EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4102489/2018

Held in Glasgow on 13, 14, 15 and 18 June 2018

Employment Judge: Mr O'Donnell

Mr Aamer Nawaz	**Claimant** **Represented:** **In Person**
SYSTRA Limited	**Respondent** **Represented by:** **Mr D Allan** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the claimant was not unfairly dismissed.

REASONS

Introduction

1. The claimant has brought a complaint of unfair dismissal. The claim is resisted by the respondent.

Preliminary issues

2. At the outset of the hearing, the claimant stated that there were four documents which the respondent had not provided to him. There had been no Order from the Tribunal for the disclosure of documents and this appeared to relate to a

voluntary request for documents made by the claimant. The documents sought were the respondent's remote working policy, their billability criteria, feedback from the various projects the claimant had worked on and the number of days he worked on each project.

3. The respondent's agent submitted that the claimant could have raised these matters at an earlier stage. They informed the Tribunal that there was no remote working policy, there were no official billability rates and that the feedback from project managers was lodged in the respondent's bundle.

4. The only outstanding item was the number of days the claimant worked on each project. The respondent's agent was not clear how easily this information could be obtained.

5. The claimant was asked whether he was saying that it was not possible for him to proceed without this information or whether some progress could be made whilst the respondent investigated whether the information could be obtained. The claimant indicated that he wanted to put this information to the respondent's second witness and so the Tribunal proceed to hear from the first witness while investigations were undertaken.

6. In the event, the information was obtained and produced. It was lodged in the bundle.

7. The Tribunal also clarified with the claimant whether or not he was seeking to advance a discrimination claim; he had ticked the box for "recommendation" on his ET1 form in the section dealing with remedies but had not otherwise pled a discrimination claim. The claimant clarified that he only sought to advance a claim for unfair dismissal.

Evidence

8. The Tribunal heard evidence from the following witnesses:-

    a. The Claimant

b. John Milligan (JM), the Business Director for the respondent's Scottish unit, who made the decision to dismiss the claimant

c. Neil Birch (NB), the Sector Director for the respondent's public transport work, who carried out the initial redundancy scoring

d. Alexander Kelvin Clarke who is referred to a Kelvin Clarke (KC), the Business Director for Scotland who took over from JM when JM retired, who dealt with the end of the redundancy process

9. The claimant and the respondent produced separate bundles of documents; there was a significant overlap in the documents in each bundle.

10. This was not a case where there was any particular dispute of fact; the events leading to the claimant's dismissal were, for the most part, a matter of consensus. The central dispute related to the opinions formed by the respondent's witnesses about the scores awarded to the claimant under the redundancy selection criteria and whether the process followed by the respondent could have been different.

11. In these circumstances, the credibility and reliability of the evidence of the various witnesses was not something on which the Tribunal had to form a particular view. In general, all of the witnesses gave evidence in an open and honest manner and the Tribunal did not consider that there was any issue with their evidence.

Findings in Fact

12. The Tribunal makes the following relevant findings in fact:-

a. The claimant commenced employment with the respondent on 1 September 2014 and he was dismissed on 5 October 2017.

b. The claimant's job title was assistant consultant at the time of his dismissal. He had previously had the job title of analyst but this changed although the work he did was not different. The claimant was employed in a graduate training role in the respondent's office on

St Vincent Street in Glasgow. The claimant was one of three graduate trainees based at the St Vincent Street office, all working in the modelling and appraisal sector.

c. The respondent is a UK wide business dealing in transport consultancy. It has offices across the UK and, in Scotland, it was four offices; one in Edinburgh, one in Perth and two in Glasgow (St Vincent Street and West George Street).

d. The respondent's business is split into different sectors:-

i. Engineering which is involved in rail engineering, highway design and drainage
ii. Development and infrastructure which provides advice on transport for developments such as housing estates or retail properties
iii. Modelling and appraisal which build, runs and tests traffic models. This sector mainly deals with the public sector and can be involved in projects of varying scale. It is this sector in which the claimant was employed although the work in which he would be involved would feed into other sectors
iv. Transport planning
v. Public transport involving bus and rail travel

e. JM was the business director for responsibility for Scotland. There were 4 other business directors covering other geographical areas; North East, Midlands, South East and Ireland. The business directors report to the Senior Leadership Team (SLT) and met with them monthly.

f. For a number of months in 2017, SLT had been highlighting concerns with the performance of the business and billability. These concerns arose across the whole of the business except for Ireland. SLT

discussed measures to improve performance such as winning more follow on work from existing clients and trying to win new clients.

g. However, these measures did not lead to the improvements sought and so SLT engaged with the business directors in relation to a costs saving exercise which could involve redundancies.

h. In particular, a review was carried out of the "utilisation rates" of staff across the UK. The term "utilisation rates" refers to the amount of billable hours each employee is producing and is expressed as a percentage of their working hours. The minimum rate was 80-85% but ideally would be 95%.

i. The utilisation rates for 2016 was produced at R163 which showed the claimant's rate was 92% and the other two trainees were 61% and 69%.

j. In 2017, the utilisation rate for the claimant had fallen to 54.47% (R172) and the other two trainees had rates at 45.2% and 51.02% (R174).

k. Based on this, SLT took the view that there was only enough work for 2 graduate trainees in Glasgow and that one trainee would require to be made redundant.

l. JM explained that the respondent did not consider including trainees in the pool for selection from the West George Street office because no modelling and appraisal work was done from that office. Similarly, trainees from the Edinburgh office were not included because the utilisation rates were not as marked at that office and there was a greater prospect of new work coming into that office. The prospect of work coming into St Vincent Street did not warrant three trainees.

m. JM was responsible for the redundancy process. He was supplied a redundancy selection criteria by HR which had been used in previous

redundancies. There were 5 factors under which the relevant employees would be scored; market versatility; technical versatility, technical competence; team working; work winning. Each factor had five levels scoring 2, 4, 6, 8 and 10 points respectively.

n. JM decided to appoint NB to carry out the initial scoring as he was the Business Unit Lead for the West of Scotland based in the same office as the three trainees. NB was to get views from the project managers for whom the three trainees had worked in 2017 and use that information to carry out the scoring exercise. Boris Johansson, the Business Unit Lead for the Edinburgh office, would carry out a sense check on the scores.

o. JM wrote to the claimant by letter dated 4 August 2017 (R75-76) to advise him that he was at risk of redundancy and the reasons for this. A letter in the same terms was sent to the other two trainees. He was invited to attend a meeting with JM on 10 August 2017.

p. JM met with the claimant on 10 August 2017 and a copy of the minutes of that meeting are at R78-79. The claimant suggested during that meeting that redundancies could be avoided by job share or cutting hours across the pool. He indicated that he would be prepared to reduce his working days to four days. He also suggested that work could be transferred from other offices.

q. Similar meetings were held with the other trainees in the pool on 18 August 2017. These were conducted by KC because JM was on holiday. The minutes of those meetings are at R136 and R142. The meetings followed a similar format as the meeting with the claimant.

r. NB had been aware of the need to consider redundancies in July 2017 but did not receive details of the redundancies until August when he was appointed to carry out the scoring. He was given the criteria by HR and had no input into the factors. He was not given any guidance

as to how to score the different factors beyond what is set out in the scoring matrix.

s. NB had general knowledge of the work of the three trainees but did not feel that he had sufficient depth of knowledge to score them without more information. He, therefore, contacted the managers for whom the trainees had worked in 2017 to get more information.

t. Two of the trainees had given names of manager to contact during their initial meeting with KC and so NB contacted those managers. The claimant had not given any suggestions and so NB contacted the claimant's line manager, Ingrid Petrie, to get this information. She gave NB the names of a Mr Paterson and Mr Gray as the project managers for whom the claimant worked the most.

u. NB did not carry out a comprehensive check of all the work done by the three trainees to identify all the managers that they all worked for in the relevant period. He simply contacted those suggested either by the employees themselves or by their line manager.

v. The work done by the claimant for different project managers was produced at R184. This document was produced for the purposes of the hearing and is the document referred to above that was produced by the respondent in the course of the hearing. The document was not produced to NB or JM in the course of the redundancy exercise.

w. The document at R184 shows that there were a number of other project managers for whom the claimant worked in 2017 such as Euan Harrison, Archie Burns & Lawrence Benson. There was no evidence that the claimant drew NB's attention to these managers before or during the scoring exercise nor did he raise them with JM in subsequent consultation meetings.

x. The respondent had a Profession Development Review (PDR) process carrying out an assessment of all staff. NB did not use the

most recent PDR outcomes as evidence in the scoring as he considered that, although there were similarities between the two processes, these were not identical.

y. NB emailed these managers on 22 August 2017 asking them to provide information about the claimant's work. Around the same time he had also emailed other project managers regarding the other 2 trainees around the same time. The various project managers responded within a few days and the email correspondence was produced at R149-161.

z. NB had not asked the project managers to score the affected employees; he took the view that this was his responsibility and that the purpose of contacting the project managers was to amass the evidence that would allow him to carry out the scoring exercise.

aa. NB scored all three trainees on the same day, 24 August 2017.

bb. The claimant's original scoring matrix was produced a R131-132. He scored a total of 18 points out of 50. The scores for each factor were as follows:-

i. Market Versatility – 2 points. The evidence available to NB only showed the claimant working in the modelling and appraisal sector.

ii. Technical versatility – 6 points. From the information available to him, NB was of the view that the claimant was capable of carrying out his own job and had shown that he had the potential to pick up new skills and work in other areas but there was no evidence of him carrying out wider work

iii. Technical competence – 4 points. Based on the information provided by the project managers, NB concluded that the claimant clearly had the requirements for his grade but there

was no evidence that he exceeded the competence for his grade.

iv. Team working – 4 points. NB was of the view that no-one suggested that the claimant was not a team player but there was no evidence that he met the next level in the scoring

v. Work winning – 2 points. NB was of the view that the claimant had limited exposure to this type of work and that was not unexpected for a trainee. There was one piece of evidence of the claimant's involvement in winning work but NB did not feel that this was enough

cc. The other two trainees had scored 28 and 30 points making the claimant the lowest scorer.

dd. The scores were provided to Boris Johansson who had no amendments to make.

ee. The claimant was advised by Clare Francis (Head of HR) that he had been provisionally selected for redundancy by letter dated 24 August 2017 (R80), The letter addressed the claimant's suggestions, made at the meeting on 10 August 2017, to avoid redundancies and explained that this would not be feasible; there was not sufficient levels of additional work from other offices that would increase the utilisation rates for all three trainees to the necessary level; reducing the working week for trainees to four days would not make the necessary savings which required a reduction of a whole post.

ff. The letter enclosed the scoring matrix prepared by NB and invited the claimant to meet with JM on 30 August 2017 to discuss his possible dismissal by reason of redundancy. Clare Francis was also present.

gg. JM met with the claimant on 30 August 2017 and the minutes of the meeting were produced at R84-86.

hh. In the course of the meeting, the claimant stated that his scoring was not consistent with his PDR specifically in relation to the team working factor. JM had not seen the PDR and agreed to consider this further. On review of the PDR, JM increased the claimant's score for team working to 6 points.

ii. The claimant indicated that he had an issue with other scores and Clare Francis explained that he should raise all of these issues at the meeting.

jj. The claimant pointed out that he had worked for another project manager, Malcolm Calvert, using Paramics software and also on social market research projects as evidence that he had worked in other sectors. JM was of the view, after looking into the work done, that these projects utilised skills which fell within the modelling and appraisal work he had done. However, JM did accept that this showed that the claimant had the potential to utilise his skills in other sectors and so he increased the market versatility score to 4 points.

kk. In relation to work winning, the claimant produced the same piece of evidence that had been before NB at the meeting. JM considered that this was a single piece of evidence but also took into account that someone at the claimant's level would have limited opportunities to do this type of work. He increased the score for this factor to 4 points.

ll. The claimant relied on the different software packages he used as evidence of technical competence but JM considered that this did not impact on the claimant's score for this factor.

mm. The claimant suggested to JM that an external person should be the scoring but JM did not consider that such a person would understand the work done in the business.

nn. The claimant also raised the fact that the other two trainees had indicated they would be prepared to relocate. JM did not consider that this was an option; there were no appropriate vacancies elsewhere at that time within the business; the other trainees had said that they would consider this if they were selected but had not volunteered to move.

oo. The outcome of the meeting was confirmed to the claimant in a letter from Clare Francis dated 11 September 2017 (R87-89). This set out the revised score for the claimant which was 24, still below the scores of the other trainees. He was invited to a further consultation meeting on 13 September 2017 to discuss the revised score and he was also given details of what his redundancy pay and other termination payments would be if he was dismissed.

pp. The claimant met with JM and Clare Francis on 13 September 2017 and the minutes of these meetings are produced at R92-94.

qq. There was discussion at the meeting regarding market versatility; the claimant argued that he had used his modelling skills in a range of contexts but JM considered that there was a difference between using those skills to support work in other sectors and actually working in the other sectors.

rr. The claimant did produce further examples of his involvement in winning work but JM did not consider that this would increase his score for this factor as the next level involved leading on such work which the claimant had not done.

ss. At that meeting, the claimant indicated that he would be willing to relocate if there was alternative work elsewhere. JM stated that

there were no opportunities in Scotland but that he would look elsewhere.

tt. JM confirmed the outcome of the meeting by letter dated 19 September 2017 (R95-97). In that letter, JM advised that an opportunity had arisen in the respondent's Birmingham office for an assistant consultant to work in their Modelling Team. The Birmingham office required the vacancy to be filled as soon as possible so the claimant. The respondent offered the role for a four week trial period during which they would cover the costs of temporary accommodation and weekly return rail travel to allow the claimant to go home at weekends. If the claimant took up the role permanently then the respondent would contribute £1000 to relocation costs. The vacancy needed filled as soon as possible so the claimant was asked to take it up within one month if he wished to do so.

uu. The letter explained that if the claimant did not take up the offer of alternative employment then he would be dismissed by reason of redundancy.

vv. The claimant replied to JM's letter by email dated 26 September 2017. The email began by indicating that he had a number of grievances about the scoring process which he believed had to be resolved and then set out the detail of these. The claimant indicated that he was looking for a neutral third party to re-assess the scores.

ww. In relation to the offer of the alternative job in Birmingham, the claimant stated that he would only consider this when he had been selected by redundancy through what he considered to be a fair process. He did, however, propose that he would go to the Birmingham office to assist them on a temporary basis if the respondent covered the cost of travel, food and accommodation.

xx. JM replied to this by email dated 27 September 2017 (R100). He stated that there would be no further assessment of the claimant's score as he was satisfied that a fair process had been followed. In relation to the Birmingham job, he gave the claimant a deadline of 10am on 29 September to respond. If no response had been received by this time then he indicated he would proceed to issue a letter confirming the claimant's dismissal.

yy. The claimant requested more time to consider the offer of the Birmingham job by email dated 28 September 2017 (R103). JM retired that day and the matter passed to KC who replied the same day extending the deadline to 2 October 2017 (R109).

zz. By email dated 2 October 2017 (R109), the claimant indicated that he would only consider the alternative role if he had been selected for redundancy through a process which he considered fair.

aaa. In these circumstances, KC issued a letter dated 4 October 2017 (R112-113) dismissing the claim on the grounds of redundancy.

bbb. The claimant appealed his dismissal and the appeal meeting was held on 8 November 2017. The appeal was heard by Bob Nicol. The minutes of the meeting were produced at R118-120.

ccc. The basis of the claimant's appeal covered the issues discussed at the earlier consultation meeting with JM regarding the fairness of the scoring process and the need for a neutral third party to carry out the scoring.

ddd. The claimant's appeal was dismissed by letter dated 15 November 2017 (R122-123).

eee. Since the claimant's dismissal, one of the other trainees moved to the respondent's London office in 2018. The St Vincent Street office only has one trainee at the present time.

Relevant Law

13. The test for unfair dismissal can be found in s98 of the Employment Rights Act 1996 (ERA).

14. The initial burden of proof in such a claim is placed on the respondent under s98(1) to show that there is a potentially fair reason for dismissal. There are 5 reasons listed in s98 and, for the purposes of this claim, the relevant reason is redundancy.

15. Redundancy is defined in s139 ERA and, for the purposes of this claim, the relevant definition would that the requirements of the business for employees to carry out work of a particular kind had ceased or diminished.

16. The test then turns to the requirements of s98(4) for the Tribunal to consider whether dismissal was fair in all the circumstances of the case. It is worth noting that there is a neutral burden of proof in relation to this part of the test.

17. In assessing the fairness of a dismissal on the grounds of redundancy, the first question is whether there has been a proper pool of employees from which selection for redundancy is made.

18. The principles to be applied by the Tribunal in assessing whether a proper pool for selection has been used are set out by Silber J at para 31 of *Capita Hartshead Ltd v Byard [2012] IRLR 814:-*

> *"Pulling the threads together, the applicable principles where the issue in an unfair dismissal claim is whether an employer has selected a correct pool of candidates who are candidates for redundancy are that*
>
> *"It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted" (per Browne-Wilkinson J in Williams v Compair Maxam Limited* [1982] IRLR 83*);*

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

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

the Employment Tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has "genuinely applied" his mind to the issue of who should be in the pool for consideration for redundancy; and that even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it."

19. The Tribunal then will go on to consider the fairness of the selection criteria applied to the pool. The Tribunal are not entitled to substitute their own criteria for those of the employer and can only interfere with the criteria if the criteria used are ones which no reasonable employer would adopt (*Earl of Bradford v Jowett (No 2) [1978] IRLR 16* and *NC Watling v Richardson [1978] IRLR 255).* There must be some degree of objective assessment in the criteria and not just the subjective assessment of a particular manager (*Williams v Compair Maxam Ltd*).

20. The *Williams* case also requires an employer to fairly apply the selection criteria. However, the Tribunal should not carry out a detailed re-examination of the scoring carried out by the employer (*Eaton Ltd v King* [1995] IRLR 75*). The consideration for the Tribunal is whether the employer has set up a proper system for selection and applied it fairly.*

21. In relation to the obligation to consult, the current state of the law in relation was summarised by the EAT in *Mugford v Midland Bank [1997] IRLR 208 at paragraph 41:-*

> *Having considered the authorities we would summarise the position as follows:*
>
> *Where no consultation about redundancy has taken place with either the trade union or the employee the dismissal will normally be unfair, unless the industrial tribunal finds that a reasonable employer would have concluded that consultation would be an utterly futile exercise in the particular circumstances of the case.*
>
> *Consultation with the trade union over selection criteria does not of itself release the employer from considering with the employee individually his being identified for redundancy.*
>
> *It will be a question of fact and degree for the industrial tribunal to consider whether consultation with the individual and/or his union was so inadequate as to render the dismissal unfair. A lack of consultation in any particular respect will not automatically lead to that result. The overall picture must be viewed by the tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy.*

22. There is a requirement on an employer to make efforts to find alternative employment for a redundant employee (*Vokes Ltd v Bear [1973] IRLR 363). However, this duty is only to take reasonable steps and not every conceivable step to find alternative employment (Quinton Hazell Ltd v Earl [1976] IRLR 296).*

Respondent's submissions

23. The respondent's agent submitted that the reason for the claimant's dismissal was redundancy and that this is a potentially fair reason for dismissal.

24. The test for whether the dismissal is fair was whether it was reasonable in all the circumstances and that the range of reasonable responses test applies to all aspects of the dismissal.

25. In relation to the pool for selection, Ms Stobart submitted that the employers have flexibility in identifying the pool (*Thomas Betts v Hardy* [1980]) and that the pool used (that is, the assistant consultants in the Glasgow office) was reasonable; there was insufficient work on the Glasgow office and that the employees needed supervision and needed to be in a team.

26. In regards to the criteria for selection, it was said on behalf of the respondent that these reflected the needs of the job and were capable of being objectively verified.

27. It was submitted that NB had carried out a fair and consistent selection process; he looked for more than one piece of evidence to support a particular score and that there was scope for his scores to be challenged. It was not reasonable for NB to interview all project managers and he followed the same process for three individuals in the pool. The scoring did not end with NB and there were two meetings with JM which allowed the claimant to challenge his scores.

28. As for the claimant's suggestion of a third party being brought into carry out the scoring exercise, Ms Stobart submitted that if the respondent had done this then they would likely have been criticised for this and it was hard to see how an outside person could have fairly scored the employees in question.

29. It was submitted that the claimant had been offered alternative employment at the same pay and in a role where he would have used the same skills for a trial period. There was no evidence this offer was a sham.

30. As regards any suggestion that the other employees in the pool should have been relocated, Ms Stobart pointed out that the other two employees had not volunteered to be relocated but had simply said that they would consider this in the event they were selected for redundancy. However, there were no

vacancies to which those employees could have been moved at the relevant time.

31. In these circumstances, it was submitted that the claimant's dismissal was fair. In the event that the Tribunal found that there was any procedural error in the process followed by the respondent, it was submitted that this would have made no difference and the claimant would still have been made redundant.

Claimant's submissions

32. The claimant made oral submissions. He stated that he had a legal right to a fair process when being dismissed and the respondent had failed to provide this.

33. He submitted that it was unfair to identify the pool for selection with billability as the only criteria and that other offices were not considered. He made reference to other employees with billability of less than 80%.

34. The claimant argued that the alternatives to redundancy had not been properly considered by the respondent; he made reference to the proposal to reduce hours which he submitted would improve billability in percentage terms to the level sought by the respondent; the others in the pool had offered to relocate and he draw attention to vacancies in other offices at A152-153.

35. It was submitted that NB was required to canvas views from all project managers and he did not do it. The claimant drew particular attention to the fact that NB had overlooked the reference to the work the claimant did with Euan Hamilton and the fact that the claimant had not been asked to identify the manager to whom NB should speak (unlike the other two employees in the pool).

36. The claimant also criticised the email which NB sent to the project managers as being a generic email which only mentioned "recent work" and not the last 12 months.

37. The claimant also criticised NB's scoring as being highly subjective because NB had no guidance or instructions provided to him about how to carry out the scoring. The feedback received did not match the criteria in the selection matrix.

38. The claimant submitted that NB did all this deliberately to keep the claimant's scores low and benefit the other candidates.

39. In relation to the adjustments of the scores by JM, the claimant made similar criticisms that JM was also highly subjective and had made the adjustments he did to show he had taken account of the additional information supplied by the claimant but had still kept these deliberately low.

40. In relation to the role in Birmingham, the claimant submitted that he would only have considered a permanent move if a fair process had been followed. He believed that the work could have been done remotely and did not require him to relocate.

DECISION

Was there a potentially fair reason for dismissal?

41. The Tribunal held that the respondent had shown that they had dismissed the claimant for reasons which would fall within "redundancy" for the purposes of s98(1) ERA and that there was, therefore, a potentially fair reason for dismissal.

42. It was quite clear from the evidence heard by the Tribunal that there had been a reduction in the respondent's requirements for work to be done by the graduate trainees in its St Vincent Street office; the evidence of the fall in the utilisation rates of these employees between 2016 and 2017 showed that the work available for the trainees had diminished.

43. Further, there was no suggestion that there was any imminent prospects of that work returning to the 2016 levels and, indeed, the number of graduate trainees has reduced further since the claimant's dismissal.

44. The Tribunal, therefore, finds that the claimant was dismissed in circumstances which amount to redundancy and that is a potentially fair reason for his dismissal.

Was there a proper pool for selection?

45. Once the respondent had identified that there was a reduction in the work available for the three graduate trainees in the St Vincent Street office then the Tribunal considers that it must be within the band of reasonable responses for the respondent to have created the pool for selection from these employees.

46. The claimant sought to argue that the respondent should have included other employees (from the same or other offices) in the pool and, whilst the respondent undoubtedly could have chosen to do so, that is not the test which the Tribunal has to apply. The test is whether what the respondent did was within the band of reasonable responses and not whether there were other options which could have been followed.

47. As far as the Tribunal is concerned, there is no question that limiting the pool to those employees for whom there is not enough work must be within the band of reasonable responses and so the Tribunal finds that there was a proper pool for selection.

Was there an objectively fair selection criteria?

48. The claimant did not lead any evidence or make any submissions regarding the fairness of the selection criteria in itself; his criticisms were focussed on the scores awarded for each of the factors.

49. The Tribunal considers that, on the face of it, the criteria were not ones which no reasonable employer would adopt; they were all relevant to the work done by the respondent and were capable of objective, evidence based assessment.

50. In these circumstances, the Tribunal finds that there was an objectively fair selection criteria.

Were the selection criteria properly applied?

51. The Tribunal did have some concerns about how NB went about gathering the information which he would use to score the employees in the pool. It was reliant on the employees themselves or their line manager recollecting for which project managers these employees had worked during the relevant period and, as was clear from the evidence, project managers could be missed.

52. It was clear that NB could have quite easily and quickly obtained a report on which projects the different employees had worked as such a report was obtained during the course of the hearing and added to the productions. This would have easily identified the managers for whom the claimant and the other employees had worked.

53. However, the Tribunal reminds itself that its function is not to substitute its own decision as to how it might have gone about obtaining the necessary information or to simply say that there was a different option open to the respondent. Rather, the test to be applied is whether what the respondent actually did in relation to this issue was within the band of reasonable responses.

54. The Tribunal is satisfied that the respondent's approach was within the band of reasonable responses; it is not unreasonable to ask an employee's line manager for information about the work done by a particular employee as a line manager would be expected to have such information; NB took a consistent approach in contacting the relevant line managers to identify the project managers to contact as well as contacting any project managers identified by the employees themselves.

55. Any inconsistency between the claimant and the other two employees in relation to the gathering of information arises from the fact that the claimant did not volunteer any suggestions as to who to speak to about him whereas the other employees did, rather than a difference in approach by NB.

56. Further, the Tribunal takes account of the fact that the claimant had three opportunities to provide further information (such as the report produced for

the Tribunal hearing); he had two meetings with JM to discuss his score as well as an appeal. The claimant did not, during the internal process, identify any project managers whom he believed should have been contacted and so it cannot be said that the respondent had been aware of any gaps in the information being used.

57. The claimant made an argument, during both the internal process and at the Tribunal hearing, that an external person should have carried out the scoring. In the Tribunal's experience, it is highly unusual for an employer to bring in an outside person to carry out such an exercise and an internal scorer is a very common practice. There was certainly no evidence on which the Tribunal could conclude that using internal scorer was out with the band of reasonable responses.

58. As regards the actual scores themselves, the focus of the claimant's criticisms were the original scores awarded by NB. However, the Tribunal considered that this was something of a "red herring" given that the scores had been revised by JM. If there had been anything wrong with the scores awarded by NB, and the Tribunal has not made any findings to this effect, then this would have been capable of being remedied by the revisions made by JM.

59. The Tribunal, therefore, focussed its consideration on the scores awarded by JM and whether he had applied the criteria fairly. The Tribunal did not carry out any form of re-scoring exercise or detailed examination of the scores but rather considered whether the scores awarded by JM were within the band of reasonable responses.

60. The evidence from JM showed that he had given full consideration to the information supplied by the claimant and, in some circumstances (for example, work winning), had given the claimant the benefit of the doubt and awarded a score which may have been higher than could have been legitimately been awarded. He provided credible explanations why he gave the scores he did and there was nothing to suggest that he had deliberately kept the claimant's score low.

61. In response to questions from the Judge, the claimant in his evidence, suggested that he should have been awarded the second highest score for each factor except working winning where he accepted the score was correct. However, none of the evidence he gave provided any basis from which the Tribunal could conclude that, based on the information available to JM at the time, the score that was awarded was one which no reasonable employer would have given.

62. In these circumstances, there was no basis from which the Tribunal could conclude that the scores awarded by JM were out with the band of reasonable responses open to the respondent.

63. The Tribunal, therefore, decided that the selection criteria had been properly applied.

Was there a fair consultation process?

64. The respondent had engaged in a process which involved an initial meeting with all those in the pool for selection followed, in the claimant's case, by two meetings with JM, in which the claimant had the opportunity to comment on his scores and provide further information, followed by an appeal.

65. The claimant did not make any particular argument that the procedure followed, in itself, was in any way inadequate or unreasonable. The Tribunal has already commented above on the claimant's assertions that JM sought to keep his score low or the way in which information was obtained as part of the consultation.

66. The Tribunal could not see any flaws or errors in the consultation which would render the claimant's dismissal unfair. In the Tribunal's view, the respondent had followed a fair process in which the claimant was given every opportunity to make his case and seek to persuade the respondent that his score should be revised.

Was there any alternative to dismissal?

67. The claimant made reference during the consultation process and at the Tribunal hearing to a reduction in the working week for each of the three trainees to 4 days as an alternative to redundancy. The respondent had considered that option but decided that it would not achieve the saving that they sought to make. The Tribunal would agree; it would only have saved three working days a week whereas the respondent had identified a need to remove a whole job (that is, five working days). It cannot be said that the respondent's decision not to follow this suggestion was out with the band of reasonable responses when it would not have achieved their aim and would also have required the agreement of the other trainees.

68. There was also reference to the relocation of one of the other trainees. Again, the question for the Tribunal was whether the respondent's decision not to proceed with this option was within the band of reasonable responses. The Tribunal considered that given that there was no evidence that there was a vacant role elsewhere in the business (other than the Birmingham job) and that there was no evidence that the other trainees would have agreed to move in circumstances where they had not been selected for redundancy then it cannot be said that it was out with the band of reasonable responses for the respondent to have decided to dismiss the claimant as opposed to moving another employee.

69. As has already been touched upon, the only apparent vacancy at the time of the claimant's dismissal was the role in Birmingham. The Tribunal did not agree with the claimant's assertions that this role was a sham; there was no evidence that it was anything other than a genuine offer of alternative employment albeit one which the claimant ultimately felt he could not take up.

70. There was no other evidence led by the claimant as to there being other vacant roles at the time of his dismissal to which he could have been redeployed.

71. In these circumstances, the Tribunal decided that dismissal was within the band of reasonable responses, there being no alternative jobs and that it was

not unreasonable for the respondent not to have taken the other options suggested by the claimant.

CONCLUSION

72. In these circumstances, the Tribunal has determined that the claimant's dismissal was not unfair, there being a potentially fair reason for dismissal, that is, redundancy. The respondent identified a proper pool for selection and properly applied objectively fair selection criteria. There was a fair consultation process and there were not alternatives to dismissal.

73. The claim is, therefore, dismissed.

Employment Judge: P O'Donnell
Date of Judgment: 26 July 2018
Entered in register: 30 July 2018
and copied to parties