EMPLOYMENT TRIBUNALS

Claimant: Mr S Davis

Respondent: Rossendale Group Limited

HELD AT: Liverpool **ON:** 25 February 2019
11 March 2019
1 April 2019
(in chambers)
4 April 2019
(in chambers)

BEFORE: Employment Judge Barker

REPRESENTATION:

Claimant: Mr Flood, Counsel
Respondent: Mr Taylor, Solicitor

JUDGMENT

The decision of the Tribunal is that the claimant was unfairly dismissed. The redundancy process carried out by the respondent was unreasonable and therefore his dismissal was unfair.

The claimant is not awarded compensation for this unfair dismissal, as the Tribunal finds that he would have been dismissed in any event by the same date even had the redundancy and dismissal process been fairly and reasonably carried out.

REASONS

Issues for the Tribunal to decide

1. The claimant complains that his dismissal by reason of redundancy from his employment with the respondent was an unreasonable redundancy as per s98(4) Employment Rights Act 1996. He does not dispute that there was a redundancy situation at his place of work in Ellesmere Port, Merseyside. However, he complains that prior to the commencement of redundancy consultation in May 2018 and as early as 30th April 2018, the respondent, acting by its managing director Simon Bamford, had already decided that the claimant would be dismissed by reason of redundancy.

2. The claimant will say that Mr Bamford had from the outset of the process decided that, of the two salespeople employed by the respondent at its Ellesmere Port site who were in the pool for selection and at risk of redundancy, the other individual in the pool, Jason Siner, would be retained and the claimant would be dismissed.

3. The claimant will say that this was apparent due to the respondent's decision to retain the salesperson with the highest quantity of technical qualifications and technical experience. He says that this was clearly Mr Siner and not him. Therefore, he says that the redundancy consultation process was inherently flawed from the outset and unfair. The claimant will also say that the issue of suitable alternative employment was not properly considered by the respondent and also that elements of the appeal process were unfair.

4. The respondent will say that the consultation was open, fair and reasonable and was done in good time and that suitable alternative vacancies were considered for the claimant but one could not be identified.

5. The Tribunal heard evidence from the claimant, Mr Bamford and Ms Sullivan for the respondent. A number of matters were raised in evidence by the parties during the Tribunal hearing. If evidence was raised during the hearing that does not form the following findings of fact, it is not because this evidence was not considered by the Tribunal but that it was not sufficiently relevant to the issues that the Tribunal had to decide.

Findings of Fact

6. The claimant was dismissed from his employment with the respondent by reason of redundancy on 9 August 2018. The claimant had been employed by the respondent for 26 years, since 1 July 1992, and at the time of his dismissal was employed in the role of sales manager.

7. The respondent company supplies specialist industrial lifting equipment and is based across three sites in England; one at Ellesmere Port in Merseyside where the claimant was based and where there are approximately 22 members of staff, a much smaller branch in the West Midlands where approximately 1 member of staff is based and a third site in Lincoln which the Tribunal understands has a similar number of staff to Ellesmere Port.

8. The respondent's business plan for 2018 to 2019 was before the Tribunal in evidence. In the business plan, and in the evidence of Mr Bamford, the respondent made a business decision for 2018 to 2019 to focus on technical products, services and jobs rather than "off the shelf" sales of lifting equipment. The respondent intended to focus on bespoke design and build lifting equipment because its view and certainly the view of Mr Bamford that such "off the shelf" traditional sales were no longer profitable, partly because of the ability of customers to buy such equipment at a lower cost through the internet. The business therefore took a decision that, if it was to thrive in the future, that it needed to predominantly consist of bespoke technical sales, which it considered to be more profitable.

9. The claimant disputed Mr Bamford's description of the changing nature of the respondent's sales profile. His view was that "off the shelf" sales were still very important to the respondent's business and that the respondent was over-emphasising the profitability of bespoke design and build projects.

10. Mr Bamford told the Tribunal that in 2018 the performance of the Ellesmere Port branch was relatively poor and that this had come as a shock to him. He therefore felt that it was critically important to increase sales to save jobs and win orders for the business.

11. The claimant was a very experienced salesperson having worked for the respondent for 26 years. He had also been branch manager at the Ellesmere Port site during his time with the respondent. The claimant acknowledges, however, that he is not an engineer and has no engineering qualifications.

12. In approximately January 2018, Jason Siner joined the company in a sales role at the Ellesmere Port branch and the claimant and Mr Siner were asked to work together to organise their workload to maximise their potential to generate sales. Mr Siner, it is acknowledged by both parties, had far less sales experience than the claimant but far more technical, engineering qualifications than the claimant.

13. Mr Bamford told the Tribunal, and had recorded in the documents headed *"Notes to management team on sales person redundancy RGEP [Rossendale Group Ellesmere Port] 30 April 2018",* which Mr Bamford described as his working document of notes and comments in relation to the redundancy process at the time, that Mr Siner was regularly taken away from "direct sales" work in order to do technical work. Although this was something that Mr Bamford noted was undermining his role as a sales person he also noted that it had positive aspects in that it could be a good way for the business to build relationships to win more technical work and larger, long term projects.

14. Mr Bamford's document set out the basis on which the respondent's redundancy consultation would take place:-

> "*These are conclusions upon which my further consultations with the management team on SD* [the claimant] *and JS* [Mr Siner] *will be introduced, they are not final conclusions but subject to discussion and further consultation.*

> *(i). RG has only one job for a sales person at RGEP. One of the two positions should be made redundant. We should make every effort to find another job for the person who is made redundant from the sales person position, given the experience and knowledge of both involved.*
>
> *(ii) The future of RG depends on winning orders from and retaining clients who bring us high value, high margin work. This will tend to be work of a more technical nature. Opportunities for less technical sales are diminishing. Relationship selling is essential. Customers form good relationships and buy from sales people who they trust on the technical level.*
>
> *(iii) The criteria for redundancy should be that we retain the person who can bring the most relevant technical knowledge, experience and qualifications to the job".*

15. The claimant does not dispute that there was a redundancy situation at the respondent's Ellesmere Port office and does not dispute the pool for selection that the respondent drew up as part of the selection exercise. However, in terms of what was likely to happen to the two individuals in the pool for selection, the comparison between Mr Siner and the claimant was stark – put simply, the claimant had all the sales experience and Mr Siner had all the technical experience.

16. Mr Bamford's evidence was that he approached the issue of the sales person redundancy exercise open-mindedly. To that end, it was his evidence that he held a series of consultation meetings with the claimant, the first two of which took place on 2 May 2018.

17. It is the claimant's case that on 2 May 2018 he had one meeting with Mr Bamford and that this was a standard sales meeting and that at no point on 2 May was there any mention of his redundancy. It is the claimant's case that in fact redundancy was not mentioned until 9 May, which the claimant says was the first time that the redundancy situation was mentioned to him.

18. On the balance of probabilities, I find that there was a redundancy consultation meeting on 9 May and none on 2 May. The need to make a salesperson redundant at Ellesmere Port was notified to the claimant on 9 May for the first time and the proposed selection criteria were discussed.

19. The four criteria for selection that were applied to the claimant and Mr Siner were as follows:-

> (i) Lifting Equipment Engineers Association ("LEEA") qualifications
>
> (ii) Technical qualifications;
>
> (iii) Industry technical experience;
>
> (iv) Industry sales experience.

20. I accept that it was clear to the claimant that, as matters stood at that time, he would not be successful when scored against Mr Siner due to the weight given to

technical qualifications and experience. It was only in relation to the "industry sales experience" criterion that the claimant would have scored much more highly.

21. Alternative employment was discussed, including whether the claimant could take over the branch manager's job at Ellesmere Port through "bumping", given that the post was filled at that time. On this occasion, the claimant said that he would like to do the branch manager's job and could do it better than the incumbent was doing it but that he would probably lose because he would be unable to show, as was required by Mr Bamford, that he had more experience, skills and qualifications for that job than the incumbent did. Mr Bamford had referred to the need to be qualified in health and safety to do the branch manager's job, and the claimant was not. Other jobs were discussed including one that the claimant did not wish to do because it contained an element of training.

22. The claimant told the Tribunal that he was surprised to have been given at the meeting on 9 May the pack of documents that were in the bundle before the Tribunal and are a series of minutes signed by Mr Bamford which purport to be minutes of two consultation meetings held on 2 May and a letter dated 9 May purporting to invite the claimant to a further consultation meeting on 9 May.

23. The claimant's evidence, which the Tribunal accepts, is that the first time that he had seen any of these documents was when he had an opportunity to read them after his meeting with Mr Bamford on 9 May. He also said that he immediately notified Mr Bamford that the minutes of their conversation of 2 May were inaccurate in that formal consultation meetings had not taken place on that date and that he had been unaware that he had been placed at risk of redundancy. The Tribunal accepts the claimant's evidence in this regard. While the Tribunal finds that it is quite possible that Mr Bamford discussed sales figures and forward planning with the claimant on 2 May, I find on the balance of probabilities that the claimant was not formally notified that he was at risk of redundancy until 9 May.

24. I further find that to receive a package of meeting minutes that did not accurately reflect the earlier conversation with Mr Bamford and a letter that post-dated the meeting on 9 May itself had a serious and deleterious effect on the integrity of the redundancy consultation process and the relationship between the claimant and the respondent and Mr Bamford in particular. The claimant told the Tribunal that he was unhappy with Mr Bamford's actions. I find that Mr Bamford's actions had the effect of undermining the relationship of trust and confidence between the claimant and the respondent and undermined the consultation process itself from the outset.

25. Mr Bamford's evidence to the Tribunal was that the respondent had sound business reasons for requiring that the sales person that they kept on at the end of the redundancy exercise had high levels of technical experience. The Tribunal accepts Mr Bamford's evidence in that regard and accepts that the respondent had good business reasons for doing so. Although the claimant disputed these conclusions and disputed the level of and profitability of technical sales, no evidence was before the Tribunal to support the claimant's complaints in this regard.

26. The claimant says that the material flaw in the consultation and selection process was two-fold. Firstly, he says that the respondent pre-decided the outcome of the redundancy process in favour of the other candidate in the pool, Mr Siner. In

particular, and secondly, the claimant says that the respondent did not look at the sales figures for both candidates properly and specifically did not look at what he refers to as "*marginal sales*", these being sales that were secured due to the claimant's skills and expertise and experience as a sales person. He says that failure to look at marginal sales and failure to give his non-technical sales experience sufficient weight did not adequately reflect his experience in the business and were devised to achieve a particular outcome.

27. It is Mr Bamford's case that had sales figures been a primary criterion, the claimant still would not have been successful in the selection process. In his witness statement he notes that in the period from January to April 2018 the claimant generated 27% less in quotations and 63% less in sales than Mr Siner. While the claimant disputes these headline figures, he accepts that he had for some months stepped away from his usual sales role. Since Mr Siner joined the business at the end of 2017 and early 2018, the claimant had been assisting him with his sales role and that they had split the sales job between them in a way that would not have maximised the claimant's sales opportunities.

28. Both parties agree that there was a further consultation meeting on 15 May 2018. It is clear from the evidence of both parties that this meeting became extremely heated. That this meeting became fractious is not surprising, I find, given that the claimant already had good reason to feel that the respondent was not being upfront and open with him.

29. The claimant's evidence was that during the meeting he set out why he believed that he had been performing well, challenged the use of the criteria and challenged the relevance of the technical qualifications required by the respondent. It is also clear from this meeting that alternative employment was discussed. The claimant's evidence was that he "again" discussed whether he could do the branch manager's job and that the issue of alternative employment was discussed again.

30. During the Tribunal hearing, Mr Bamford was asked whether he had ever considered the possibility of the claimant relocating to the respondent's Lincoln site. Despite several questions being asked on this point by the Judge, Mr Bamford appeared unwilling to acknowledge that the Lincoln site was one which would have fallen for consideration as part of the search for suitable alternative employment for Mr Davies. Although it is clear that Mr Bamford did not raise the possibility of employment in Lincoln, the claimant did not raise that possibility either as part of their discussions, even though he had the opportunity to do so on two occasions. It is the respondent's case that there was not an appropriate vacancy in Lincoln in any event. Furthermore, although a role in West Midlands was said to be available, it was described by the respondent as a "pressure testing" role and the claimant was not suitable for this either.

31. The claimant was given a letter dated 16 May which contained Mr Bamford's response to two specific points raised in the meeting of 15 May. The first was that the claimant asked Mr Bamford to consider if he could replace Mark Revans in his job as branch manager at Ellesmere Port. Mr Bamford confirmed that he had already considered this following it being mentioned at the consultation meeting on 2 May and that he having given it further thought rejected it on the basis that Mr Revans was

better qualified for the role than the claimant was because he has health and safety qualifications and experience that the claimant did not have.

32. The second point that the claimant had asked Mr Bamford to consider was not applying the LEEA and other technical qualifications as criteria and replacing them with criteria of sales won. Mr Bamford also rejected this request, and explained that this had been done because the respondent was looking to retain a sales person with technical knowledge going forward due to the changed nature of the market in which the respondent had to compete for business. Furthermore, Mr Bamford said that it would be very difficult to fairly measure "sales won" due to the fact that the sales team and other employees worked together to win sales as a team.

33. The letter concluded by inviting the claimant to a further meeting on 17 May which was described as one to "conclude the consultation". It would have been apparent to the claimant from the letter dated 16 May that this further consultation meeting would result in the claimant's dismissal.

34. At the meeting on 17 May, the claimant was asked for any further suggestions he might have regarding alternative employment. The claimant said he had nothing further to add than what he had said previously. Mr Bamford then gave the claimant notice of the termination of his employment by reason of redundancy and the rest of the meeting was taken up with discussing redundancy pay and the claimant's rights of appeal. The claimant was told that he could be on gardening leave for the rest of his notice period but that he was able to look for alternative work during that time. The claimant's notice period was 12 weeks' notice which commenced on 18 May and ended on 9 August 2018.

35. The claimant appealed against his dismissal. The claimant's points of appeal was summarised by the appeal hearing officer Matthew Fordham who was an external consultant and were as follows:-

(i) The criteria used by the respondent were not relevant for a sales role;

(ii) The criteria had been chosen to ensure that he was selected for potential redundancy and that it had been acknowledged by Mr Bamford as early as 9 May that the claimant would probably lose on the criteria proposed by him;

(iii) The consultation process was flawed in that the claimant had not always been informed in advance that there was going to be a consultation meeting taking place and also he did not have the chance to examine the minutes from the previous meeting prior to the following one;

(iv) The purported consultation meeting on 2 May was not a redundancy consultation meeting but was in fact an informal meeting;

(v) The tone of the consultation became less amenable as the process went on;

(vi) The respondent's position was inconsistent because they had opened a new branch in Wolverhampton at the same time as claiming a need to save costs;

(vii) The claimant had suggested he could do the Branch Manager's role better than the current incumbent but this had been rejected;

(viii) That "sales won" should have been a criterion but this had been rejected and that other criteria could have been used to include absence records, disciplinary record and length of service and/or that the respondent should have used a written job description and person specification for the new role and selected the criteria from there.

36. Having examined the consultation process Mr Fordham concluded *"it is clear that the decision to make SD redundant was not unreasonably based. The appeal raised a wide range of questions and while the company may have done things differently or made changes to the process, the consultation reached was a reasonable one"*.

37. The claimant told the Tribunal that as a result of the disclosure exercise in the Tribunal process he became aware that a large amount of information had been produced by the respondent for Mr Fordham's benefit, including a statement from Melanie Sullivan. This was not given to the claimant, nor was the claimant allowed to see the pack given to Mr Fordham and therefore did not have the opportunity to question any of the conclusions reached by the respondent. The claimant says that Melanie Sullivan's statement for the appeal process contains figures which discuss the very matters that he wanted to take issue with at the time relating to "marginal sales", and that this is a major flaw in the respondent's procedure as that all relevant information should have been there for the claimant and the appeal officer to consider.

38. Mr Bamford and Ms Sullivan told the Tribunal that the respondent is a small business and could not be drawn into a prolonged and forensic analysis of sales figures and historical data. However, as a result of the claimant's complaint of sales figures being considered or not considered was looked into, documents were produced to enable the appeal officer to consider this feature of the process, which he did.

The Law

39. For a dismissal to be fair by reason of redundancy, there must be a redundancy situation at the respondent's business. Dismissal has to be within the range of reasonable responses, as per section 98(4) of the Employment Rights Act 1996. It is for the Tribunal to decide whether the actions of the respondent in these circumstances fell within or without the range of reasonable responses. The question for the Tribunal is whether in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating the redundancy situation as a sufficient reason for dismissal. This is to be determined in accordance with equity and the substantial merits of the case.

40. The case of *Williams and Compair Maxam [1982] ICR 156 EAT* sets out additional factors for the Tribunal to consider in deciding whether a dismissal by reason

of redundancy is unreasonable contrary to section 98(4) of the Employment Rights Act. Those criteria are:-

(a) Have there been objectively chosen selection criteria fairly applied;

(b) Were employees adequately warned and consulted;

(c) Was alternative work available or was there a failure to seek alternative work on the part of the employer;

(d) If a union was present was a union involved and consulted. In the claimant's case no union was present and so this issue did not fall to be considered.

41. Procedural failure on the part of the employer can render a dismissal unfair under section 98(4) but the question of whether the employee would still have been dismissed if a fair procedure had been followed is relevant to the amount of compensation payable.

42. Selection criteria should be clear and transparent and objective and should be verifiable by reference to data. The Tribunal must ask and examine whether there was a proper appraisal or selection of employees. However, if the respondent's selection criteria are objective the Tribunal should not over-scrutinise them.

43. It is for the respondent to decide how to make an assessment of the skills and attributes it wishes to retain in its workforce. The question for the Tribunal is whether a reasonable respondent would have chosen the method adopted in this case. Skills and knowledge are reasonable considerations provided they are assessed objectively. The case of *O'Hare v Drake International Systems Ltd (trading as Drake Ports Distribution Services) - [2003] All ER (D) 12 (Sep)* held that a tribunal was in error in seeking to impose their own views as to the reasonableness either of the criteria or the implementation of those criteria, as opposed to asking the correct question which was whether the selection was one that a reasonable employer acting reasonably could have made.

44. *Polkey v A E Dayton Services Limited Ltd [1987] IRLR 503 HL* established the principle that a Tribunal may find that even though a dismissal would have taken place**,** adherence to fair procedures would have delayed its implementation such that a claimant can be paid compensation on the basis of the later dismissal date.

Application of the law to the facts found

A: Was the redundancy process unreasonable and therefore was the dismissal unfair?

45. Turning to the long-established guidance in *Williams v Compair Maxam,* the first question to consider is have objectively chosen selection criteria been fairly applied? I find that they have. Although the claimant complains that Mr Bamford had pre-decided the issue, I find that proposals were still at a formative stage when Mr Bamford first met with the claimant.

46. Although Mr Bamford had clearly decided to reduce the salesforce in Ellesmere Port and a had clearly decided to focus on technical sales going forward, he had two discussions with the claimant about what other criteria could be considered and this included him giving consideration to the claimant's request that "marginal sales" were taken into consideration. This is evident because Mr Bamford carried out an analysis of recent sales and concluded that, in this claimant's case, this would not improve his scores. He also considered whether or not an analysis of "marginal sales" would assist and initially declined to carry out this more detailed analysis due to the time involved and because, in essence, he was less concerned with sales won and more concerned with technical potential.

47. On the balance of probabilities the Tribunal accepts the respondent's evidence that, due to the market conditions in which it found itself trading in 2017 and 2018, it took a business decision to focus on bespoke technical sales which necessitated longer term relationships with its clients involving a higher level of planning and technical expertise. This decision did not match the claimant's skills and experience. It is apparent or would have been apparent to Mr Bamford and the claimant from the point at which this approach was first announced that it would be highly unlikely that the claimant would be retained in employment as a result. However, it does not follow that this should lead the Tribunal to conclude that the selection criteria were inherently unfair.

48. Further, it is settled law (*O'Hara v Drake*) that there is little scope for employees to challenge an employer's scores and/or selection criteria and that in any event, a Tribunal cannot substitute its own view of what would have been reasonable in terms of scores or selection criteria for that of a reasonable employer. The Tribunal finds that the selection criteria chosen and their application in the instant case were actions which a reasonable employer acting reasonably could have taken.

49. The next question is whether employees were adequately warned and consulted. Although the claimant did have two consultation meetings with Mr Bamford on 9 May and 15 May, the way in which Mr Bamford had conducted the process on 9 May meant that the claimant's trust in the consultation process had been severely damaged.

50. This was particularly unfortunate given the length of time that the claimant had been employed by the respondent. The claimant had 26 years' service with the respondent. Although documents before the Tribunal indicate that Mr Bamford had become concerned in the months leading up to the redundancy exercise that the claimant was not able adequately to capture the market that the respondent sought to pursue in terms of technical sales, it is clear from the evidence before the Tribunal that the respondent did not have any issue with the claimant's performance and certainly no issues concerning disciplinary problems, attendance problems or other significant matters were raised during the course of this hearing. This leads the Tribunal to conclude that the claimant had had a successful and lengthy period of employment at the respondent.

51. It is good industrial relations practice that any redundancy consultations are to be carried out in an upfront, open and transparent manner. It is also important that employers are mindful that the impact of a redundancy situation on a long-serving employee is likely to be far greater than the impact of a redundancy situation on an

employee with a much shorter length of service and that there is a greater duty of care in relation to longer-serving employees for this reason.

52. It is therefore deeply regrettable that the redundancy consultation process in this case did not proceed in accordance with this good industrial relations practice. Of particular concern are the actions of the respondent in exaggerating the consultation that had taken place by purporting to have had two separate formal consultation meetings with the claimant on 2 May when the Tribunal accepted the claimant's evidence that such formal consultation meetings did not take place.

53. The first actual consultation meeting that the Tribunal found did take place, took place on 9 May 2018. Even on this date, the respondent failed to warn the claimant that this meeting would be a consultation meeting. It had clearly considered sending the claimant a letter in advance of that meeting as the letter had been drafted and signed but that letter was not provided to the claimant until during the actual meeting itself.

54. Rather than being warned in a manner that would have allowed the claimant to give some thought to the redundancy consultation exercise, the claimant was quite ambushed by the redundancy consultation process and his faith in the process was undermined from the outset, in particular by the inaccurate minutes of the meetings that he was handed on the 9 May. It is clear from the evidence before the Tribunal that the claimant took great exception to the respondent's actions in this regard and that he was justified in doing so. The respondent's behaviour in this regard was inequitable and not in accordance with the substantial merits of the claimant's case and their actions in this regard made the redundancy process unfair as per s98(4) of the Employment Rights Act 1996.

55. Furthermore, it is clear from the respondent's evidence that although a more detailed analysis of "marginal sales" was eventually produced by the respondent for the appeal officer, this was not shared with the claimant and he was not afforded the opportunity to comment on it. In fact, it is evident that a significant amount of extra information was provided for the appeal process that was not shared with the claimant. This is also unreasonable and also renders the consultation and dismissal process unfair.

56. The next question is whether alternative work was available, or was there a failure to seek alternative work on the part of the employer. The claimant now complains to the Tribunal that work may have been available in the respondent's Lincoln site and that he would have relocated himself and his family from the north-west of England to Lincoln (or the West Midlands) had this been offered to him and had it been suitable. It was clear from Mr Bamford's evidence at the Tribunal hearing that he considered that the respondent had no obligation to consider alternative vacancies in Lincoln for the claimant, even though Lincoln was the respondent's other significantly-sized site and employed individuals in a similar role to the claimant.

57. When asked directly about relocation to Lincoln, he dismissed this as a possibility. When pressed further on this point, he was quite adamant that consideration of moving the claimant to Lincoln was not required by the respondent. This is also unreasonable. The respondent is under a duty to discuss alternative roles in the organisation with the employee at risk of redundancy. The details of the

conversations between the claimant and Mr Bamford about alternative employment were before the Tribunal and it was evident that Lincoln had not been discussed at all. This element of the process was also unreasonable and unfair.

Would the claimant's dismissal have been delayed?

58. The law is clear that where there are flaws in a redundancy consultation exercise as is the case with the claimant's redundancy consultation, account must be taken of what would have happened in the event that the redundancy consultation process had been without such flaws. This is set out in *Polkey v A E Dayton Services Limited*. Three broad scenarios are envisaged; firstly, that had the process been fair, no dismissal would have happened and the claimant would have remained in employment. The second scenario is that dismissal would have happened in any event, although it may have been delayed by any correction in that process. The third scenario is that dismissal may have happened, and the probability of that dismissal taking place involves an element of speculation by the Tribunal.

59. Given that the respondent was within its rights to decide on the selection criteria that it did and given that there were only two employees in the pool for selection, and given that one of those employees clearly met the criteria much more successfully than the other, the Tribunal finds that even had the redundancy consultation process not been flawed as found, that Mr Siner would still have retained his job and the claimant would still have been made redundant. Dismissal would therefore have taken place in any event.

60. Even if the issue of alternative employment is taken into account, although the respondent ought to have taken into account the possibility of the claimant relocating to Lincoln or the West Midlands, the Tribunal accepts that no suitable vacancies existed at the Lincoln site or at the West Midlands site. In any event, the findings of fact set out above indicate that the claimant was given three separate opportunities to discuss suitable alternative employment with the respondent and with full knowledge of the existence of the Lincoln and West Midlands sites, at no point did the claimant raise the possibility of relocation. The issue of "bumping" other employees out of their jobs at Ellesmere Port was considered, but none of the options that were available were suitable. Therefore had there been a full consideration of alternative employment, dismissal would have taken place in any event.

61. In terms of whether a closer examination of the claimant's sales figures would have produced a different result, taking the claimant's case at its highest, from the evidence before me it was by no means clear that such a forensic examination of the sales figure would have favoured the claimant in any event. Several different interpretations of successful sales were put before the Tribunal in argument and the respondent's case was that in any event it was extremely difficult to work out which sales had been "won" by which member of staff due to the often protracted nature of the respondent's sales. The Tribunal accepted the respondent's evidence in this regard. The Tribunal also accepted that it was reasonable for the respondent to be less concerned with the sales skills of the retained employee and more concerned with his technical expertise.

62. The next question for the Tribunal is whether the date of the claimant's dismissal would have been later than 18 May 2018 and his last day of employment 9 August 2018 had these flaws been corrected.

63. The first flaw in the consultation process was the respondent's decision to exaggerate the content and nature of the meetings on 2 May and not to give the claimant proper warning of the first substantive consultation meeting on 9 May. Had actual consultation meetings taken place on 2 May, or had the respondent been upfront that consultation began on 9 May, the claimant's dismissal date would not have been any different. Furthermore, the series of meetings that were held, those being 9 May, 15 May and 17 May did give the claimant opportunity to be consulted and to contest the circumstances and selection process of the respondent.

64. The next flaw was the issue of alternative employment. The claimant was given opportunities at each of those three meetings to discuss the issue of suitable alternative employment. He did not raise the issue of a move to Lincoln himself. In any event, even had the respondent investigated the Lincoln site, I accept that no suitable vacancies were available there. This flaw would therefore not have affected either the fact of dismissal or the dismissal date.

65. The final issue to consider is whether the claimant's dismissal would have still taken place or would have been delayed had the flaws in the appeal process been corrected.

66. In relation to the flaws that the claimant says affected the fairness of the appeal process, the Tribunal has found no evidence from the information before it to suggest that had the claimant been given the opportunity to comment on the information passed to Mr Fordham by Melanie Sullivan and others that it would have made any difference to the outcome of the process. The key decisions taken by the respondent were not affected by the points raised by the claimant and the Tribunal finds on the balance of probabilities that a forensic examination of the claimant's sales figures compared with those of Mr Siner would not have affected Mr Bamford's decision to prefer the candidate with the highest level of technical experience and skills and qualifications.

67. Providing the claimant with the opportunity to analyse and discuss with the respondent the extra information provided to Mr Fordham would have necessitated one further appeal meeting. On the balance of probabilities this could have taken place within a period of between one week and ten days. Given that the claimant was serving a twelve week notice period on gardening leave, the extra week for the extra appeal meeting could have been accommodated within this notice period.

68. The claimant also made submissions to the Tribunal that because no disclosure was made of Mr Siner's redundancy consultation documents that an inference should be drawn that there was no consultation meeting with Mr Siner, and that therefore the redundancy process was a "done deal". However, the Tribunal notes that no request for disclosure of these documents was made by the claimant's representatives. The Tribunal declines to draw an adverse inference against the respondent. There was no evidence before the Tribunal from which I could conclude that no consultation took place with Mr Siner. Even if that had been the case, it is clear that a full and proper consultation with Mr Siner would have made no difference to the outcome of the

redundancy consultation process. I find that it would also not have delayed the claimant's dismissal, as on the balance of probabilities it would have taken place in tandem with the claimant's consultation process.

69. Therefore, on the balance of probabilities had the consultation process not been flawed, the Tribunal finds that the claimant's dismissal date would not have been extended past 18 May 2018 such that his employment would still have ended at the expiry of his notice period on 9 August 2018. Therefore, although the dismissal was unfair, the claimant is to receive no compensation as he has suffered no losses which can be attributed to the fact that the dismissal was unfair.

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Employment Judge Barker

Date_____18 June 2019_____________

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 June 2019

FOR THE TRIBUNAL OFFICE