EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103948/2018

Held in Glasgow on 13 and 14 August 2018

Employment Judge: F J Garvie

Mr J Sneddon — **Claimant**
In Person

Kelvin KBB Ltd — **Respondent**
Represented by:
Mr A Strain - Solicitor

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim should be dismissed.

REASONS

Background

1. In his claim, (the ET1) presented on 12 April 2018, the claimant alleges that he was unfairly dismissed. He goes on to say at Section 8 (page 6 of the ET1) that he was "Chosen for redundancy from contentious scoring matrix". At the end of the ET1, he attached a copy of a letter dated Monday, 12 February 2018 from him to the respondent. He also provided more information under the Section marked, "15 Additional Information" (page 12 of the ET1).

2. The claimant provided an ACAS Certificate with a date of receipt by them of 20 February 2018 and date of issue of 12 March 2018. The claimant gave the termination of his employment as 4 January 2018.

3. His claim was duly acknowledged and a copy sent to the respondent on 12 April 2018. The respondent lodged a response, (the ET3), received on 8 May 2018 which was within the timescale required in terms of the Notice of 12 April 2018. In the ET3, the respondent denies that the claimant was unfairly dismissed. Attached to their reply was a copy of a letter sent to the claimant dated 9 March 2018 which was in response to his letter to them of 12 February 2018.

4. The ET3 was acknowledged by letter of 10 May 2018. A case management order was issued dated 15 May 2018 and, on 14 May 2018, the parties were informed that the case would now proceed to a final hearing.

5. The case was then duly listed. Mr Strain advised by email of 12 June 2018 that he was now instructed on behalf of the respondent. He then wrote on 2 August 2018, copying the claimant into his application, for documents to be provided. Employment Judge Robert Gall directed the claimant's comments be sought by 5pm on 6 August 2018.

6. A letter was issued on 7 August 2018, advising that the application for the order had been refused by Judge Gall as there was insufficient time for compliance with any order and that an earlier order dated 15 May 2018 covered similar matters to what was now being sought.

7. The claimant by emails of 8 and 9 August 2018 asked that his earlier email address be ignored and another one be used instead as the claimant's previous email address was no longer operational. This correspondence was acknowledged by letter of 10 August 2018 although this does not appear to have been copied to Mr Strain.

The Final Hearing

8. At the start of the final hearing, it was confirmed that both parties had provided bundles of productions. There was considerable duplication and it was agreed

that the productions which would be used would mostly be from the respondent's bundle although, where necessary, reference would be made to the claimant's bundle. Mr Strain suggested that his bundle be referred to as a joint bundle but given there were two separate bundles they are referred to as the claimant's or the respondent's bundle.

9. Mr Strain sought to add in an additional document, (R14) to the respondent's bundle and there was no objection to this from the claimant.

10. It was confirmed that evidence would be given from two witnesses for the respondent and the claimant would also give evidence on his own behalf.

11. Mr Allan Hughes, the respondent's business manager, gave evidence as did a Miss Colette MacLeod who was the claimant's Line Manager as at termination of his employment.

12. As indicated, the claimant also gave evidence on his own behalf.

Findings of Fact

13. The Tribunal found the following essential facts to have been established or agreed.

14. The claimant commenced employment with the respondent on 1 April 2014. In the ET1, he set out that his job remit was as a Sales Order Processor/Kitchen Designer.

15. He was assigned to sales order processing which is a specific department within the respondent's organisation. The respondent manufactures kitchens, bedrooms and bathrooms, primarily for the new house-building market although there is some work done for retail clients.

16. As indicated, Miss MacLeod was the claimant's line manager. The claimant's job is recorded as being that of a design/planning processor in terms of a record of an individual consultation held with him on 5 December 2017, (R5).

17. Mr Hughes as the Regional Director/Business Manager has responsibility for the external field-based sales team in Scotland. In total, the respondent employs approximately 200 individuals. Mr Hughes is based at the respondent's head office where he spends a certain amount of time with the sales and customer teams who work in the head office. His office is an enclosed glass fronted one office which overlooks an open plan area with desks for the sales order processing team and the robes (wardrobes) team. The customer (care) team works in a similar open plan office on the floor above where Mr Hughes and the sales teams are based.

18. When Mr Hughes commenced employment in April 2017, there were between 6 and 8 in the team where the claimant worked. The robes (wardrobes) –team had about 6 staff.

19. By early October 2107, the respondent realised that they required to reduce the number of employees as a result of a downturn in orders. Mr Hughes had meetings with senior management following which he was asked to address a meeting involving the sales order processing teams for kitchens and vanities (where the claimant was based) and the robes (wardrobes) team. Also present were the customer care team i.e those staff who work on the floor above where the claimant and his team and robes were based.

20. Mr Hughes was provided with what was described as "the script". He read this out in the presence of all these staff at a meeting on 30 November 2017, (R3). It gives an overview and then goes on to explain what would happen to individual staff. It was made clear that two employees (referred to as "two heads") would be lost from the kitchens and vanities team and two from the robes team but there would be no change to the numbers in the customer care team.

21. After some more information was provided, the customer care team, having been informed that they would not be impacted by the reduction in the head count were allowed to return to their work upstairs.

22. The rest of the employees were informed that there would now be one to one briefings with their respective line managers with a member of the HR team present as well. They were told that they would each be given a letter informing them whether or not the individual concerned was at risk of redundancy.

23. Mr Hughes also explained that the employees had been assessed within two pools against a redundancy selection criteria. The first pool consisted of the kitchen/ vanity team (which included the claimant) while the second pool was the robes team.

24. The claimant was invited to a meeting with Miss MacLeod as his line manager and a Miss O'Connor from HR.

25. Miss MacLeod was adamant that the claimant received a copy of a letter from her at that meeting which was held on 30 November 2018 soon after the overview meeting attended by the employees who had been addressed by Mr Hughes. An undated letter, (R12) was addressed to the claimant but this has the wrong address since it shows his house number as 5 whereas his house number is 6.

26. That letter refers to this individual meeting with the claimant. It explains that the respondent had not been able to avoid the need for compulsory redundancies and so a selection process was carried out using a selection criteria matrix.

27. The letter went on to state:

> "I regret to inform you that your position is one of those to have been provisionally selected for redundancy following the application of those selection criteria. I enclose details of your score and the breakdown of how it was arrived at." (Tribunal note -these are the documents set out at R8 and 9). The letter then continued:

"I would emphasise that this is only a provisional decision and that we will now commence a period of individual consultation to give you the chance to discuss this situation and how it affects you in more detail, including:

- The reason for the proposed redundancy of your role
- The make-up of the selection pool
- The selection criteria, including how they have been applied to you and whether you think the provisional assessment is correct
- Possibilities for alternative employment
- The redundancy terms that will apply if your selection for redundancy is confirmed and alternative employment is not available
- Any ideas you may have for avoiding redundancy or reasons why you think the company should not select you for redundancy

Next steps

I would like to meet with you on a one- to-one basis to discuss your provisional selection for redundancy."

28. The letter confirmed that the claimant would be on paid leave and he was to attend a meeting on Monday, 4 December 2017. He was advised of his right to be accompanied by a work colleague or a recognised trade union representative.

29. The claimant denied that he had received this letter, asserting that it was posted to the wrong address and so it was delivered to his neighbour. However, he accepted that he knew that he was to attend a meeting on Monday, 4 December 2017. For whatever reason, he was not available then and so that meeting was rescheduled, at his request to Tuesday, 5 December 2017. He attended that meeting at which Miss MacLeod and Miss O'Connor

were again present. The latter prepared a document called “Record of Individual Consultation Meeting”, (R5) which sets out the points discussed. This record was not available during the course of that meeting but was sent to the claimant afterwards. It is a template which sets out under the first column, “**Areas to be covered**”. Below this appear in the same column, “**General business rationale**”, “**Shape/structure of function/department**” and “**Impact on own role**”.

30. The next column is headed, “**Confirm covered/understood**” and in the third column there is a heading, “**Issues raised by employee/alternative suggestions**” and below that “**Company response**”.

31. Under this third column information is then set out.

32. Under “**General business rationale**” the claimant did not want Miss MacLeod to go over “the script again” this being a reference to the script or information provided by Mr Hughes on 30 November at the collective meeting with all the staff from the three teams.

33. R5 then notes that the claimant agreed to Miss MacLeod going over the script again with Miss O’Connor advising that she would take notes and would provide a copy later to the claimant as a record of the discussion.

34. Miss MacLeod reiterated that the team was losing “2 heads”. She advised that the claimant’s position was one that had been provisionally selected following the application of the selection criteria and the scoring matrix and the letter issued on 30 November 2017.

35. In relation to questions, the claimant asked who was in the selection pool. The note records that Miss MacLeod “advised that it was **the whole office**” (Tribunal’s emphasis). Miss O’Connor clarified that the claimant was a part of the Kitchens/Bathrooms pool.

36. The claimant asked when the scoring matrix was designed and was advised that it was designed for the redundancy assessment. The claimant asked if

people's varying levels of service were assessed and Miss MacLeod is recorded as saying that everyone was assessed against the same criteria. The claimant asked if there was a record for everyone and when asked if he meant in relation to the assessment, this was confirmed. He was informed he could only see his own scoring matrix and he asked how he was supposed to know how others had scored.

37. Miss O'Connor explained that the scores were collated and ranked before those identifying those who were at risk of redundancy.

38. The claimant asked if everyone had a personal file which was confirmed. He asked to see his file and was advised that there would be a charge to receive the copy.

39. The claimant was informed that there were no alternative vacancies. He asked if he could be considered for future vacancies. The note records that the exercise was said not to be able about people not doing a good job but, as a result of the need to reduce heads due to the order book and so, the claimant could apply for any suitable vacancies in the future.

40. There was then discussion about statutory redundancy and entitlement to notice pay. The claimant did not have any other questions and what is then recorded is that he asked that his address be amended to show the correct number, 6 rather than number 5 which had been recorded wrongly on his at risk letter and this was to be rectified. It was also confirmed the respondent had his email address.

41. In relation to what happened at this meeting, the claimant was adamant that his understanding from Miss MacLeod was that she had said "*the selection pool was the whole office*". That certainly is what appears in the record of the individual consultation meeting, (R5). Miss MacLeod in her evidence was adamant that she had not meant by this that she was included but, rather that there 8 individuals in the team, including the claimant who were affected. She, as line manager of that team, was not included in the pool.

42. The claimant's Redundancy Selection Matrix, (R9) sets out under "Skillset" that he was assessed as "Good" with 4 skills which gave him a Score of 6. His "Productivity" was "Average" (within the category of 4-6) giving him a Score of 4.

43. His Attendance was marked as "Excellent" with 0-1 which attracted a Score of 0. The same applied to his "Disciplinary record" which was marked as "None" and "Excellent" and this also was a Score of 0.

44. R8 shows the Criteria and Rating. Under "Role Skillset", it shows the following six items:

Design/Fusion, Customer Interaction, Customer Care, Programming, Call off management and Order Processing.

45. There are four items greyed out for the claimant and he is given 4 Skills under the Heading, "'Good".

46. Under the heading "Productivity/Output", the Measure/Score is shown under columns 1, (the lowest mark), 2 (being mid) and 3 (being high). There are then five categories as follows:

Client Complexity, Kitchen Orders Completed, Vanity Orders Completed, New design projects and Rate of specification errors.

47. The claimant scored "Low" for "Client Complexity" and this was shown under Column number 1. He received "Mid" for "Kitchen Orders Completed" with this being recorded as "< 400", and so he was in column 2. For "Vanity Orders Completed" this wasg "< 400" and so under column 1. "New Design Projects" was marked as "< 10" and so in column 1. "Rate of Specification Errors" was shown as "> 10%" and so was in column 1. The claimant is shown under the "Average" column as having a Score of 4 from a possible 4-6.

48. Under the column, “Attendance” the number of occasions are set out as follows:

0-1 in a rolling 12 month Period 0
2-3 in a rolling 12 month Period 1
4-5 in a rolling 12 month Period 2
6+ in a rolling 12 month Period 3

49. Someone with 6 plus would be “Below Average” and would have attracted a Score of -3, “Average” with 4-5 is a -2. Next, someone with 2-3 is “Good” and -1 while 0-1 (the claimant’s position) is 0 and “Excellent”.

50. There is then a heading, “‘% Absence rate”’. This is highlighted for the claimant as 0, being “< 1.75% in a rolling 12 month period”. The other percentages are “1.75 – 3.49% in a rolling 12 month period 1”, “3.50%- 5.24% in a rolling 12 month period 2 and “5.25% + in a rolling 12 month period 3”.

51. Alongside is another column that has “Below Average” is 6, “Average” is 4-5, “Good” is 2-3 and “Excellent” is 0-1.

52. Next, there is the information headed, “Disciplinary” with “Below Average” attracting a Score of -3, “Average” a Score of -2, “Good” a Score of -1 while “Excellent” attracts a Score of 0.

53. There are also headings, “Final Written Warning”’, “Written Warning”, “Verbal Warning” and “None”.

54. The claimant’s disciplinary record is shown as “Excellent” and so his Score is marked as 0.

55. Finally, under the heading, “Length of Service” this notes that this was only to be used if more than one employee had the same overall score, in which case 0-5 years would score 1, 5-10 years 2, 10-15 years 3, and 15-20 years 4.

56. As indicated, the claimant was given copies of R8 and R9 and so these were available to him at the meeting on 5 December 2018.

57. The claimant did not dispute that the notes from that meeting, (R5) prepared by Miss O'Connor following that meeting were accurate, except for his contention that Miss MacLeod made it clear to him that she was included in the selection pool which, of course, Miss MacLeod in her evidence, strongly denied.

58. By letter dated 5 December 2017 addressed to the claimant at his correct address, Miss O'Connor enclosed a copy of that record of the discussion, (R5). She went on to refer to his enquiry about his personal file and asked if he intended to make a written request.

59. She also confirmed there was to be a further meeting on Thursday, 7 December 2017 to confirm redundancy.

60. The claimant contacted the respondent by email, indicating that he did not intend to attend that meeting. This seems to have been by an email of 7 December 2017 as set out in a further letter to the claimant from Miss MacLeod (R6) which is dated 7 December 2017. This confirms that he did not intend to attend that further meeting. That letter went on to explain there were no opportunities for redeployment and that his employment would end on 4 January 2018 due to redundancy. It then sets out details of his entitlements.

61. The penultimate paragraph reads:

> "You have the right to appeal against your dismissal. If you want to do this, please write to me within five working days of receipt of this letter, stating the grounds for your appeal."

62. Although this letter bore to be from Miss MacLeod, it had been prepared for her by the HR department.

63. The claimant did not appeal against the decision to dismiss him on the grounds of redundancy.

64. Separately, the claimant then wrote to the respondent by letter dated Monday, 12 February 20018 addressed to Miss O'Connor (R1).

65. The claimant wrote:

> "I feel this outcome was unfair and that the scoring matrix embarked on for the previous twelve months was unfairly used and collated to end my contract with the company. The fact that a member of the selection pool administered the scoring for the matrix can't possibly be deemed to be fair."

66. The same paragraph concludes as follows:

> "That with the fact it was not acknowledged I did any work for the Customer Care department on the selection matrix confirmed my feelings."

67. He then pointed out that of the 8 members of the pool, he was 6th in terms of service yet with no disciplinary record, excellent timekeeping and attendance, he found himself in the bottom two using their (the respondent's) selection matrix. 4 people had joined in 2014 with two leaving.

68. The claimant asked that his grievance be considered by the respondent. It is important to emphasise that this grievance letter was received well beyond the termination of the claimant's employment on 4 January 2018.

69. The respondent replied to that by letter dated 9 March 2018, (R2). It is from Laura Davidson, an HR manager with the respondent. It notes that the claimant's main concerns to be:

- "The way in which the announcement was made; and

- The selection matrix and the administrating of the matrix.

A group announcement was made on Thursday 30 November 2017, advising staff of pending redundancies within the department. One-to-one meetings were then held later that day with affected individuals.

At this initial meeting, it was explained that a selection matrix had been used to select those at risk within the redundancy pools and you were informed that we were entering into a period of consultation with you.

It was explained that consultation was an opportunity for you to raise any concerns and ask any questions you might have in relation to your provisional selection for redundancy. At this meeting, you were invited to attend your first consultation meeting on Monday 4 December."

70. The letter then explained that the claimant was not required to work his shift and that he was unable to attend the meeting on 4 December. Next, under the heading, **"**<u>The selection matrix and the administering of the matrix</u>" the letter continues:

"The selection matrix was developed by Alan Hughes, Business Manager, Collette MacLeod, Design/Planning Manager, Kenny Andrew, Robes/Sales Manager and HR. The scoring was not collated over a period of 12 months but was completed during November 2017 based on the criteria set and looking back over a 12 month period. The requirement to reduce staff numbers in the team was only identified in October 2017.

Neither Collette or Kenny were at risk of redundancy and as the line managers of the affected teams, were the most appropriate

> individuals to carry out the scoring in conjunction with Allan Hughes, the overall Head of the Department.
>
> All members of staff were assessed against the same criteria to ensure fairness throughout the process. Individuals have the right to challenge and discuss their own scoring and you were afforded this opportunity at your first consultation meeting.
>
> Individuals do not have the right to see the scoring of others.
>
> While we understand that this has been a difficult time, we believe that a fair process was carry out."

71. As indicated, the claimant was informed that he was not entitled to see the scores of others in his department. R10 has four pages which were produced as part of the respondent's bundle. R10/1 sets out that there are 8 employees with the claimant shown as employee 7 with his total score being 10, namely 6 for Skillset, 4 for Productivity and 0 for Attendance and 0 against Discipline. He is ranked 7th. There is then the 8th employee who scored 8. The employees who are ranked above them scored in a range from 15 to 13.

72. R10/2 shows the claimant as Employee 7 with his name appearing in the next column. Against each of the Criteria, Design/Fusion Customer Interaction, Customer Care, Layout Planning/Quote, Call-off management and Processing, there are x's where the individual employees have been scored. The claimant was not scored for Customer Care but nor were employees 1, 2, 6 and 8 so only three of the employees, namely 3, 4 and 6 were scored for Customer Care.

73. All the employees were scored for Design and Fusion and only employee 8 was not scored for Customer Interaction.

74. Under Layout Planning/Quote, employees 4 and 8 do not have an x against them. Under Call-off management, employees 3 and 8 do not have an x

against them while neither the claimant nor employee 8 have an x for Processing.

75. R10/2 also shows the Skills Awarded with the Rank in the final column. The claimant (as employee 7) is ranked, “Good” and employee 8 is ranked, “Below Average”. The remaining six employees are all ranked as “Excellent”.

76. Next, R10/3 sets out the 8 individuals and shows Scoring under Customer Complexity, Volume of orders (Kitchen), New Quotes/Booking in, Processing Errors/Problem Solving. All the employees were scored for these. The claimant’s Rank is “Average”. Employee 8 was “Good” as were employees 2, 3, 4, 5 and 6 with only one employee who is number 1 and is “Excellent”.

77. The final page is R10/4. It has Columns marked Employee, Name, Days, Occasions, Score Days, Score Occasions, Total and Rank. For the avoidance of doubt, only the claimant’s name appears as the remaining 7 employees’ names are left blank. The Tribunal was asked to accept R14 as a substitute page and this page, (R14) as compared to R10/4 caused considerable discussion. For clarity, R14 has an extra column marked, ‘Absence Rate’ whereas R10/4 does not.

78. R10/4 also provides what was referred to as a Footnote. It was explained that this spreadsheet is from an Excel package and the information in the Footnote in R10/4 is not replicated on R14. The Footnote states:

> “Overall Score- add score for occasions to score for total hours absence and convert to a minus figure *e,g, 1-3 occasions (1 point) + 3% absence (2 points) = 3 points in total = -3 ”.*

79. As explained, R14 has an extra column marked, “Absence Rate”. It appears to have been calculated from the information provided in the Footnote at R10/4. Mr Hughes appeared to indicate that the information set out in the Footnote was correct except that, where there is a positive score given under the column marked, “Total” this was then to be converted to a minus.

80. The query which this gave rise to was that employee 1, is shown as having 5.5 days of absence on 5 occasions with a Score of -1 for Score Days and a Score of -2 for Score Occasions which then is shown as giving a Total of 3, (this being plus three). It appears, according to the Footnote, that this should be converted to a minus figure (i.e.-3). It was unclear whether that individual did, in fact, have 3 points deducted since under Attendance in R10/1, this is shown as -1 one with a total of 15 (this individual scored 8 for Skillset and also 8 for Productivity. This individual is Ranked as 1.

81. Against R10/4 and R14, his or her ranking (this in unknown given the individual is not named) is shown as “Good”.

82. In contrast, the claimant, (employee 7) and employees 2, 3, 4 and 8 all have a Rank of “Excellent” while employee 1 has a Rank of “Good” as do employees 5 and 6 on R10/4 and R14.

83. It is important to note that the claimant did not, of course, have this information available during the course of the consultation meeting as he was told he was not entitled to see his colleagues’ scores. It is appropriate to note that the Tribunal had considerable difficulty in following how the final scores had been calculated. What is apparent from looking at the final scores, (R10/1), is, as indicated above, that employee 1 scored a total of 15, and so appears to have had 1 point/mark taken off for Attendance from an original total of 16 (i.e. 8 for Skillset and 8 for Productivity) less 1 for Attendance giving the total of 15.

84. Employees 2, 3, 4 all have totals of 14 and so are ranked joint second. Employees 5 and 6 scored a total of 13 points, ranking as joint 5th place followed by the claimant at 7th with a total of 10 points while employee 8 scored a total of 8 points and so was ranked 8th.

85. The Tribunal understood from Mr Hughes that the Absence Percentage was calculated on an excel programme with the Footnote on R10/4 being the basis for that calculation. Even if the scoring was incorrect and employee 1 should

have had 3 points not 1 point deducted, that would still have given a total number of points of 13 (i.e. 3 deducted from the total of 16) which, in turn, would have changed the order of ranking so that employees 2, 3 and 4 would have been joint 1st with employee 1 then being in joint 4th place with employees 5 and 6. Since the claimant and employee 8 scored 10 and 8 points respectively any such re-calculation for employee 1 would not have altered the order of ranking. The same would still apply had employees 5 and 6 had 2 points deducted for Attendance as that would have meant they each would have total Scores of 12 and not 13 and while it would have changed the rankings it would not have impacted on either the claimant or employee 8.

86. It therefore seemed to the Tribunal that, whatever way one looked at these calculations and rankings, the end result is that the claimant accrued 10 points and so was at least 3 or, possibly 2 points, adrift of the nearest next two employees, namely employees 5 and 6 who scored 13. Employees 2, 3 and 4 all scored 0 for Attendance and Discipline so there are no deductions made from their other scores for Skillset and Productivity, (R10/1).

87. The Tribunal was mindful that it has to take into account, as indicated by Mr Strain and as was explained to the claimant during the course of the hearing, that it is not for this Tribunal to consider the detail of the selection criteria and the markings since it does not have a remit to re-examine how the criteria was chosen and how the available data was then applied, unless there was bad faith or error.

88. The Tribunal considered whether it could conclude that there was an error here. If there was and the Tribunal was not satisfied that there was, then even if that were the case, it is not apparent how that might have made any difference to the claimant's scoring, given he would still have been adrift of employees 5 and 6 who scored 13 or if there was an error in their calculation of Attendance and they should have scored 12 points then they would both still have been 2 points clear of the claimant.

89. In any event, the claimant chose not to attend the meeting on 7 December 2017 nor did he query any of the matters beyond what is set out in R5 until he sent in the grievance letter of 12 February 2018 which was well after the termination of his employment on 4 January 2018.

90. In relation to who was in the selection pool, the Tribunal was satisfied that Miss MacLeod's evidence on this was to be preferred. It is unfortunate that she replied to the question, "Who was in the selection pool?" by saying, "Advised that it was the whole office" when it was apparent that she, as the line manager, was not included. Why she did not explain this more clearly to the claimant on 5 December 2017 was not clear to the Tribunal.

91. In the letter of 9 March 2018, (R2) Miss Davidson does specifically refer to the fact that Miss MacLeod and her counterpart in Robes, Kenny, were not at risk of redundancy and that they "as the line managers of the affected teams, were the most appropriate individuals to carry out the scoring in connection with Alan Hughes, the overall head of the department."

Closing submissions

92. At the end of the hearing of evidence on 14 August 2018, Mr Strain and the claimant provided oral submissions.

93. The respondent's submission is set out below followed by the claimant's submission.

Respondent's submissions

94. Mr Strain commenced his submission by reminding the Tribunal that the claimant commenced employment on 1 April 2014 and his employment ended on 4 January 2018. The reason for termination was redundancy. The claimant's earnings were agreed by the respondent as being the net figure provided to the claimant of £1,505 per month.

95. The Tribunal had heard from Mr Hughes who had joined the respondent as a business manager in May 2017. In or around October 2017, he identified

with the management team of the company that as there was a downturn in business, decisions had to be made regarding potential restructuring and redundancy. The Tribunal heard from Mr Hughes that the decision was made in early November and he decided that he would have to look at redundancies in the Sales Order processing team which was the team in which the claimant was employed. He concluded that two of the team of 8 had to be made redundant. He then, in conjunction with Miss MacLeod and with input from the HR department, identified criteria to be used for the selection matrix. In doing so, he looked at what were the priorities for the business and the relative weighting to be applied to the criteria.

96. This was done following discussion with Miss MacLeod as to what information and data was available from the company's internal systems. The information available related to attendance, disciplinary, productivity, output and the skillsets required going forward.

97. Accordingly, this selection matrix was put in place with data provided by Miss MacLeod and HR. There was a pool of 8, being all the individuals in the department, including the claimant who were then scored.

98. On 30 November 2017, Mr Hughes then addressed three teams, these being robes and the sales order processing teams for kitchens and vanities. The Customer care team also attended the meeting held on 30 November by Mr Hughes at which he addressed the staff from all three teams.

99. Thereafter, the claimant was asked to attend an At Risk on the same day. He did so, meeting with Miss MacLeod and Miss Sandra O'Connor from HR. At that meeting, Miss MacLeod gave the claimant a copy of the At-Risk letter addressed to him which is undated, (R12). The claimant was also provided with a copy of R8, this being the document which sets out the criteria and scoring and also R9 which is the document for the claimant himself.

100. The claimant was invited to attend an individual consultation meeting to be held on 4 December, (R12). This meeting then took place on 5 December,

not 4 December, and minutes were prepared, (R5) by Miss O'Connor following the conclusion of that meeting. It was clear that the claimant had R8, R9 and R12 when he attended that meeting and he was invited to ask questions about the selection criteria, its application and the scoring matrix.

101. What is apparent from the minutes of the meeting is that the claimant did not question the matrix, the scoring or the criteria used although he was entitled to have done so. The claimant was then invited to attend a final meeting to be held on 7 December 2017 and, subsequently by email, he declined to do so. Confirmation of his termination by way of redundancy was then sent to him under cover of a letter of 7 December 2017, (R6) advising that he was not required to work his notice period and his last day of employment would be 4 January 2018. That letter also set out his entitlement to appeal, (see the penultimate paragraph of that letter). The Tribunal had heard that the claimant chose not to do so.

102. Subsequently, the claimant issued a grievance letter and this is attached to the end of the claim form, (the ET1 at R1). This is a letter dated 12 February 2018. This was responded to by the respondent's Laura Davidson who is an HR Manager with the respondent, (at R2 on the final pages of the ET3). This refers to the way in which the announcement was made and the selection matrix and administering of it.

103. Productions are R10 and 14 are redacted but detail the breakdown of the relevant scoring against all of the criteria of those within the pool.

Turning to the points of contention by the claimant regarding the relevant criteria, he was for the first time at the Tribunal hearing, contesting that customer care and order processing were areas of work done by him on the basis that he says he ought to have been scored for those skill sets.

104. Miss MacLeod and Mr Hughes gave evidence that the claimant did not qualify for customer care because he was not trained on using the respondent's CRM

system called Epicor. That was the criteria used for scoring employees against that skillset.

105. Insofar as order processing was concerned, Miss MacLeod gave evidence that, in the main, the claimant's work involved order programming rather than order processing and that the respondent had, prior to the claimant joining their organisation recruited an order processor who was specifically employed to undertake the order processing requirements.

106. These appear to be the two main areas of attack regarding the criteria.

107. Mr Strain then wished to deal with the overall scoring and to look at the selection criteria, the process adopted and the legal requirements.

108. Mr Strain understands that the claimant now seems to have an issue regarding the pool given he gave in evidence his view that he believed Miss MacLeod was a member of that pool. The Tribunal had heard evidence from Miss MacLeod and Mr Hughes with regard to that. Mr Strain therefore invited the Tribunal to prefer the evidence of Mr Hughes and Miss MacLeod in terms of credibility and reliability where there was any conflict with the evidence of the claimant.

109. The reason he suggested this was that Mr Hughes and Miss MacLeod gave their evidence in a perfectly straightforward and credible fashion whereas, unfortunately, the same could not be same of the claimant who he would submit was at times evasive and sometimes obstructive with regard to his response to questions. Specifically, in relation to the at risk letter, he suggested he did not have knowledge of its existence because of the inaccuracy of the address placed on that letter but it appears that he received that letter at the original meeting. In contrast, the claimant steadfastly maintain that this letter had lain at his neighbour's door for quite some time and after the consultation meeting in December.

110. According to the claimant, the respondent is "a great big company" and Miss MacLeod lied. That is what was the claimant's view.

111. The claimant also appeared to suggest that Mr Hughes had an “Agenda” for some unknown reason but that, in Mr Strain’s submission, was simply not credible.

112. Mr Strain then referred the Tribunal to parts of the Commentary in the IDS handbook on Redundancy.

113. He confirmed that copies of the relevant pages had been provided to the claimant before the lunch adjournment. It became apparent when Mr Strain commenced reading from this handbook that certain pages had not been provided to the claimant.

114. The clerk was called and ask to take the Judge’s copy of the IDS handbook in order to copy the pages which had not been provided to the claimant. There was no objection to Mr Strain continuing his submission whilst she did so. Once the missing pages had been copies and given to the claimant the clerk returned the Judge’s copy of the handbook to her.

115. Mr Strain referred the Tribunal to various parts from pages 284 through to 305. He started at page 281, under the heading, ‘**Selection criteria’** and from 8.114 to 8.115 as follows:

> “8.114 If the selection pool is reasonable, the employment tribunal will then consider the selection criteria applied by the employer to employees in the pool.
>
> 8.115 **Criteria should be clear and transparent.** It may well be unfair to score employees on a range of pre-advised selection criteria and then take into account additional factors of which the employees are unaware in deciding who to select for redundancy.”

116. Therefore, Mr Strain confirmed that the criteria should be clear and transparent. Next, he referred to 8.117 as follows:

> "8.117 **Criteria must be objective.** In order to ensure fairness, the selection criteria must be objective; not merely reflecting the personal opinion of the selector, but being verifiable by reference to data such as records of attendance, efficiency and length of service."

117. In Mr Strain's submission, these tests were met here and the Tribunal had heard the evidence of Miss MacLeod and Mr Hughes that their starting point involved the collation of data and information from the employer's systems which was verifiable from those systems and that was why they gathered that information. Accordingly, these were objectively verifiable.

118. On the issue of attendance, these attracted scores and there was also provision for disciplinary record to be taken into account. The information provided was verifiable and perfectly objective – everyone was to be assessed on the same basis and the same skills.

119. Turning to the skills, these had to be assessed objectively and the information applied consistently to the pool of 8 individuals. This enabled assessment of what each individual was doing in their job.

120. In setting these criteria, Mr Strain's submission was that these were used as perfectly sound and sensible reasons and an employer has a considerable discretion thereafter. He referred the Tribunal to page 285 of the handbook at paragraph 8.121 as follows:

> "**Extent of employer's discretion.** Provided an employer's selection criteria are objective, a tribunal should not subject them or their application to over-minute scrutiny – British Aerospace plc v Green and ors 1995 ICR 1006, CA. Essentially, the task for the tribunal is to satisfy itself that the method of selection was not inherently unfair and that it was applied in the particular case in a reasonable fashion. Thus, employers are given a wide discretion in their choice of selection criteria and the manner in which they apply them and tribunals will only

> be entitled to interfere in those cases which fall at the extreme edges of the reasonableness band."

121. Mr Strain placed emphasis on the last sentence quoted above.

122. In his submission, the respondent was entitled to choose the criteria that was the best fit for their business. The Tribunal had heard about this from Mr Hughes and it was not at all surprising since he was the business manager who was looking for employees who had as much utility for the business looking at the skills going forward that were needed with a reduced head count.

123. So, while Mr Strain understood that the claimant might not agree it was a decision that the respondent was entitled to make.

124. The same applied to the productivity and attendance and disciplinary scoring. It does not matter that the claimant was not in agreement with these. In his submission, these fell within the reasonableness band.

125. The claimant also took issue with the assessment period. The respondent looked back over a period of twelve months and in Mr Strain's submission, that was a reasonable thing to do. He directed attention to page 287 at 8.123 of the IDS brief and the heading 'Length of assessment period'.

126. This states:

> "**Length of assessment period.** The length of the assessment period is likely to be important when it comes to determining the reasonableness of the application of selection criteria, as a short assessment period may not show the true picture. Employers will normally be expected to make allowances where an employee's assessment period is truncated by maternity leave, disability or other statutory absences, to ensure that he or she has scored fairly as against other employees."

127. The length of the assessment period was twelve months and, in Mr Strain's submission, this was perfectly reasonable to look at a calendar year and, again in his submission, was one which the employer was entitled to make. Was it reasonable or not is a question for the Tribunal but, in his submission, it was a reasonable length of assessment period.

128. Next, he referred to page 289, 8.127, "**Performance, skill and knowledge.**"

129. This reads as follows:

> "It is very common for employers to select employees for redundancy on the basis of their performance at work. The potential stumbling block relates to how that performance is measured. For example, an organisation that sets employees targets and regularly reviews staff performance against those targets should have to hand objective and verifiable documentation on which to rank employees' performance. However, an employer that does not regularly monitor performance, and instead relies on the subjective opinion of the employee's manager at the time redundancy is considered, will be leaving itself open to the allegation that the criterion is either not objective or is not being applied in a fair manner."

130. Dealing with this point, here as the Judge had pointed out, the issue is to determine what were the business needs going forward and these in this case were the skills and productivity and these are recognised, objective factors. It is not a matter of if the claimant disagrees; the employer is entitled to do so, they were entitled not to weigh attendance and disciplinary in the same way.

131. Mr Hughes wished to emphasise that this was a matter for the respondent and the Judge cannot interfere, provided the employer has looked to apply the criteria reasonably.

132. Next, Mr Strain referred to page 294 at 8.138 as follows:

> "8.138 However, while tribunals are entitled to consider whether selection criteria were applied fairly, they should not examine the actual scoring unless there has been bad faith or an obvious error – Dabson v David Cover and Sons Ltd EAT 0374/10."

133. Mr Strain was not saying there had been any error at all but he highlighted that the Tribunal was not to scrutinise the scoring unless the Tribunal thought there was bad faith on the part of the respondent or an obvious error and in his submission, in this case, there was neither.

134. Then, turning to the scrutiny of the claimant's scoring and his request to scrutinise other employees, Mr Strain directed attention to page 297 at 8.143 "**Analysing employee assessments**".

135. He then read out the section under that, which reads as follows:

> "When selecting employees for redundancy, it is common practice for employers to decide upon a number of different criteria against which the employees in the pool for selection should be assessed and then to allocate marks for each employee under each of those criteria. Once the selection has been made, those selected might feel that the marking or grading was not carried out accurately and complain that the resulting dismissal was unfair. The question which then arises is whether, and to what extent, an employment tribunal can lawfully scrutinise the employer's assessments of all those in the pool in order to discover any evidence that would substantiate the employees' claims."

136. Mr Strain made reference to **Buchanan v Tilcon Ltd** 1983 IRLR 417, Ct Sess (Inner House) where the Court of Session ruled that where an employee makes a general complaint of unfair selection, the employer does not have to prove to a tribunal that its grading of employees was carried out accurately.

137. He went on to refer to that decision in Buchanan being followed in Eaton Ltd v King and ors 1995 IRLR 75, EAT – see the handbook at paragraph 8.144 on page 297 and then over to page 298.

138. Mr Strain noted that the Judge had explained this to the claimant during course of the hearing.

139. Mr Strain then referred back to 8.143 as follows:

> "On appeal, the Court of Session held that where an employee's only complaint is unfair selection, all that the employer has to prove is that the method of selection was fair in general terms and that it was reasonably applied to the employee concern. Where the tribunal, as here, had accepted that the senior official doing the selection had made his decision fairly, using information he had no reason to question, to demand that he set up the accuracy of that information by direct evidence was unreasonable and unrealistic."

140. In Mr Strain's submission, this was on all fours with this case. Here, there was a complaint of unfair selection which was not particularised in any way. This had not been attempted until the Tribunal Hearing and accordingly, the Tribunal must follow the judgment of the Court of Session in **Buchanan** as it is binding on this Tribunal.

141. In Mr Strain's submission, there was clear evidence about the selection process in the matrix and this was done fairly and reasonably and applied to all the employees affected who were judged by the same criteria. They were objectively assessed and scored, using the same scoring mechanism.

142. It is unfortunate that the claimant finds himself to be number 7 in the pool and also unfortunate for number 8 who was in at number 8 but the employers had to make a decision and it was a decision they were entitled to take and they did so fairly and reasonably.

143. The claimant took issue with the relevance of the scoring of other employees but he was not entitled to see the scoring of other employees. Mr Strain next referred to page 301 of the handbook at section 8.150 "**Duty to disclose assessment to employees.**" This reads as follows:

> "The above cases were concerned with the evidence an employer must produce at an unfair dismissal hearing to show that it had fairly applied the selection criteria. However, the question of whether the employee has a right to know how he or she fared in the assessment process may well arise prior to dismissal."

144. That sentence is significant because, in this instance, the claimant was given full disclosure of his individual assessment and scoring in terms of R8 and R9 and he accepts that he had them prior to the initial consultation meeting.

145. Mr Strain then referred to page 302 of the IDS brief and the reference there to the judgment in **John Brown Engineering Limited v Brown and ors** 1997 IRLR 90, EAT as follows:

> "The Brown case does not go so far, however as to hold that employees should be entitled to compare their scores with those of employees who have been retained. On this question, the courts, while demonstrating a clear understanding of an employee's desire to answer the question 'Why me and not someone else?', have taken the view that to require the employer to review the assessments each time someone selected for redundancy challenges his or her own marks, or those of other employees, is an intolerable burden."

146. In his submission, there was no legal requirement for the respondent to disclose the relative assessments of the other employees in the pool to the claimant and, equally, there was no legal entitlement of the claimant to see them.

147. Further support for this could be drawn at page 302 under section 8.151 as follows:

> "These decisions confirm the Court of Session's view in Buchanan v Tilcon Ltd 1983 IRLR 417, Ct Sess (Inner House), that, in general claims of unfair selection for redundancy, there is little scope for employees to challenge the fairness of an employer's decision to select a particular individual."

148. This logic was then adopted in **Boal and anor v Gullick Dobson Ltd** EAT 515/92, (again see IDS at page 302 paragraph 8.151).

149. Next, Mr Strain referred to the foot of page 302 and top of page 303 as follows:

> "There was no legal authority for the proposition that consultation had to be as detailed as the employees claimed. The duty on the employer was to act reasonably within the terms of S.98(4) ERA. It could not be said that an employer was under a duty to provide an employee selected for redundancy with all the information on which the decision to dismiss had been based so that the employee could examine it, point out any mistakes that might have been made and require the employer to go through a revision exercise. If this were required, the employer would not be able to carry out the redundancy exercise at all; it would lead to an 'intolerably protracted and utterly impracticable process'. Moreover, the disclosure of such information to employees would involve breaches of confidentiality and would destroy the morale of both workers and management."

150. So, in Mr Strain's submission, the respondent acted fairly and reasonably by not providing the claimant with the relative scoring of the other employees in the pool.

151. And so, in his submission, the selection was fair, reasonable and unfortunate for the claimant but someone had to be selected. He was fairly and reasonably selected.

152. He had the opportunity to challenge his own scoring at the individual consultation meeting as he had R8 and R9. He knew the criteria. He knew his scores. He did not question it. That was his opportunity and he did not take it.

153. He had the opportunity to appeal the decision to select him and he did not take it.

154. All of those factors must be taken into account if the Tribunal were to decide that the process for his selection was unfair and any assessment of compensation in that regard would have to be taken into account.

155. Turning to the assessment of compensation, it was Mr Strain's submission that, on the evidence, the claimant failed to discharge the onus on him to establish that he had taken all reasonable steps to mitigate his loss. The Tribunal had seen a relatively small snapshot of job applications; this was an eclectic job application. In his submission, the claimant was not able to establish that he had taken all reasonable steps to obtain alternative employment.

156. It was surprising that the claimant had secured full time employment with a bar in Falkirk in two weeks' time subsequent to this Tribunal Hearing and also surprising that his previous part time employment with that same bar ended at the same time as his employment with the respondent came to an end.

157. Mr Strain's last point was the claimant had been referred to the IDS handbook regarding consultation and the selection matrix. In Mr Strain's submission, it is not a legal requirement that there should be consultation about the selection matrix. Mr Strain had referred to the extent of the employer's discretion in fixing the matrix criteria and the scoring.

158. In his submission, there was no need for assessing this if the process was carried out fairly and was reasonably applied to all those employees who were under scrutiny and the scoring and criteria were applied to them.

159. The respondent had fulfilled all the requirements to have individual consultation meetings.

160. For all these reasons, Mr Strain invited the Tribunal to find that the claimant's employment was terminated for a fair reason, namely redundancy and that he was fairly selected for redundancy.

Claimant's submission

161. The claimant referred to his having already indicated during the evidence that he did not think either Miss MacLeod or Mr Hughes were credible or reliable witnesses. There was no mention, as far as he could see, of how the selection was to apply to people in the respondent company. The claimant had understood from Miss MacLeod that she was included in the pool but it seems that she then changed her mind. The claimant pointed out that when asked to name the 8 individuals who were involved, she was unable to name the 8th individual although, after a short adjournment when the issue was being addressed with the claimant and Mr Strain, Miss MacLeod was recalled and was able to say that the 8th person was another individual that previously worked on the same floor in the respondent's office where the claimant and his colleagues were based but who had been moved upstairs.

162. The claimant's position was that the purpose of having a redundancy scoring matrix was that the people who were trusted with the job of identifying those to be selected should be up to speed with the whole matrix and, in his view, this did not apply to either Mr Hughes or Miss MacLeod. The claimant was sure that the Tribunal found it confusing and vague and very difficult to work out what was meant when considering the productions at R10 and R14.

163. The claimant accepted that, at the outset, he had not been aware of the detail regarding selection for redundancy but more had become clear to him during

the course of the two days of the hearing. So far as he could see, only three individuals were considered for work in relation to customer care and awarded scores but the remaining members of the pool were not. His understanding was that six of the individuals, including himself, had been involved in order processing, albeit they had not been trained but this was unfair because two of the individuals in the pool got points and the others did not.

164. The claimant accepted and understood that the case he was trying to bring was partly in relation to order processing where he was not trained but nonetheless he did do order processing at times when, for example, the order processor was on holiday or off sick.

165. The claimant reiterated that, in his view, both Mr Hughes and Miss MacLeod had been very vague in their evidence regarding the information set out at R10 and R14.

166. The claimant was reminded that it is not for the Tribunal to "unpick a seam of material" as an analogy that could be given in relation to the Tribunal's remit in relation to the selection process.

167. The claimant reminded the Tribunal that he had given evidence and, in his submission, the respondent's witnesses had "made things up as they went along". It was not a fair way of using the process. He did not see why one year was used as the assessment period when it would have been fair, in his submission to use two years, as that would have been more representative. The claimant reiterated that he thought the process was unfair and he did not know the depth of the selection matrix was such a problem. He believed that the two main people involved, namely Mr Hughes and Miss MacLeod lacked the confidence and skill to undertake the process which they had been engaged to carry out by the respondent's management.

The Law

168. Section 98 of the Employment Rights Act 1996 states:

“**98 General**

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

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is 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 the subsection if –

(a) …

(b) ….

(c) is that the employer was redundant, or;

(d) ….

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

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

Observations on the witnesses

169. Mr Strain had invited the Tribunal to prefer the evidence of Mr Hughes and Miss MacLeod where it conflicted with the claimant. In relation to the evidence and, specifically Miss MacLeod, being unable to remember the 8th person who was in the pool for selection while the Tribunal noted the points made by the claimant it was satisfied that she had made a genuine mistake in being unable to recall the 8th individual when giving evidence. The Tribunal was satisfied that she had not suggested that she herself was included as part of the pool for redundancies. It would not make sense for a line manager to be included in a pool where those potentially affected were members of a team being line managed by Miss MacLeod. On the balance of probabilities, the Tribunal preferred her evidence that she was never suggested to the claimant that she was one of those affected by the redundancy selection process.

170. Turning to Mr Hughes, his evidence was, at times, unclear in relation to the calculation of the scoring as laid out in the documents that are R10/1 and R10/4 as against R14. The Tribunal remained unclear as to how he had then calculated the absence rates and at best this was left unclear. If the Tribunal remains correct in its understanding that employee one who had a score of minus one and a score occasion of minus two, it is still not clear why he appears to be given a positive figure of three albeit his ranking is good against the claimants and others being excellent with the exception of employees five and six who are each marked as good.

171. In relation to the claimant himself, he was at times somewhat unwilling to listen and focus on the questions posed to him but the Tribunal has to make allowance for the fact that he was an unrepresented party and inexperienced

in Tribunal proceedings. The claimant was very fair in accepting that he did not take up the opportunity to appeal against the decision and that it was only later that he discovered more information about redundancy selection and as the Tribunal understood it, that was the reason why he subsequently sent the grievance letter in to the respondent. As indicated, his employment had already terminated and so the respondent was under no obligation to respond to it but they did do so in terms of the letter of 9 March 2018. That letter appears to address the concerns the claimant had set out specifically with the two headings marked 'The way in which the announcement was made' and 'The selection matrix and the administering of the matrix'.

172. In relation to Mr Hughes he was less clear than might have been expected in relation to the use of the Footnote and the excel calculation and how this was applied to the employees, particularly those who had some absences, such as, for example, employee 1.

Deliberation and determination

173. As was indicated by Mr Strain, dismissal for redundancy is a potentially fair reason. It was not in dispute that the claimant was dismissed by reason of redundancy. What he challenged, at times, vociferously was that the selection process was flawed and he asserted that the respondent failed to apply the criteria appropriately.

174. The Tribunal concluded that Mr Strain was correct in his submission that it is not for this Tribunal to look closely at how the scoring worked or was calculated, absent error or bad faith on the part of the respondent.

175. As explained above, the Tribunal concluded that, even if there was any mistake or error in the scores attributed to those employees who were ranked as "Good" as opposed to the claimant and some of his colleagues who were ranked as "Excellent" under Attendance and Discipline Record, then even if the scores were properly such that a minus 3 or minus 2 mark should have been awarded to some of those employees ranked under this section as

"Good" rather than "Excellent" it would have made no difference overall as the claimant would still have been adrift by at least 2 if not 3 marks from them.

176. The Tribunal reminded itself that it is not for it to examine the scoring unless there has been bad faith or error. In this case, the Tribunal could not find that there was bad faith and, if there was any error in the attribution of scores for Attendance and Discipline, then this would not have affected the overall ranking of the claimant against those who were ranked as "Good" against these criteria.

177. In relation to the selection criteria generally, the Tribunal reminded itself that, as was pointed out by Mr Strain, it is bound by the decision in **Buchanan** (see above) and that the employer does not have to prove that the grading of the employees was carried out accurately. The employer has to show that the method of selection was fair, in general terms, and was reasonably applied by it to the employee concerned.

178. Whilst noting the claimant's obvious dissatisfaction as to why he was not scored for some categories that was a decision for the respondent to take. Here, had the respondent decided not to score only the claimant on Customer Care then that might have raised a suggestion that the respondent failed to apply the selection process fairly and accurately. However, the claimant was not singled out in not being scored for this category, other colleagues were also not scored.

179. There is no requirement for an employer to disclose the scores of other employees and so the Tribunal could not say that the failure to do so was unlawful. The decision in **John Brown Engineering** (see above) is also binding on this Tribunal. This makes it clear that an employer is not required to allow employees to compare their scores with those employees who have been retained. The claimant did receive his individual assessment and scoring in terms of R8 and R9. He was not entitled to have sight of his colleagues' scores.

180. The Tribunal therefore concluded that Mr Strain was correct in his submission that the respondent was not under a legal requirement to disclose the other employees' assessments to the claimant as part of the consultation process.

181. While the Tribunal was alert to the fact that the claimant was dissatisfied with the process that is not the issue for determination.

182. The issue for the Tribunal was whether the respondent acted fairly and reasonably in not providing those other scores. It concluded that the respondent was entitled not to have done so.

183. The claimant did not challenge his own scoring and while he thought that Miss MacLeod was included in the pool for redundancy the Tribunal accepted that by referring to the "whole office" she did not intend this to be interpreted as including her as the line manager.

184. The claimant decided, for whatever reason, not to attend the follow up meeting on 7 December. He did not take the opportunity offered to him to appeal against the decision although he did later submit a grievance which the respondent considered and then set out its reply in their letter to him of 9 March 2018.

185. The Tribunal noted the criticism made by the claimant of the way the selection matrix was applied but it could not hold that there was bad faith on the part of the respondent's managers. As has been explained in detail above, the Footnote and the excel calculation could have been more clearly set out by Mr Hughes in his evidence. Insofar as the claimant not being scored for customer care and order processing was concerned, there were others who were in the same position as the claimant in that they too did not receive scores.

186. Accordingly, the Tribunal could not conclude that the claimant had been disadvantaged by this approach by managers who were in a position to have the relevant knowledge as to the employees' experience in these areas. They

were best placed to take the decision not to award scores for these areas to the claimant and some of his colleagues.

187. As to the claimant's criticism that the respondent was wrong to look only at a 12 month assessment period, the Tribunal could not conclude that they were wrong to do so. That was a decision for the respondent's management team to take and, while the claimant may have thought that a longer period could have been used, the Tribunal could not interfere with their decision to look at a 12 month period rather than a longer time.

188. The Tribunal concluded that, in all the circumstances of this case, the claimant was dismissed for a fair reason, being redundancy and that he was fairly selected.

189. While the Tribunal appreciated that the claimant was dissatisfied at having been selected for redundancy it could not say that his selection was unfair. It concluded that the respondent carried out a process that was fairly and reasonably applied to all the employees who were potentially affected, including the claimant.

190. It therefore follows, applying the law to the above findings of fact, that this claim must be dismissed.

Employment Judge: FJ Garvie
Date of Judgment: 05 September 2018
Entered in register: 06 September 2018
and copied to parties