45. During the first consultation meeting on 3 July 2017:

45.1. The respondent explained the rationale for the proposed redundancy, due to the reduction in work and the need to reduce headcount. Mr Brackenridge also explained that the ERP system would have an impact on the claimant's role, as would the general move towards a more centralised procurement function across the Imtech group;

45.2. the claimant expressed concern that if the ERP system was one of the reasons for the redundancies, then he should have been advised of the possibility of redundancy sooner. Mr Brackenridge explained that the primary reason for the redundancy was the downturn in the business;

45.3. the vacancies list was discussed. The claimant said that the only job which he considered suitable was one in London but that he would not relocate and was looking for a job in the North West. Mrs Pursey offered to forward the claimant's CV to other businesses within the group, Inviron and Capula. The claimant declined that offer;

45.4. the claimant asserted that he had been unfairly selected for redundancy and that Alastair Rowe should have been considered as a Procurement manager and included in a pool for selection with the claimant because Alastair Rowe:

45.4.1. was on the same salary as the claimant;

45.4.2. was on the company intranet listed as procurement manager;

45.4.3. was in the procurement manager email group;

45.4.4. attended all procurement manager meetings;

45.4.5. was referred to as procurement manager at supply chain meetings;

45.4.6. was involved in all the framework agreements;

45.4.7. had been brought in by Steve Milnes, Managing Director, as a Procurement manager and there was an underlying agenda to replace Andy;

- 45.4.8. had worked with Steve Milnes previously and the decision to dismiss the claimant rather than Mr Rowe was based on personal reasons.
46. It was agreed that Mr Brackenridge and Mrs Pursey would consider the points raised by the claimant and that there would be a further consultation meeting.
47. On 4 July 2017 the claimant emailed Mrs Pursey to confirm that he did not want to submit his CV for a role at Inviron. Mrs Pursey replied to confirm that Capula did have projects in the North West and asked again whether the claimant would like her to submit his CV to them. The claimant declined as he remained of the view that his strengths were in M and E, and Capula was a systems integration business.
48. Mr Brackenridge investigated the claimant's assertion that Alastair Rowe was in fact a Procurement manager. He spoke with Nigel Hemsall to clarify the position relating to Alastair Rowe's attendance at the procurement management meetings referred to by the claimant during the consultation meeting. Mr Hemsall confirmed that Mr Rowe was recognised as having the subcontractor knowledge base whereas the claimant did not and therefore both the claimant and Mr Rowe were always requested to join the procurement community meetings and forums. Mr Brackenridge noted that the claimant ran the Procurement department, that Alastair Rowe reported into the claimant, and that Alastair Rowe was referred to and treated as a Senior Buyer. He therefore concluded that Alastair Rowe was not a Procurement manager but was a Senior buyer with primary responsibility for subcontract procurement.
49. The claimant was invited to attend a further consultation meeting on Monday 10 July 2017. He was advised of his right to be accompanied by a work colleague or trade union representative. The claimant was again accompanied by Phil Boyham. During the second consultation meeting:
- 49.1. Mr Brackenridge repeated the reason for the redundancies and explained why he did not consider that Alastair Rowe was a Procurement manager;
- 49.2. the claimant repeated his view that Alastair Rowe was a Procurement manager and was treated as such by Nigel Hemsall;
- 49.3. the claimant stated that he did not want to be considered for any internal vacancies as he felt unfairly selected as he was not pooled with Alastair Rowe and it was only a matter of time before the respondent tried to get him, the claimant, out of the door;

49.4. the claimant said that he may be interested in a vacancy at Inviron and he took a job description. He was offered help with CV writing, agency contacts and interview practice, but said he did not require help with these.

50. By email dated 10 July 2017 (page 642) the claimant asked various questions of Mrs Pursey relating to his selection for redundancy. He again asked how he was selected without Alastair Rowe being considered. He expressed the view that there were areas of work that overlapped between them and that he would argue that he was more capable of undertaking Alastair's work than vice versa. The claimant advised that he could not consider the position at Inviron because it fell outside his skill set. He did however ask to be advised of any positions relevant to his skill base within the North West area.

51. By letter dated 11 July 2017 (p 643), sent to the claimant by email of the same date, Mrs Pursey invited the claimant to a further consultation meeting on 13 July 2018. The claimant was advised of his right to be accompanied by a work colleague or trade union representative. Mrs Pursey sought in her letter (approved by Mr Brackenridge) to identify the main points from the consultation meeting and to respond to the claimant's email of 10 July. Extracts from the letter dated 11 July 2017 read as follows:

During the first consultation meeting you also queried the placement of your role as at risk of redundancy. You believed that a member of your department, Alastair Rowe, should be placed in a selection pool with you as you felt Alastair also operated as a Procurement manager.

We had not pooled you with Alastair initially as we considered you to be in a stand alone role. In light of the points you made at the consultation meeting on the 3rd, however, we have revisited this and sought to clarify this with Nigel Hemsall, Group Procurement Manager. He advised that your role as Procurement manager and Alastair's role as Senior Buyer were not interchangeable. In your role as a department manager, you identify the team structure and assign roles and responsibilities to each member of the team, including Alastair. The department was structured by you to allow Alastair to focus purely on subcontract ordering, while other members of the team focus on different aspects of procurement. Alastair attends procurement meetings because of his knowledge of subcontract procurement and the need for him to contribute to broader procurement discussions. In your role of Procurement Manager, you have people management responsibility and Alastair reports into you. He is therefore in a more junior role to you. His more junior status is also demonstrated by the £16,750 salary differential between your role and his. For the above reasons, we believe we were correct not to pool you with Alastair, and we remain of the view that you are in a stand-alone position

We went on to discuss potential opportunities across the Group. You had previously been given the Group vacancy list but confirmed that there were no opportunities suitable given your desire to remain in the North West. You stated you would not consider any vacancies within the Imtech group.

Following our consultation meeting you raised a number of questions by email on 10th July, some of which I have answered above, the others I deal with below

With regards to the distribution of workload, given the volume issue within the business, there are fewer projects in progress and less procurement activity required to service the live projects. This is the reason why your role was placed at risk of redundancy. There is capacity within the Procurement department to undertake additional duties and your activities will be distributed among the team according to skill set. For clarity, Alastair has not undertaken any additional duties since our meeting on 29 June...

I would be grateful if you would clarify whether your email contains a request for you to be considered for the Senior Buyer role on the basis that you believe you would be better able to carry it out than Alastair. We would give due consideration to this, but would ask that you confirm if you wish us to do so ahead of the consultation meeting. Note that the effect of this request, if granted, would be that Alastair would be made redundant and you would be re-engaged on the terms of a Senior Buyer

...

I confirm that we shall advise you if there are any suitable roles for you in the North West area that become available

52. By email dated 12 July 2017 (p 648) the claimant responded to Mrs Pursey's letter. He maintained his position that Alastair Rowe was a Procurement manager, indicating that it had been Steve Milne's decision to create a role for Alastair, had personally agreed with Alastair his overall package, primary job function and that the department in relation to Alastair Rowe's role was not structured by him, the claimant, but by Steve Milnes. The claimant questioned why he had appeared on the redundancy list and said that the decision for his selection had been in error on the basis that the selection was done by people with historical relationship with others that should have been considered within the redundancy pool, noting that Steve Milnes Nigel Hemsall and Alastair Rowe all worked for Balfour Beatty during the same period. The claimant did not answer Mrs Pursey's question about whether he wished to be considered for the Senior Buyer role because he overlooked that question as he did not have a copy of the letter before him at the time and was working from memory of what the email had said.

[The tribunal accepts the claimant's evidence that he did not have before him a copy of the letter dated 11 July 2017 when he drafted his written response. He was working from memory of the email he had received.]

53. The claimant's email dated 12 July 2017 concluded as follows: -

On a final note I would highlight that your last email was sent to my business email address, from my conversation with you on 4 July I was advised that you would be amending my out of office settings, I also understand that a mailing rule has been set up by the company forwarding any such emails to the entire procurement team. I

consider your distribution of both my email to yourself and your private and confidential letter of 11 July to be a breach of my own privacy and confidentiality.

54. Mrs Pursey spoke to the claimant on the telephone and apologised for her error. Mrs Pursey was unaware that other members of the team would have access to emails which she sent addressed to the claimant personally.

[On this the tribunal accepts the evidence of Mrs Pursey.]

55. A third consultation meeting took place on 13 July 2017. The notes were taken by Mrs Pursey (p650). During that meeting:

55.1. Mrs Pursey again apologised for sending her email dated 11 July to the claimant's work email address;

55.2. The claimant explained that he had not received a hard copy of the letter dated 11 July, just the emailed copy. He did not explain that he had been unable to access the email when he was preparing his response by his email dated 12 July 2017. He did not ask for a further copy of Mrs Pursey's email dated 11 July 2017;

55.3. Mr Brackenridge explained that the decision to place the claimant's role at risk was not a reflection on the claimant's performance. Mr Brackenridge told the claimant that the respondent recognised that the claimant had performed well, and acknowledged that he had received pay rises and bonuses as a result;

55.4. the claimant again reiterated that he did not accept the decision not to pool him with Alastair Rowe, again asserting that Alastair Rowe was a procurement manager;

55.5. the claimant asserted that the only reason for his selection was that Nigel Hemsall and Steve Milnes had worked with Alastair Rowe previously;

55.6. Mr Brackenridge told the claimant again that Steve Milnes did not make the decision and that the reason for the claimant's selection for redundancy was that Mr Hemsall and Mr Brackenridge had agreed it, it was not a personal decision;

55.7. it was noted that Steve Milnes had recognised the claimant's value to the business and had awarded the claimant discretionary bonuses £4000 and £3500 in 2015 and 2016, even though the respondent was not hitting targets;

55.8. Mrs Pursey asked the claimant whether he wanted to be considered for the Senior buyer role, which she explained would involve a

change of role and employment terms. The claimant did not accept this offer and asserted again that Alastair was in the same role as him, a Procurement manager. The claimant then said words to the effect that “Jesus was a Shepherd, but we all knew he was more than that”;

55.9. Mrs Pursey told the claimant that she had checked Alastair Rowe’s description on the intranet and that he was listed as a Senior buyer. The claimant alleged this had been changed after he, the claimant, had raised the issue. This was denied;

55.10. Mrs Pursey offered to undertake a selection between Alastair and the claimant for the role of Senior buyer. The claimant refused that opportunity saying he did not believe it would achieve anything;

[The tribunal notes some inconsistency and confusion in the evidence as to whether an offer was made to the claimant to be placed in a selection exercise between Mr Alastair Rowe and himself for the position of Senior Buyer and/or Procurement manager. The brief note at page 652 of the bundle does not specify for which role this offer was made. On balance the tribunal finds the offer was to do a selection exercise between the claimant and Alastair Rowe for the position of Senior buyer. That is consistent with the letter dated 11 July and consistent with the offer made earlier in the 3rd consultation hearing. The tribunal accepts the evidence of the respondent’s witnesses that the claimant refused this offer. The claimant did not, in his grounds of appeal, challenge the statement that he had refused the offer of bumping.]

55.11. the claimant was not offered a selection between himself and Alastair Rowe for the position of Procurement manager.

[The tribunal accepts the claimant’s evidence that he was not offered a selection between himself and Alastair Rowe for the position of Procurement manager. The tribunal accepts that if such an offer had been made then the claimant would have accepted it as this was exactly what the claimant had been looking for since the first consultation meeting. An offer of a selection exercise between Mr Rowe and the claimant for the position of Procurement manager would have been wholly inconsistent with the respondent’s decision that there was no longer a business need for the position of Procurement manager, a position held uniquely by the claimant.]

56. Mr Brackenridge adjourned the meeting to consider his decision. On resumption he confirmed the decision to make the claimant’s role redundant. He explained that he did not accept the claimant’s argument that he should have been pooled with Alastair Rowe and there were no suitable alternative roles in the North West. The claimant was given the choice to be paid in lieu

of notice or to be on garden leave during the notice period. The claimant chose to be paid in lieu.

57. By letter dated 14 July 2017 (p655) Mrs Pursey confirmed the decision to dismiss. The letter was approved by Mr Brackenridge before it was sent. The letter:

57.1. wrongly reported that the claimant had rejected an offer to be placed in a selection pool with Alastair Rowe for the position of Procurement Manager;

57.2. confirmed that claimant had denied the offer that there be a 'bumping' exercise, that is, that the claimant would be given the position of Senior buyer;

57.3. confirmed that the claimant had been served with notice taking effect at close of business on 13 July 2017;

57.4. advised the claimant of his right of appeal.

58. The claimant exercised his right of appeal by an email dated 21 July 2017 (p663). The basis of his appeal was that he should have been pooled with Alastair Rowe. He repeated his argument that Alastair Rowe was also a Procurement manager. The claimant said that he wished to take up the offer made to him in the letter of dismissal to be placed in a selection pool with Alastair for the role of Procurement manager. The claimant stated that he had not rejected the opportunity to be selected for redundancy in a pool with Alastair at the final consultation meeting. The claimant did not, in his grounds of appeal, challenge the statement in the letter of dismissal that he had refused the offer of bumping, did not take up the suggestion that there be a bumping process whereby Alastair Rowe's role would be made redundant and the claimant placed in the position of Senior Buyer.

59. The appeal was heard by Anita McFarlane, Commercial director. She had joined the business on 3 April 2017 and was at the date of the claimant's dismissal the claimant's direct line manager.

60. An appeal hearing was held on 1 August 2017. Anita McFarlane was assisted by Hazel Pursey, head of PR, who took notes. The claimant was again accompanied by Phil Boyham. In essence, the claimant's repeated exactly the same arguments as he had in the consultation meetings, namely, that Alastair Rowe, although a Senior Buyer in job title, was in fact a Procurement manager and therefore should have been placed in a pool for selection with the claimant. The claimant did not:

- 60.1. produce during his appeal the extract from the intranet which described Mr Rowe as a Procurement Manager (p 433);
 - 60.2. say that he was interested in taking the role of Senior Buyer to avoid redundancy.
61. Mrs McFarlane informed the claimant that she would investigate whether the claimant and Alastair Rowe should have been in the same pool for selection and, if so, would instruct a scoring exercise to be carried out.
62. Mrs McFarlane carried out a reasonable investigation of the claimant's assertions. She asked Mr Hemsall to send her evidence of when the procurement meetings were held and what they were described as. Mr Hemsall sent Mrs McFarlane confirmation of the dates of the procurement meetings of which there were only four in the period from December 2016 to the claimant's redundancy on 13 July 2017. As part of the investigation Mr Hemsall confirmed to Mrs McFarlane that Alastair Rowe was invited to the meetings, which were called procurement meetings, because he spent more time on site than the claimant and in order to address subcontracting matters.
63. After the investigation Mrs McFarlane came to the honest and genuine opinion that there were key differences between the roles of the claimant as Procurement manager and Alastair Rowe as Senior buyer. Mrs McFarlane decided that it would not have been appropriate to pool Alastair Rowe with the claimant. She was satisfied that:
- 63.1. Alastair Rowe attended procurement meetings at the request of Nigel Hemsall because of Alastair Rowe's knowledge of subcontracting and interaction with site teams, not because Alastair Rowe was considered to be a Procurement manager;
 - 63.2. the procurement meetings were not described as procurement management meetings or procurement manager meetings;
 - 63.3. Alastair Rowe was described as a Senior buyer on the respondent's and Imtech Group's intranet, not as a procurement manager as the claimant had alleged.;
 - 63.4. The claimant did line manage Alastair Rowe even though Alastair Rowe took directions from other employees of the respondent. Mrs McFarlane's view was that it would have been impractical and inefficient for all of Alastair's activities to have to be funnelled through the claimant;
 - 63.5. Alastair Rowe had no line management responsibility;

- 63.6. there was a wide disparity between the claimant's and Alastair Rowe's designated level of authority;
- 63.7. there was a significant salary difference between the claimant and Alastair Rowe reflecting the differences in their roles.
64. By letter to dated 4 August 2017 Mrs McFarlane wrote to the claimant with her decision on his appeal (p 698). The letter explained the reasons for Mrs McFarlane's decision to reject the claimant's appeal.
65. A further 11 roles were made redundant in December 2017, including the roles of Julie Whitehead and David Pierrie, two of the claimant's witnesses. The other witness for the claimant, Paul Mann, left the respondent in July 2015.

The Law

66. An employer must show the reason for dismissal and that the reason fell within one of the categories of a potentially fair reason set out in Section 98(1) and (2) Employment Rights Act 1996 ("ERA 1996").
67. Redundancy is a potentially fair reason for dismissal under Section 98(2) Employment Rights Act 1996 ("ERA 1996"). Redundancy is defined under Section 139 Employment Rights Act 1996. **Safeway Stores Plc v Burrell 1997 ICR 523** [endorsed by the House of Lords in **Murray & anr v Foyle Meats Ltd 1999 ICR 827**] states that the correct approach for determining what is a dismissal by reason of redundancy in terms of Section 139(1)(b) involves a three stage process:
- 67.1. was the employee dismissed? if so
- 67.2. had the requirements of the employer's business for employees to carry out work of a particular kind ceased or diminished, or were they expected to cease or diminish? if so
- 67.3. was the dismissal of the employee caused wholly or mainly by that state of affairs?
68. In determining at stage 2 whether there was a true redundancy situation the only question to be asked is whether there was a diminution/cessation in the employer's requirements for employees (not the claimant) to carry out work of a particular kind, or an expectation of such a diminution/cessation in the future. At stage 3 in determining whether the dismissal was attributable wholly or mainly to the redundancy, the Tribunal is concerned with causation. Thus, even if a redundancy situation arises, if that does not cause the dismissal, the employee has not been dismissed by reason of redundancy.

69. The employer having established the potentially fair reason for dismissal, the Tribunal must decide whether the employer acted reasonably or unreasonably in dismissing the claimant for that reason. The burden of proof is neutral: it is for the Tribunal to decide. The tribunal has considered all the circumstances of this case, including those matters referred to in s98(4) Employment Rights Act 1996, to determine whether, in all those circumstances, the dismissal of the claimant for the reason stated was fair or unfair. In deciding whether the decision to dismiss was fair or unfair the tribunal reminds itself that it is not for the tribunal to substitute its view for that of the employer. The question is whether the respondent acted fairly within the band of reasonable responses of a reasonable employer in dismissing the claimant.
70. The Tribunal must be satisfied that an employer has acted reasonably in deciding the appropriate pool from which to select the redundant workers. **Thomas and Betts Manufacturing Limited -v- Harding [1980] IRLR 255** states that the employers have greater flexibility in defining the unit of selection or pool where there is no agreed procedure. The respondents should show that they have applied their minds to the problem and acted from genuine motives. The Tribunals must be satisfied that an employer acted reasonably taking into account all the factors including, whether other groups of employees are doing similar work to the group from which selections were made, whether employees jobs are interchangeable, whether the employee's inclusion in the unit is consistent with his or her previous position, whether the selection unit was agreed with the union.
71. In **Capita v Hartshead Limited v Byard 2012 IRLR 814**, the EAT considered the applicable principles in deciding whether the employer has selected a correct pool of candidates for redundancy as follows:
- 71.1. it is not the function of the 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 Brown – Wilkinson J in **Williams v Compair Maxam Limited 1982 IRLR 83**);
- 71.2. 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 (2005) All ER (D) 142**);
- 71.3. 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 Limited v Ryan EAT/663/94**);

71.4. 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

71.5. Even if the employer has genuinely applied his mind to the issue of who should be in the pool consideration for redundancy, then it will be difficult, if not impossible, for an employee to challenge it.

72. The Tribunal should consider whether an employee was warned and consulted about an impending redundancy. Whether consultation is adequate in all the circumstances is a question of fact for the Tribunal. An employer will normally not act reasonably unless he warns and consults any employees affected. **Polkey -v- A E Dayton Services Limited [1988] ICR 142.**

73. An employer should do what he can do, as far as is reasonable, to seek alternative work for the employee before dismissing by reason of redundancy. **Thomas and Betts Manufacturing Limited -v- Harding (Supra).**

74. The tribunal has considered and where appropriate applied the authorities referred to in submissions.

Determination of the Issues

(including, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence)

75. The claimant was dismissed and the effective date of termination was 13 July 2017.

76. The reason for the dismissal was redundancy in that the requirements of the employer's business for employees to carry out work of a particular kind, namely Procurement Manager, ceased or diminished, or were expected to cease or diminish and the dismissal of the claimant was caused wholly or mainly by that state of affairs. Redundancy is a potentially fair reason for dismissal within s98 (1) and (2) Employment Rights Act 1996.

77. The tribunal has considered all the circumstances of this case, including those matters referred to in s98(4) Employment Rights Act 1996, to determine whether, in all those circumstances, the dismissal of the claimant for the reason stated was fair or unfair. In deciding whether the decision to dismiss was fair or unfair the tribunal reminds itself that it is not for the tribunal to substitute its view for that of the employer. The question is whether the

respondent acted fairly within the band of reasonable responses of a reasonable employer in dismissing the claimant for the reason stated.

78. The tribunal has examined all the circumstances and notes in particular the following matters:

78.1. There is no satisfactory evidence to support the assertion that the decision to select the claimant for redundancy was motivated by malice or bias in favour of Mr Rowe. The fact that Mr Milnes was part of the senior leadership team who considered the need for redundancies is hardly surprising as he was the Managing Director;

78.2. There is no satisfactory evidence to support the claimant's assertion that:

78.2.1. Mr Milnes was involved in the decisions relating to individual redundancies at departmental level;

78.2.2. all the managers involved in the claimant's selection for redundancy were acting directly under the instruction of Steve Milnes to retain Alastair Rowe, a friend of Mr Milnes, in preference to the claimant;

78.2.3. all the managers involved in the claimant's selection for redundancy chose to retain Alastair Rowe because he had worked with some of the managers in other businesses. There was the unfortunate incident when Mrs Pursey in error sent the email of 11 July to the procurement group thereby disclosing confidential information to members of the claimant's team. The claimant was understandably upset by that. However, the tribunal accepts that this was not deliberate. Mrs Pursey immediately apologised for this error.

79. The tribunal has carefully considered the evidence of the respondent's witnesses to determine whether it accepts that the respondent made a genuine business decision that, in achieving the required cost savings, the removal of the position of Procurement Manager served the interests of the business. In reaching this decision the tribunal bears in mind, in particular, that: -

79.1. Mr Brackenridge originally made the decision that the removal of the two Senior Buyers and Coordinator in the Procurement Department was the best option for the required savings in salary costs;

79.2. However, before reaching a final decision, Mr Brackenridge sought the views of Nigel Hemsall, Head of Procurement at the Imtech Group;

- 79.3. Mr Hemsall expressed his view that the proposal to remove the two Senior Buyers and coordinator roles would not have left the business with a functional Procurement department. He put forward the alternative proposal to make redundant the position of Procurement Manager and leave the two Senior buyers and coordinator roles unaffected;
- 79.4. After discussion Mr Brackenridge agreed with Mr Hemsall's view and decided that the necessary cost saving in the Procurement Department would be achieved by the removal of the post of Procurement Manager;
- 79.5. There is no satisfactory evidence to support any assertion that either Mr Hemsall or Mr Brackenridge was motivated by malice or that they were in some way motivated to retain Mr Rowe and/or to target the claimant for removal from the company;
- 79.6. the claimant made no allegations of unfair treatment at the hands of either the Managing Director, Mr Milnes, Mr Hemsall or Mr Brackenridge prior to the start of the redundancy process;
- 79.7. The claimant did not complain at any time prior to the redundancy process that he was being edged out of the business, that Mr Rowe had been appointed to replace the claimant;
- 79.8. The only real complaint expressed by the claimant, during the course of the tribunal hearing, was that Mr Rowe had been appointed without his agreement: he did not think that Mr Rowe was up to the job and understood that any appointment would only be made with the claimant's consent. However, the claimant did not make any complaint about the appointment of Mr Rowe at the time in 2015;
- 79.9. The claimant did not object to part of his duties being delegated to Mr Rowe, did not object to Mr Rowe attending procurement meetings, did not at any time, prior to the redundancy exercise, complain that Mr Rowe was refusing to follow his own instructions, did not complain that Mr Rowe received his instructions from the directors directly.

Having considered all the circumstances the tribunal accepts the evidence of the respondent's witnesses and finds that the respondent made a genuine business decision that the removal of the position of Procurement Manager did serve the interests of the business and did better serve the interests of the business than the removal of the positions of Senior Buyers and Coordinator. It was reasonable for Mr Brackenridge to seek the opinion of Mr Hemsall, who, as Head of Procurement of the Imtech Group, had a good knowledge of the structure and function of the respondent's Procurement Department.

80. Having identified that the role of Procurement Manager would be made redundant Mr Brackenridge and Hazel Pursey, Head of HR, considered whether any of the roles affected by the redundancy proposal should be placed in a selection pool. They reached the decision that the claimant's role was a stand-alone position, that he was the only Procurement Manager, had a distinct role from any other employee. They made the decision that the claimant was therefore in a pool of one and the claimant was advised that he was placed at risk of redundancy.

81. The tribunal has carefully scrutinised this decision to determine whether Mr Brackenridge and Mrs Pursey genuinely applied their minds to the issue of who should be in the pool for consideration for redundancy. The tribunal notes, in particular, as follows:

81.1. the Organogram (p260), a contemporary document, accurately reflected the respondent's genuine understanding of the line management of the Procurement department at the time of the redundancy exercise. It indicates that Mr Rowe fell under the claimant's line management;

81.2. The claimant's job title was Procurement Manager, Mr Rowe's job title was Senior Buyer. Each has a Contract of employment /letter of appointment consistent with that job title;

81.3. The claimant had not, prior to the redundancy exercise, raised any complaint, formal or informal, that either:

81.3.1. Mr Rowe had been appointed to replace him; or

81.3.2. Mr Rowe was in reality a Procurement Manager and was identified as such on the Intranet; or

81.3.3. Mr Rowe was treated as a manager; or

81.3.4. Mr Rowe wrongly attended Procurement Management meetings; or

81.3.5. Mr Rowe no longer fell under the claimant's line management; or

81.3.6. Mr Rowe took instruction from directors not the claimant;

81.3.7. He disagreed with the allocation of some of his duties to Mr Rowe;

In all these circumstances, it was reasonable for Mr Brackenridge and Mrs Pursey to decide that the claimant was in a unique position as Procurement Manager. In the absence of any prior notification from the claimant that he believed that Alastair Rowe was in fact a Procurement Manager and wrongly described as Senior buyer, it was reasonable to rely on the available

documentary evidence and the job titles of the claimant and others in the Procurement Department to make their decision. There is no satisfactory evidence to support the assertion that either they were instructed by Mr Milnes to place the claimant in a pool of one, or that Mrs Pursey made that decision because she had worked with Mr Rowe in previous employment elsewhere. The tribunal is satisfied and finds that Mr Brackenridge and Mrs Pursey genuinely applied their minds to the issue of who should be in the pool for consideration for redundancy.

82. It was reasonable for Mr Brackenridge and Mrs Pursey to be the managers involved in the identification of the pool and the selection process. Although the claimant objects to their involvement in the process, on the grounds that they had a lack of knowledge of his duties and background, the claimant did not, during the redundancy consultation, object to their involvement and did not, during the hearing, identify any other manager who could have taken their place. In any event, they investigated the points raised by the claimant and sought information from Mr Nigel Hemsall, who had regular contact with the claimant and Alastair Rowe and had a good knowledge of the scope and quality of their work.
83. There followed a consultation procedure. From the beginning the claimant made it clear that he did not accept that he was in a unique position. He asserted that Alastair Rowe, who had the job title of Senior Buyer, was in fact also a Procurement Manager and that there should be a selection process between the claimant and Alastair Rowe.
84. The respondent carried out a reasonable investigation of the claimant's assertions. Mr Brackenridge was reasonable in concluding that Mr Rowe did not hold the position of Procurement Manager. Whereas Mr Brackenridge and Mrs Pursey had originally decided that the claimant held a unique position by examination of the documentary evidence and job titles, the tribunal is satisfied and finds that during the course of the consultation process Mr Brackenridge and Mrs Pursey did carry out a reasonable investigation of the claimant's assertions that in reality Mr Rowe was a manager and that his job title and job description did not accurately reflect the true nature of his duties. Having conducted the investigation Mr Brackenridge and Mrs Pursey were reasonable in concluding that Mr Rowe was not a Procurement Manager and confirming their position that the claimant was in a unique position.
85. The tribunal can understand how the claimant felt aggrieved that he, a conscientious well valued employee with a high level of skills and performance, should be selected for redundancy when Alastair Rowe, who had fewer skills and less experience than the claimant, was retained. It is clearly the claimant's view that a better business decision would have been to retain the higher skills level of the claimant. However, the question for the

tribunal is not what was the best business decision. It is not for the tribunal to substitute its view. The question is whether the respondent acted within the band of reasonable responses. The investigation by Mr Brackenridge and Mrs Pursey showed that employees other than procurement managers did from time to time attend the procurement meetings held by Mr Hemsall. It is clear that Mr Rowe's attendance at such meetings was more regular than other non-procurement managers. His regular attendance at meetings, his receipt of day-to-day instructions from directors in the business, was different to other Senior Buyers, such as Mr Pierrie. However, the attendance of Mr Rowe at these meetings, the instruction from the directors, have been explained. The difference in treatment of Mr Rowe, when compared to other senior buyers, related to the nature of his duties. It is not in dispute that Mr Rowe carried out part of the functions of a Procurement manager. The claimant raised no objection to that prior to the redundancy exercise. There is no satisfactory evidence that any other Senior Buyer had similar delegated duties.

86. The decision that the claimant was in a unique position, that he was in a pool of one, and that there should be no selection exercise fell within the band of reasonable responses.
87. The respondent did consider bumping. They did ask the claimant whether he would want to be considered for the position of Senior Buyer. It is not clear whether the respondent intended to operate some sort of selection criteria between the claimant and the existing Senior Buyers, including Mr Rowe. In the letter dated 11 July 2017 Mrs Pursey was suggesting that the claimant simply take over the position of Mr Rowe, who would then be made redundant. However, the claimant did not accept the offer, did not indicate that he wished to be considered for the position of Senior Buyer. The tribunal accepts the claimant's evidence that he did not have before him a copy of the letter dated 11 July 2017 when he drafted his email dated 12 July 2017, and did not deliberately fail to respond to the offer at that stage. However, at the meeting on 13 July 2017 Mrs Pursey asked the claimant whether he wanted to be considered for the Senior buyer role and the claimant rejected that offer. The offer was clearly set out in the letter dated 14 July 2017 (p 655) confirming termination of employment. The claimant did not, in his grounds of appeal, challenge the statement that he had refused the offer of bumping. At the appeal stage the claimant did not pursue any request for him to be considered for the position of Senior Buyer. On balance the tribunal finds that the claimant had no interest in the position of Senior buyer. The respondent was reasonable in putting forward the offer and not taking it any further when the claimant rejected the offer.
88. The respondent carried out a fair consultation procedure. The claimant was given full opportunity to state his case, he was allowed the opportunity of

representation. The respondent considered the claimant's representations. The respondent carried out a reasonable investigation of the claimant's challenge to the decision that the claimant held a unique position and that there should have been a pool of two: the claimant and Mr Rowe. The claimant was offered and exercised a right of appeal. At the appeal stage the appeal officer carried out her own investigation as to whether Mr Rowe was a Procurement Manager and whether there should have been a pool of two. She made a reasonable decision based on a reasonable investigation that Mr Rowe was not a Procurement manager.

89. The respondent offered the claimant the opportunity to avoid redundancy by taking up alternative employment both with the respondent and within the wider group. There is no satisfactory evidence to support the claimant's assertion that the offer of the job in Ashford was a sham. It is clear that Mr Brackenridge and Mrs Pursey took steps to investigate the available vacancies and to enquire whether the claimant was interested in any such vacancies. The claimant gave a clear indication that he was not interested in any vacancy other than in the North West. The respondent acted reasonably in offering to send the claimant CV to other members of the group, in different areas of business. The claimant chose not to avail himself of that opportunity on the basis that he did not have the appropriate skill set for those areas of business.

90. In all circumstances the dismissal was fair.

Employment Judge Porter

Date: 8 June 2018

RESERVED JUDGMENT WITH REASONS SENT TO THE PARTIES ON

23 June 2018

FOR THE TRIBUNAL OFFICE