Case No: 2300438/2017

EMPLOYMENT TRIBUNALS

Claimant: Mr Kareem-Komolafe

Respondent: London General Transport Services Ltd t/a Go-Ahead Group

Heard at: London South **On: 19th & 20th April 2018**

Before: Employment Judge Tsamados

Representation
Claimant: Ms E Godwins, Employment Consultant
Respondent: Mr I McCabe of Counsel

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is as follows:

1) The Claimant was not unfairly dismissed and his complaint is dismissed;
2) His complaints of age discrimination, victimisation and entitlement to a redundancy payment are dismissed on withdrawal.

REASONS

The Claim/Complaints

1. By a claim form presented to the employment tribunal on 1st February 2017, the claimant brought complaints of unfair dismissal, age discrimination, victimisation and entitlement to a redundancy payment (it being alleged that the payment received was wrongly calculated) against the respondent, his ex-employer, London General Transport Services Ltd t/a Go-Ahead Group. In its response presented on 6th March 2017, the respondent denied the complaints but indicated that it would investigate whether the claimant had any outstanding entitlement to redundancy pay.

2. A preliminary hearing was conducted on 17th May 2017, at which the issues arising from the complaints were identified and case management orders and directions were made. Following this the claimant provided further particulars of his claim and details of the remedies he sought.

3. By e-mail from the claimant's solicitors dated 18th April 2018, the claimant withdrew his complaints of age discrimination and victimisation. At the start of the hearing it also became apparent that he was not pursuing his complaint of entitlement to a redundancy payment, having received the shortfall owing from the respondent. These complaints are there dismissed on withdrawal.

4. The claimant's solicitors also advised by e-mail on 18th April 2018 that the claimant suffers from a heart condition and stress, having been admitted to hospital on 16th April 2018. They indicated that he would be likely to require regular breaks at the hearing goes ahead.

5. The claimant was able to attend and at the start of the hearing indicated that he would ask for breaks if required. Indeed, given the temperature in the tribunal room on the first day of the hearing (28c) we had to decamp to a cooler room with working air conditioning and a fan and to rise early both days.

The Issues

6. The remaining complaint is of unfair dismissal. The issues are as set out at page two of the record of the telephone preliminary hearing held on 3rd May 2017. In summary:

   6.1 What was the reason for the dismissal? The respondent contends that the reason was redundancy;
   6.2 If it was a reason related to redundancy was the dismissal fair?
   6.3 Was a fair procedure followed?
   6.4 Should the claimant be entitled to a remedy?
   6.5 Should the Polkey principle apply?

7. The claimant's representative indicated that the claimant did not dispute that the potentially fair reason for his dismissal was redundancy. Further, she indicated that the genuineness the redundancy was not challenged. Similarly, there is no issue as to the fairness of selection for redundancy, the claimant being one of 60 Passenger Assistants ("PAs") declared redundant by the respondent. The essence of the claimant's case is around the issue of suitable alternative employment although consultation would appear to still be in issue.

8. The claimant provided an updated schedule of loss for use this hearing. He is seeking re=engagement and/or compensation. The parties agreed that the tribunal should deal with the question of liability first and move on to any resultant remedy hearing thereafter or separately.

The Evidence

9. The respondent provided a bundle of documents, which I refer to where necessary as "R1". I heard evidence from the claimant and, on behalf the respondent, from Ms Hannah Man, its General Manager at Stockwell Garage, and Mr Des Farthing, its Policy Development Manager, by way of written statements and in oral testimony.

10. At the end of the evidence, the parties provided written skeleton arguments.. The respondent's Counsel also provided a copy of Stacey v Babcock Power Ltd (1985) ICR 221, Employment Appeal Tribunal

Findings of fact

11. I set out below the findings of fact I consider relevant and necessary to determine the issues I am required to decide. I do not seek to set out each detail provided to me, nor make findings on every matter in dispute between the parties. I have, however, considered all the evidence provided to me and I have borne it all in mind.

12. The claimant was employed by the respondent from 29th October 2001 until 2nd September 2016. He was originally employed as a Bus Driver based at Camberwell garage and then subsequently at Merton garage. He was unable to continue working as a Bus Driver because his Public Carriage Act ("PCA") licence was withdrawn by the DVLA due to his heart condition. This led to the claimant being dismissed by the respondent on medical grounds on 28th August 2013. However, he was subsequently re-engaged by the respondent as a Passenger Assistant ("PA") from 19th November 2013 onwards.

13. I was referred to documents relating to an employment tribunal claim that the claimant brought at that time but which was ultimately settled through the auspices of ACAS. However, the fact of the claim was really only relevant to the complaint of victimisation which has now been dismissed on withdrawal. But for the purposes of the complaint of unfair dismissal, it was apparent that the claimant was clearly aggrieved at that time and still appears to be aggrieved because he had to, as he put it, fight to obtain re-engagement as a PA, the respondent's medical adviser initially suggesting that he was medically unfit to do that job.

14. In London, the respondent operates under the trading name Go-Ahead London. It employs 7,000 staff at 17 locations in London. This includes approximately 6,000 bus drivers. The remaining staff are engineering and maintenance staff plus a smaller group of management and administrative staff. Go-Ahead London is part of the wider Go-Ahead Group which consists of a number of sister companies including Govia Thameslink Railways ("GTR"), Southeastern and London Midland.

15. The claimant was one of 60 PAs working for Go-Ahead London on bus route 11 which operated from Stockwell garage. Mrs Hannah Man is the General Manager of Stockwell garage. The claimant had previously worked with Mrs Man at Merton garage and they got on well with each other and the claimant found her to be helpful and supportive.

16. Indeed, it would be fair to say that the claimant was viewed as a competent employee and there were no concerns about his ability to do his job. Moreover, the claimant had received a commendation from the respondent's managing director, Mr John Traynor, in respect of his performance of his duties as PA (R1 158).

17. Mr Des Farthing is employed as the respondent's Policy Development Manager. He was employed as Personal Manager between 2005 and 2017 and took up his current position in March 2017. He has an extensive background in personnel. Whilst the respondent has a small personnel department, he explained that 99% of effective personnel work is undertaken at ground level at the respondent's garages and the staff there have become very familiar with undertaking routine personnel work.

18. The claimant's statement of main terms and conditions of appointment is at R1 49-57. Clause 11 of this document indicates that the claimant was entitled to the statutory notice of termination of employment. There is no reference to any entitlement to any contractual redundancy severance payment or to any procedure applying in the event redundancy. In evidence Mr Farthing confirmed that there was no written redundancy procedure.

19. On 19th April 2016, the claimant applied for the position of Garage Administrative Mileage Clerk and on 10th May 2016 he was informed that due to an internal reshuffle, the position was no longer available (R1 58 to 60 and 61 respectively).

20. On 8th May 2016, the claimant applied for the position of Assistant Buyer (R1 62-65). His application was unsuccessful (R1 66).

21. In late June 2016, Mr Traynor was advised by Transport for London ("TfL") that it was withdrawing the respondent's funding for PAs on the six bus services on which they operated. This resulted in the 60 PAs employed by the respondent being put at risk of redundancy. There were larger numbers of redundancies at the same time in other bus companies, Arriva and Metroline, who employed PAs.

22. Mr Traynor met with Mr John Murphy, the Unite Regional Organiser, and Mr Paul Ainsworth, the Unite Company Convener, on 8th July 2016 to inform them of this decision and the action that the respondent needed to take.

23. Mr Farthing oversaw the redundancy process which then ensued. His role was to ensure that there was adequate consultation with Unite and the affected staff, to notify the Department of Work and Pensions and to support local Managers. He also undertook the individual consultation process accompanied either by Mrs Man or the Operating Manager, Mr Seth Patel. He also canvassed his colleagues in other parts of the business to ensure that any vacancies were advertised to the PAs and through his department his staff arranged for any tests and interviews for vacant posts to take place.

24. Mrs Man was involved in exploring alternative job opportunities for the affected staff, liaising with the relevant Unite representatives and in consulting with the affected staff. She was more involved in the practical aspects of the process, keeping in regular contact with the PAs and arranging job fairs internally and with TfL.

25. On 11th July 2016, Mr Traynor wrote to the claimant and the other PAs to inform them that following a financial review, TfL was withdrawing PAs from the six services on which they operated with effect from 3rd September 2016.

The letter is at R1 67. The claimant was affected because he was employed on bus route 11. The letter advised of the following three options:

"(1) You will shortly be invited to attend a go-ahead group job fair at which any opportunities within the wider business will be made available for you to express an interest in

(2) TfL will host a similar event over the coming weeks.

(3) If you are unable to secure a position through either of these channels, you will be entitled to redundancy

Your local garage management will soon be in touch to provide specific details around options 12 option three only applies if alternative employment is unavailable."

26. The letter indicated that this was not a decision taken by the respondent but a direction from TfL with which it had to comply and expressed regret that it had come to this and a personal thanks to the PAs for a job well done.

27. Unite the Union was involved at all stages of the redundancy process and their representatives were on hand throughout to assist the PAs. Whilst the claimant was not a member of the trade union, Mr Farthing indicated that he would have been able to obtain their assistance. The local Unite representative was Mr Conrad Hall. The regional officers were Mr Murphy and Mr Ainsworth.

28. Following Mr Traynor's letter, Mrs Man spent some time speaking to the affected PAs in person (during their breaks at Victoria Station) and via email. The claimant and the other Personal Assistants each had an iPad as part of their job with which to keep in contact the respondent and each other.

29. Mrs Man sent the claimant an email on 24th July 2016 (at R1 68) because she not been able to speak to him personally. In her email she stated that she was meeting with Personnel the next day to talk over the situation for those PAs with more years of service than others. She wanted to be correct before giving any information as Personnel have more experience in this area. The claimant responded that same day explaining that he been on holiday and thanked her for keeping him in mind. He indicated that he looked forward to seeing her at the Job Fair on the coming Tuesday (R1 68). This email correspondence was via the claimant's work email address.

30. Mr Farthing said in evidence that no preferential treatment was given to those with longer service because there were very few job opportunities within the organisation for those PAs not holding a PSV licence and a very small number of internal vacancies.

31. The respondent held a number of Job Fairs. These were principally organised by Mrs Man. Mr Farthing identified contacts particularly in sister companies then Mrs Man carried out the detailed organisation of the Job Fairs.

32. The claimant attended the Go-Ahead Job Fair on 26th July 2017. This was an opportunity for the PAs to meet with representatives from the other Go-

Ahead companies and to identify and to apply for vacant posts. Mrs Man was clear with all of the PAs that there was no promise of continuing employment, it was entirely down to the individual employee's suitability for any vacant posts.

33. Afterwards, Mrs Man wrote to Mr Traynor by email on 26th July 2017 informing him of how the Job Fair went (R1 70-71). This indicates that the Job Fair went well and was well attended, 52 out of 59 PAs attending with representatives from Southeastern, Govia ("GTR") and London Midland. The PAs brought along copies of their CVs as requested and any reference numbers if they had already applied for vacancies via websites. The next step was for Mrs Man to email the representatives details of all the attendees and to provide the CVs of those unable to attend and for the PAs to make applications for vacancies as appropriate.

34. The claimant attended a further Job Fair, the TfL Job Fair, on 3rd August 2016 (R1 77a, 79 and 84). The purpose of this Job Fair was for the PAs to obtain information about potential roles within TfL, to apply for those roles and to obtain assistance with CV writing, completing applications and with interview skills.

35. After the meeting Mrs Man again emailed Mr Traynor to advise him how the Job Fair had gone (R1 85-86). This report indicates that attendance was good but there were few vacancies available at that time from TfL and the train operators. Her e-mail also indicated that there were some issues with Mr Hall and the views he was expressing.

36. In addition, Unite held individual meetings with the PAs during August 2016. However, the claimant did not attend those meetings, presumably because he was not a member of Unite.

37. I was referred to email correspondence from Mr Hall to the PAs and a response from one particular PA at R1 160-161 in which ZB expresses dissatisfaction about the information provided by the respondent at the Job Fair. Mrs Man explained that the respondent had been liaising with the regional Unite representatives, Mr Murphy and Mr Ainsworth and they were speaking with the local representative Mr Hall. However, she became aware that he had provided misleading information to some of the PAs at the Jobs Fair and the respondent had to take this up with the regional representatives. On balance of probability I accept her evidence that this was the case.

38. On 18th August 2016, the claimant attended his one-to-one redundancy consultation meeting with Mr Farthing and Mrs Man. There is no copy of the invitation letter within the bundle and the respondent does not have notes of that meeting. I was referred to the schedule of meetings that were sent internally between Mrs Man and Mr Farthing at R1 87-91 which indicated the dates of all of the PA's meetings including that of the claimant.

39. At the meeting, the claimant did not exercise his right of accompaniment, although other PAs were accompanied by union representatives. At the meeting there was a discussion about the claimant's plans and the redundancy options. The claimant was also given the opportunity to put any

further questions and suggestions that he had. There is no indication that the claimant raised any issues at that meeting.

40. Mr Farthing wrote to the claimant on 18th August 2016 following the one-to-one meetings (R1 96-97). This letter set out the options with regard to redundancy and the figures of redundancy and notice payments available. In essence, the claimant and presumably the other PAs were offered the choice of leaving on 16th September 2016, but not required to attend the work beyond 2nd September 2016, and receiving a statutory redundancy payment, or leaving on 2nd September 2016 with a payment including statutory redundancy and the two weeks' pay that they would be entitled to under the first option. The intention of the first option was to effectively keep the PAs in the respondent's employment for a further two weeks in the hope that they might find alternative employment during that time. The claimant was invited to express which option he favoured, failing which the respondent would by default impose the first option. The letter made clear that this was not notification of final redundancy but simply to advise of the options and to ascertain preferences.

41. The redundancy consultation process concluded on 23rd August 2016. Mrs Man wrote to all the PAs by email informing them that formal redundancy notice letters would be sent out (R1 105). Her email also reminded the PAs that they will have the choice to provide their personal email addresses which she would pass on to TfL and the other Go-Ahead companies for future job links and so that they could continue to receive the respondent's vacancy list.

42. Mr Traynor wrote to the claimant on 23rd August giving him formal notice of termination of his employment by reason of redundancy (R1 106-107). The claimant's letter set out his entitlement to statutory notice of 12 weeks and stated that he would be paid a cash equivalent notice. The letter also indicated that he would be receiving a tax-free redundancy payment of £8,828.85 and indicated the method of calculation. The claimant's employment was terminated with effect from 2nd September 2016. The letter did not provide any right to appeal against the decision.

43. The letter was a standard letter to all of the Pas and none of them were offered the right of appeal. Mr Farthing stated that given the circumstances of the redundancy it was inappropriate to offer a right of appeal because the situation could not be changed. He further stated that even if an appeal had been offered it would have made no difference to the decision taken.

44. On 24th August 2016, Mrs Man emailed the PAs to inform them that there was the possibility of obtaining an additional six weeks' work on a temporary basis as Timing Surveyors. This was done in the hope that this would bridge the gap between the end of the PAs role and longer term alternative employment if it became available (R1 108-109). The claimant did not put himself forward for this work, not because he did not enjoy timing work, but because it was a temporary job and not a permanent one. 13 PAs did apply for the work (R1 124).

45. On 26th August 2016, the claimant provided his personal email address to the respondent and indicated that he wished to exercise option two of Mr Farthing's letter of 18th August 2016 (R1 116).

46. On 26th August 2016, Mrs Man sent the claimant and the other PAs further alternative employment opportunities (R1 110-111).

47. On 30th August 2016, Mrs Man sent the personal email addresses for all of the PAs, including the claimant, to Ms Elena Blakey at TfL, so that TfL could advise them of employment opportunities at TfL after their employment with the respondent had terminated (R1 117-119).

48. On 31st August 2016, Mr Traynor wrote to the claimant to confirm acceptance of his request for his employment to terminate on the earliest possible date of 2nd September 2016 and confirming the details of the sums he would receive (R1 120-121).

49. A total of 47 PAs were made redundant from Stockwell garage including the claimant. I was referred to a schedule at R1 124. Three of the PAs secured alternative employment in non-driving roles with in the respondent company. As far as the respondent is aware the claimant did not apply for any these roles. All of the PA roles were made redundant.

50. Unfortunately, the lists of suitable vacancies at the respondent company were not sent to any of the redundant PAs after termination of their employment. This resulted from administrative oversight. Both the Personnel department and Mrs Man believed that the other would be circulating these lists. This oversight was not picked up at the time. None of the redundant PAs, including the claimant, raised the fact that they were not receiving job list post termination of employment

51. The claimant's position is that he applied for a number of vacancies both internally with the respondent and externally with its other companies and TfL. During the redundancy process he applied internally via his work email address for a number of vacancies, but he received no response. He raised the lack of response with Mrs Man at the time, but she indicated that she was not able to deal with the matter and advised him to take it up with Personnel. He also registered on the Southeastern and GTR recruitment portal (R1 149). The claimant also applied for positions with TfL after his employment with the respondent had ended.

52. The claimant applied for internal and external vacancies using his work email address. These were for the post of Training Administration Support Assistant (R1 94-95) and the post of Garage Administrator Mileage Clerk (R1 104). The claimant also believes that he applied for the position of London Underground Customer Services Assistant (R1 110-111). He never received any response to his applications.

53. The claimant also applied for a position with GTR on 26th July 2016 (R1 148) but despite being advised by Mrs Man in her e-mail that GTR stated that it would be a four week process (R1 71), he did not receive any response until 19th October 2016 (R1 153).

54. The claimant has not been able to provide copies of any these emails from his work address in support of these matters because he no longer has access to it. He did not take hard copies of the emails or forward them to his

personal email address at the time. The respondent has subsequently deleted his work email account.

55. The respondent has since undertaken a search of its own email accounts (the Personnel generic address and individual addresses of its staff members), has not been able to find any e-mails related to the job applications. The respondent has also checked its individual files for those these vacancies, which contain all the correspondence relating to applications and could can find no trace of anything relating to applications from the claimant.

56. Whilst the claimant states that he discussed the lack of response to his applications with Mrs Man, she does not recall any such conversations. Mr Farthing was unaware that the claimant had applied for any vacancies during the redundancy process or had raised concerns about any lack of response.

57. I was referred to R1 114- 15 which is email correspondence dated 26th August 2016 in which a PA raised enquiries about a job application, Mrs Man responses to it and passes the matter onto Mr Farthing for his consideration.

58. The claimant's position is that the respondent through its managers gave him and the other PAs the impression that they would be given priority with their applications for alternative work including those vacancies which existed within TfL. This arises from a construction placed upon the wording of the three options in Mr Farthing's letter of 11th July 2016 at R1 67 and in particular at option (3). The respondent denies giving such an impression and that this interpretation of that letter is fallacious.

59. I find on balance of probability that the respondent did not give the claimant this impression because this was not within its remit or control and I do not accept the interpretation placed on the letter at R1 67 either being correct of supportive of this impression.

60. I also find on balance of probability that the respondent did not receive the claimant's internal job applications. In the past the respondent had replied to his applications prior to the redundancy situation arising and also to at least one other PA when concerns were raised about her job application. The respondent was not ill-disposed to the claimant. He was well regarded as an employee. There is no obvious reason why the respondent would not reply beyond simple non-receipt. The respondent could not find any record of receipt of e-mails from the claimant and the claimant could not provide them. The respondent is of course not responsible for the failure of external companies in responding to the claimant's emails.

61. I further find on balance of probability that the claimant did not raise concerns about the lack of response to his job applications with Mrs Man. He had a good working relationship with her by his own admission and she had dealt with his concerns in the past (R1 57c).

62. I received written submissions from the parties' representatives which were amplified orally.

Relevant Law

63. Section 98 (1), (2) and (4) of the Employment Rights Act 1996:

‘(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 this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)—

(a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

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

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.’

64. Section 139 of the Employment Rights Act 1996:

‘(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

(i) to carry on the business for the purposes of which the employee was employed by him, or
(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

(2) For the purposes of subsection (1) the business of the employer together with the business or businesses of his associated employers shall be treated as one (unless either of the conditions specified in paragraphs (a) and (b) of that subsection would be satisfied without so treating them)…

(6) In subsection (1) “cease” and “diminish” mean cease and diminish either permanently or temporarily and for whatever reason.’

Conclusions

Potentially fair reason

65. I first had to consider whether the respondent has shown a potentially fair reason for the claimant's dismissal within section 94 of the Employment Rights Act 1996 ("ERA"). Both parties accepted that the potentially fair reason is redundancy. Having regard to the definition of redundancy within section 139 ERA and my findings of fact I accept that the respondent has shown that the potentially fair reason for the claimant's dismissal is redundancy.

66. Section 139(1)(b) defines redundancy as including the situation where the fact that the requirements of that business for employees to carry out work of a particular kind or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish. The work of the particular kind was that carried on by the PAs and the requirement for that work ceased as a result of the decision taken by TfL.

67. I then turned to consider the reasonableness of the decision under section 98(4) as it applies to the Claimant's dismissal for the reason shown, that being redundancy.

68. In particular I considered those matters which might render a dismissal for redundancy unfair as identified by the Employment Appeal Tribunal in *Williams v Compair Maxam Ltd* [1982] IRLR 83, EAT, as approved by *Robinson v Carrickfergus Borough Council* [1983] IRLR 122, NICA. These can be summarised as follows:

    68.1 That there was no genuine redundancy situation;
    68.2 That the employer failed to consult;
    68.3 The employee was unfairly selected; or
    68.4 That the employer failed to offer alternative employment.

69. I accept that these are not principles of law but rather standards of behaviour which may alter over time in accordance with the prevailing understanding of what constitutes good industrial relations practice (one obvious point being that they now often have to be applied to establishments with no trade union recognition).

70. In Polkey v A E Dayton Services Ltd [1987] IRLR 503, the House of Lords expressly referred to the relevant procedures required in a redundancy dismissal in the following terms:

    "… in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representatives, adopts a fair decision which to select for redundancy and takes such steps as may be reasonable to minimise a redundancy by redeployment within his own organisation."

71. It is not open to an employee to challenge whether the employer acted reasonably in creating the redundancy situation and equally the Tribunal

cannot investigate the commercial and economic reasons which prompted the situation or look into the rights and wrongs of the employer's decision (James W Cook & Co (Wivenhoe) Ltd v Tipper and others [1990] IRLR 386, CA; Moon v Homeworthy Furniture (Northern) Ltd [1976] IRLR 298, EAT.) However, the Tribunal is entitled to investigate whether the redundancy situation is in fact genuine (James W Cook & Co (Wivenhoe) Ltd v Tipper and others [1990] IRLR 386, CA.).

72. There is no evidence to suggest that this was anything other than a genuine redundancy and despite the claimant's assertions to the contrary particularly in his initial complaints of age discrimination and victimisation, I find the redundancy to be genuine and brought on by the actions of TfL.

73. An employer should give as much warning as possible of impending redundancies to enable any recognised trade union and affected employees to consider possible alternative solutions and if necessary, find alternative employment (Williams v Compare Maxam Ltd [1982] IRLR 83, EAT).

74. Consultation is very important in redundancy situations and can take many forms. At one end of the spectrum it involves collective discussions and meetings with a recognised trade union; at the other end it will entail discussions with individual employees who are likely to be made redundant. Failure to consult individually may well make a dismissal unfair, although compensation may be limited if consultation would not have made any difference to the outcome.

75. Consultation requires the employer to consider options which would not involve making the employee redundant, including early retirement, seeking volunteers, alternative employment, lay-off and short-time working. The employees and their representatives should be involved in this process. Consultation means more than communicating a decision already made. The Industrial Relations Code of Practice 1972 at paragraph 46, which has been repealed, provided a good definition of consultation. It defined consultation as jointly examining and discussing problems of concern to both management and employees. It involves seeking mutually acceptable solutions through a genuine exchange of views and information (Heron v Nottingham City Link [1993] IRLR 372, EAT. Consultation should be held when the proposals are still at a formative stage, there is adequate information on which to respond, adequate time in which to respond, and conscientious consideration by an authority of the response to consultation (R v British Coal Corporation ex p Price [1994] IRLR 72, HC; Rowell v Hubbard Group Services Ltd [1995] IRLR 195, EAT.)

76. I find that in the circumstances the respondent undertook a reasonable level of consultation both with the trade unions and with the claimant on an individual basis. The respondent was given a decision by TfL as a fait accompli and had a limited amount of time in which to undertake a redundancy process and limited scope to accommodate the affected employees so as to avoid the need to make redundancies. However, it took reasonable steps to communicate with those staff, to look for possible job opportunities and to set up Jobs Fairs.

77. Given that all of the PAs were facing redundancy, subject to their ability to obtain further employment with the respondent or the wider group of companies or indeed externally, this is not a case in which there is any issue as to selection for redundancy.

78. An employer must at least look for alternative employment and should offer any suitable available vacancies. The employer's duty is not limited to offering similar positions or positions in the same workplace and it should consider the availability of any vacancies with associated employers. When offering alternative employment, the employer must give sufficient detail of the vacancy and allow (unless the job functions are obvious) a trial period. Failure to do so could make a dismissal unfair (*Elliott v Richard Stump Ltd* [1987] IRLR 215, EAT.) It is up to the employee whether to accept the alternative employment, which might even involve demotion or a reduction in pay (*Avonmouth Construction Co v Shipway* [1979] IRLR 14, EAT.) Employers should consult about possibilities and not make assumptions about what jobs an employee would find acceptable.

79. The respondent had limited job opportunities for non-driver PAs internally and within its wider group of companies. It set up Jobs Fairs involving those other companies and TfL. It circulated details of vacancies and encouraged the affected PAs to apply and to indicate that they were Go-Ahead London staff when applying. It offered ways of extending the affected PA's employment in the hope that they could secure alternative employment before redundancy took effect.

80. However, the respondent could not offer priority to its staff in obtaining work with other companies and as I have found did not give that impression even if the claimant and others may have erroneously formed that view.

81. It is unfortunate that the arrangements to forward post-termination vacancies lists to the affected PAs did not come to fruition. But in any event, this was a process that would have taken place after the claimant's employment had ended and so could not impact upon the fairness of his dismissal.

82. It is also unfortunate that the claimant did not receive any response to a number of internal and external applications for work. However, as I have found, the respondent was not aware of these applications, the claimant did not raise concerns during his employment and the respondent is not responsible for the failings of external organisations.

83. I also looked at the matter in the round so as to determine whether dismissal is within the band of reasonable responses (Grundy (Teddington) Ltd v Plummer and Salt [1983] IRLR 98, EAT). Clearly it was.

84. I also considered whether the failure to offer the claimant a right of appeal rendered the dismissal unfair. However, I accept the respondent's submissions that there is of course no obligation for an employer to have a written redundancy process or to provide a right of appeal. What matters is the reasonableness of the respondent's actions.

85. Whilst I find it surprising that the respondent did not have a written process, it is not unreasonable in the circumstances and the respondent did follow the normal steps which one would expect a reasonable employer to follow.

86. As to the lack of a right of appeal, as Mr Farthing stated and I accept, no one was offered the right of appeal and in the circumstances the decision to make the claimant and the other PA's redundant was not something that was open to reconsideration. If the claimant had concerns it could only legitimately have been about vacancies he had applied for and not heard of and of course he was at liberty to raise those matters with the respondent notwithstanding not being offered a right of appeal and he did not. I find that the respondent acted reasonably in not including an appeal.

87. In the circumstances I find that the claimant was not unfairly dismissed and I dismiss his claim.

88. In closing I would state that I do recognise that the claimant has clearly been affected in terms of his financial position and well-being by his redundancy. I sincerely hope that he can take some comfort from what the respondent has said about his employment record and there being no dispute that he was a good employee and that the respondent did not want to lose good employees. As the respondent's Counsel stated, it is traumatic to be told one is going to be made redundant, it is a kind of assault on one's personal being and makes one feel not valued. However, this was never the intention. These are sentiments with which I agree. Sadly, this was a decision thrust upon the respondent who then had limited options by which to avoid having to make redundancies.

Employment Judge Tsamados
Date: 20th May 2018