



# THE EMPLOYMENT TRIBUNALS

**Claimant:** Mrs T Young

**Respondent:** Ground Work North East Limited

**Heard at:** North Shields Hearing Centre    **On:** 24 May and 7 August 2019

**Before:** Employment Judge Morris (sitting alone)

***Representation:***

**Claimant:** In person

**Respondent:** Mr P Scope, solicitor,

## RESERVED JUDGMENT

The judgment of the Employment Tribunal is as follows:

1. The claimant's complaint that her dismissal by the respondent was unfair, being contrary to sections 94 and 98 of the Employment Rights Act 1996, is not well-founded and is dismissed.

## REASONS

### **Representation and evidence**

1. The claimant appeared in person and gave evidence.
2. The respondent was represented by Mr P Scope, solicitor, who called two employees of the respondent to give evidence on its behalf as follows: Mr S Roberts, Director of Youth, Employment and Skills; Ms L Gardner, Head of HR & Business Services.

3. The Tribunal also had before it an agreed bundle of documents, which was added to during the hearing, comprising more than 953 pages only a small number of which were actually referred to, which as I said to the parties is to be deprecated. There were, for example, 313 pages of copies from the claimant's diary, not one of which was looked at.

### **The claimant's complaint**

4. The claimant's complaint is that her dismissal by the respondent was unfair, being contrary to sections 94 and 98 of the Employment Rights Act 1996 ("the 1996 Act") being, primarily, that she had been dismissed by reason of redundancy when she was not redundant, and/or she had been wrongly selected for redundancy and/or she had been given limited access to alternative employment opportunities and such opportunities that would have been suitable for her were available both before and soon after her dismissal.

### **The issues**

- 5 The issues to be determined by the Tribunal are as follows:
  - 5.1 Was the claimant dismissed? The respondent accepted that she had been.
  - 5.2 Has the respondent shown what was the reason for the claimant's dismissal? The respondent asserted redundancy.
  - 5.3 Was that reason a potentially fair reason within sections 98(1) or (2) of the 1996 Act? Redundancy is such a potentially fair reason.
  - 5.4 If the reason was a potentially fair reason for dismissal, did the respondent act reasonably or unreasonably in treating that reason as a sufficient reason for the dismissal of the claimant in accordance with section 98(4) of the 1996 Act remembering that neither party now has a burden of proof in that regard?
  - 5.5 In regard to section 98(4) of the 1996 Act, the Tribunal would, bring into account a consideration of whether the respondent had followed a fair procedure, including such elements as giving the claimant advance warning of the prospect of redundancy, adopting and applying a fair and objective process to select her as an employee to be dismissed for redundancy, discussing these matters with her so as to obtain her comments and other input, making a decision to dismiss her that fell within the range of reasonable of a reasonable employer acting reasonably, allowing her to appeal against that decision and, throughout the redundancy process including during the claimant's notice period, considering the potential for redeploying her to alternative vacancies rather than dismissing her.

### **Consideration and findings of fact**

- 6 Having taken into consideration all the relevant evidence before the Tribunal (documentary and oral), the submissions made by or on behalf of the parties at

the hearing and the relevant statutory and case law, including that which was referred to by the respondent's representative (notwithstanding the fact that, in the pursuit of some conciseness, every aspect might not be specifically mentioned below), the Tribunal records the following facts either as agreed between the parties or found by the Tribunal on the balance of probabilities.

- 6.1 The respondent is a small to medium sized charity with some 230 staff and 200 volunteers operating in the North East of England and Cumbria, its object being to transform lives in the most disadvantaged communities. It seeks to help people gain confidence and skills to get into training or work, lead more active lives and overcome significant challenges such as poverty, isolation, low skills and poor health.
- 6.2 The respondent relies upon receiving government and other public funds to run community projects including employing staff. The funding tends to be for a fixed period and a particular project and an employee's role may both be funded from a number of different sources. For this reason, a number of employees are engaged on fixed term contracts.
- 6.3 The claimant commenced her employment with the respondent in August 2013. She was employed as a Senior Youth Worker on a fixed term contract terminating on 31 July 2018 (43). At the time relevant to these proceedings, the claimant was the only youth worker employed by the respondent. In her witness statement, the claimant said that she had "not seen this document prior to its inclusion in the bundle" and initially maintained that position when giving oral evidence (even after having been shown the original contract), although not disputing that the signature at page 53 was her signature. She later shifted her evidence, however, to say that she "may not have had any recollection of" the document.
- 6.4 In August 2017, the claimant had capacity in her Senior Youth Worker role so was offered and accepted the role of a Young Persons Training Officer for 18.5 hours a week additional to her existing role, once more on the basis of fixed term contract expiring on 1 July 2018 (126).
- 6.5 At this time, the claimant's roles as Senior Youth Worker and Young Persons Training Officer (along with the roles of a further 19 employees) were primarily funded (Mr Robert's estimate being 60 to 70%) by the European Funding for the Youth Employment Initiative Contract ("YEI Contract"), which provided 70% and required to be supplemented by Match Funding that was received by the respondent from Durham County Council and Hartlepool Borough Council in respect of two operating programme contracts: Durhamworks (issued by Durham County Council) and Hartlepool Borough Council. This funding was due to expire on 31 July 2018 (85).
- 6.6 The claimant's evidence was that she had not been undertaking work funded by YEI but was working on the Talent Match programme (as she had done since January 2014) and was training for the respondent's skills team delivering level 3 youth worker courses; she was also working on the National Citizen Service ("NCS") programme for four weeks commencing

24 July 2018 as she had done in previous years. Mr Roberts accepted that the claimant was undertaking Talent Match work but explained that although the claimant's role was partly funded by Talent Match, that contract (like others) was not able to operate in isolation and was only viable with match funding; in that case it was matched to the YEI programme. Mr Roberts explained this to the claimant at the first consultation meeting on 20 June 2018, "SR explained that sometimes contracts were not viable in isolation and were only viable as we have other funding". I accept his evidence in this respect. The fact that the claimant's role was primarily funded by the YEI Contract is also borne out by the time sheet records compiled from timesheets completed by the claimant that show from May 2017 until her dismissal on 2 August 2019 the majority of her working time related to Durham Talent Match YEI, coded D2848D, with the balance being taken up on work with NEETS, coded NE095 (761).

- 6.7 Although there was the possibility of funding becoming available in the future, in order to meet the proposed contract requirements the respondent had to submit a new delivery model for the programme, which included revised staffing structures (138-140). Hartlepool Borough Council wrote to the respondent to this effect on 11 May 2018 requesting certain information as the notional allocation it was to receive was significantly less than the original request (135). The previous staffing structure for the Youth & Employment Team – North East is at page 137(f), the revised staffing structure is at page 137(r). It is apparent that the claimant's role of Senior Youth Worker - Talent Match, which appears in the previous structure, has been removed from the revised structure. Similarly, the number of Youth Coach posts has been reduced from 10 to 7; albeit 8 such posts were actually available (146).
- 6.8 Given the revised staffing structures and the potential that no funding would be provided at all the respondent needed to prepare for redundancies within its business and, as the future allocation of any funds at this stage was notional, it had to consult on the basis that all 20 roles funded by the YEI Contract were at risk of redundancy. The respondent decided to consider only those 20 roles as potentially redundant (ie. that would be the 'pool' from which those to be dismissed for redundancy would be selected) on the basis that it was those roles that were funded by the YEI funding and the funding for other employees, such as Trainers, Assessors and NCS Youth Workers, was not at risk and, additionally, those employee had completely different job descriptions and qualifications.
- 6.9 On 15 June 2018 Mr Roberts wrote to the claimant (and at the same time to her colleagues in the Youth and Employment Team that was funded by the YEI Contract) to advise that unfortunately her role was potentially at risk of redundancy (141). That letter set out the 20 posts that the respondent was currently proposing might need to be made redundant (although emphasising that the proposal was not final) and, as a result of restructuring its services, the 12 new positions that would be available; expressions of interest for which were required by 25 June 2018. The

letter also set out the procedure to be followed including employee consultation, applications and provisional selection for new roles, appeal against having been made redundant, entitlement to notice and a calculation of redundancy pay.

- 6.10 At this time, the respondent received indications regarding future funding that could dramatically reduce the number of redundancies and notified the claimant and her colleagues accordingly (144). As nothing was confirmed, however, the redundancy exercise had to be continued not least because delay could mean that with no funding it could not make payments in respect notice periods.
- 6.11 On 20 June 2018 Mr Roberts met the claimant to consult with her on the potential redundancy, with Ms Gardner present as note taker (145). He explained the situation to the claimant, including that a number of future roles had been ring-fenced as there were no changes between them and the existing roles, and identified 10 potential roles that were available for her to consider. He encouraged the claimant to ask questions, which she did. The claimant confirmed that she intended to apply for all the roles, except that of Administrator and Mr Roberts informed her of a role in Cumbria for which she requested the job description.
- 6.12 The claimant confirmed that she wanted to be considered for the Youth Coach and the Community and Employment Engagement Officer positions the job descriptions for which were sent to the claimant on 20 June 2018 (149), and she was informed of the salaries on 25 June 2018 (156). The role of a Youth Worker is different to that of a Youth Coach the focus of which is to facilitate employment, education or training for young people and requires an understanding of the employment sector. The role involves a high degree of caseload management and continual monitoring and reviewing of a young person's progress. Although the claimant was supported by her managers with caseload management it was below the level expected and she was not as competent as her colleagues in this respect (134(a) – (d), 137(a) – (d) and 167(a) – (d)). That said, this was not a specific factor that was brought into account in relation to the claimant being selected for redundancy.
- 6.13 Mr Roberts and Ms Jacqui Hodgson, who was the programme manager at the time, comprised the panel that interviewed the claimant on 2 July 2018 in respect of the posts in which she had expressed interest. At that interview the claimant stated that she no longer wanted to be considered for the Community and Employment Engagement Officer post and, therefore, the interview proceeded in relation to only the 8 Youth Coach posts. The claimant's evidence was that in June 2018 she had suffered a collapsed eardrum, which had required minor surgery and, on 28 June she attended a hospital appointment in connection with her ear issues at which both her ears were filled with steroid cream, which had reduced her hearing by about 90% until it was removed on 9 July 2018. Thus, when she attended the interview she could not hear properly but she had not specifically made the interview panel aware of this and had not requested

that the interview be rearranged, and it did not appear to Mr Roberts that she could not hear.

- 6.14 At the interviews, all candidates for the Youth Coach posts were asked the same questions, which focused upon key experience and knowledge (160), and they could return to their answers at any time if they wished to add anything. At the end of the interview the answers the candidates had given were reviewed and they were asked if they were content with their answers, and also if there was anything else that they would like to be taken into consideration. The claimant did not raise anything.
- 6.15 The overall scores from the interviews ranged from 76 to 38; the claimant's score was 46, which was not high enough to secure a Youth Coach role. Those who did secure such roles achieved scores of between 76 and 50. There were employees who scored lower than the claimant who were retained as employees of the respondent but not as Youth Coaches; they were offered the roles of Administrator and Community and Employment Engagement Officer, for which the claimant did not wish to be considered. I should interject here that the spreadsheet at page 167 does not accurately record the interview scores obtained by the candidates at the interviews as I have summarised them above. I accept Mr Roberts' evidence, however, that the scores shown in that document had been inaccurately inputted onto that spreadsheet and his explanation that the error possibly arose from scores being inputted prior to the two panel members having discussed and agreed the final score for each candidate.
- 6.16 At this stage Ms Gardner enquired with all the managers within the respondent as to whether there were alternative jobs available that might be suitable for the claimant but there were none.
- 6.17 The claimant was invited to a further consultation meeting with Mr Roberts (168), which took place on 6 July 2018 (185). She was informed that she had not been successful in her application for a Youth Coach role. She was told that a further alternative role had been identified as a Work Experience Coordinator but she did not wish to be considered for that role. As no funding had been confirmed and there were no alternative solutions at this stage the claimant was told that she would be given notice of redundancy. This was confirmed in a letter of 6 July 2018, the termination date being given as 2 August 2018, and she was offered a right of appeal (187). The claimant did not appeal, her evidence being that by the time she received the dismissal letter the deadline for submitting an appeal had passed but she did not approach the respondent to explain and ask for an extension of the deadline.
- 6.18 All those who had been provisionally selected as being at risk of redundancy were issued with notices of redundancy although those who had been provisionally selected for a future role, subject to funding, were also provided with a conditional job offer letter.

- 6.19 Mr Roberts and the claimant met again on 11 July 2018 when he explained to her the selection process and the scores that she had received (191).
- 6.20 Durham County Council and Hartlepool Borough Council then advised the respondent that funding would be available to extend their respective contracts until December 2018. That helped secure certain roles in the short term (199) but the funding was based upon the revised staffing structure, which had reduced the number of Youth Coach roles in relation to which the claimant had not been successful in securing a position. Thus this short-term funding did not affect her being dismissed for redundancy on 2 August 2018; albeit that she was retained as a sessional worker until 14 August to complete the NCS programme (942).
- 6.21 In the event, the claimant was the only person who was dismissed by reason of redundancy. This was due to a combination of the extension of funding referred to above and the fact that one employee took voluntary redundancy and another resigned in July 2018 to explore other opportunities.
- 6.22 After her dismissal the claimant became aware that the respondent was seeking to recruit to two new roles: one as Bright Water Training and Community Project Manager (242), the other as a youth worker for the Kick the Dust project (244). Neither role had existed prior to the claimant's dismissal as they are each dependent on new external grant funding (241). On 26 September 2018 the claimant wrote to Ms Gardner about these roles and asked why she had not been informed, before her redundancy that they were likely to be advertised (246). Ms Gardner responded the same day (245) explaining that the respondent had been obliged to advertise both roles externally and that the Kick the Dust role had not gone out to recruitment until 14 September 2018. She invited the claimant to apply for any role that was still open but the claimant's evidence was that she had declined to do so as she had lost faith in the respondent.

## **Submissions**

- 7 After the evidence had been concluded, the respondent's representative made oral submissions by reference to a detailed written submission and the claimant made oral submissions. Their submissions addressed the matters that had been identified as the issues in this case. It is not necessary to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from the findings and conclusions below. Suffice it to say that I fully considered all the submissions made together with the statutory and case law referred to in the written submissions of the respondent's representative, and the parties can be assured that they were all taken into account in coming to my decision. That said, the key points in the submissions are set out below.
- 8 The respondent's representative made submissions including as follows:

- 8.1 The respondent faced a redundancy situation in light of difficulties as a result of funding having decreased with the result that it had a diminished requirement for the two roles for which the claimant was employed. As a result, the claimant was made redundant. Her role was not replaced and the selection for alternative roles was fair.
  - 8.2 The respondent acted reasonably including as follows: warning and consulting with the claimant; adopting a fair and objective selection process including considering and fairly identifying an appropriate pool from which the employees to be made redundant should be selected; fairly selecting the claimant for redundancy in accordance with that process; giving the claimant the opportunity to apply for alternative roles that existed prior to her dismissal (no alternative roles being in existence when the claimant was dismissed on 2 August 2018) and inviting her to apply for the Bright Water and Kick the Dust roles that became available following her dismissal; giving her the opportunity to challenge her scores and to appeal against her dismissal.
  - 8.3 On a specific point relating to the selection pools, the respondent adopted alternative approaches. Primarily, the claimant's position was unique and both the Senior Youth Worker role and the Young Persons Training role ended so, arguably, there was no pool. The respondent did, however, include the claimant in a pool, Ms Gardner applying her mind to its delineation being the particular team carrying out the particular functions that had its funding reduced and it was not appropriate to pool with other employees in different roles and in different teams.
- 9 The claimant made submissions including as follows:
- 9.1 The respondent had not followed a fair procedure. The respondent said that the original document recording the interview scores (167) had been sent in error but how could it be said that they were not the true scores? The answers at interview should have been marked fairly for everyone. Also, the redundancy process should have included the whole department.
  - 9.2 The respondent said the funding ended in July 2018 but the Talent Match funding continued to December 2018. So funding was available for at least half her job up to December.
  - 9.3 Jobs had been available after her dismissal, which do not just come up.
  - 9.4 She had done everything asked of her with 100% results yet whatever she had done previously had had no bearing and had not been regarded. Her skills and five years worked for the respondent had meant nothing.
  - 9.5 Life at work had become very difficult. She had been bullied and then her boss had become sick and then died.
  - 9.6 To the respondent it was just a redundancy procedure but for the claimant it was her life and she now had no confidence.



**The law**

10 The principal statutory provisions that are relevant to the issues in this case are contained within the 1996 Act and are set out below:

10.1 Unfair dismissal

94 *The right.*

(1) *An employee has the right not to be unfairly dismissed by his employer.*

98 *General.*

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

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

(b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

(2) *A reason falls within this subsection if it —*

.....

(c) *is that the employee was redundant,*

.....

(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.*

10.2 Redundancy

139 *Redundancy.*

(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.*

#### **Application of the facts and the law to determine the issues**

- 11 The above are the salient facts and submissions relevant to and upon which the Tribunal based its Judgment having considered those facts and submissions in the light of the relevant law and the case precedents in this area of law.
- 12 The issues arising from the statutory and case law referred to above that are relevant to the determination of this case are summarised at paragraph 5 of these reasons. They fall into two principal parts, which I shall address in turn.

*What was the reason for the dismissal and was it a potentially fair reason?*

- 13 The first questions for me to consider are what was the reason for the dismissal of the claimant and was that a potentially fair reason within sections 98(1) and (2) of the 1996 Act? It is for the respondent to show the reason for the dismissal and that that reason is a potentially fair reason for dismissal. By reference to the long-established guidance in Abernethy v Mott Hay and Anderson [1974] IRLR 213, the reason is the facts and beliefs known to and held by the respondent at the time of its dismissal of the claimant.
- 14 In this case, there was a conflict of evidence between the claimant and the respondent's witnesses as to the funding regimes within which the respondent had to operate and the implications of that for its business and its employees. While I accept that the claimant, as a relatively senior employee, would have some knowledge of these matters I preferred the evidence of the respondent's witnesses given their status within the organisation and, more importantly, their respective responsibilities: Mr Robert being involved in the tender process for gaining extensions to funding and sourcing funds for community projects and Ms Gardner being involved in planning and advising on any strategic developments within the business.

- 15 I accept the evidence that each of them gave in this regard that the YEI Contract funding received by respondent was coming to an end in July 2018, which was one of the reasons why the claimant was employed on fixed term contracts giving 31 July 2018 as the termination date, and even though the two local authorities concerned (Durham County and Hartlepool Borough) then received and made available to the respondent additional funding, that was reduced from that which had previously been received and was based upon the revised staffing structures referred to above.
- 16 It is understandable that claimant considered that she was not redundant in these circumstances when the funding for the Talent Match programme with which she was principally involved was to continue until December 2018. I accept Ms Gardner's evidence, however, that in the summer of 2018 the amount of work on that programme was reducing. Further, as indicated above, I also accept the evidence of Mr Roberts that although the claimant's role was partly funded by Talent Match, it could not operate in isolation and was only viable when matched with funding from the YEI programme. As also indicated above, it is clear from the time sheet records compiled from timesheets the claimant had completed that, from May 2017 until her dismissal on 2 August 2019, the majority of her working time related to Durham Talent Match YEI.
- 17 On the particular point of whether the claimant was employed on a fixed term contract, I do not accept her evidence that she had not seen the contract at page 43. As mentioned above, when questioned she ultimately shifted her evidence to be that she did not have any recollection of the document and, significantly, did not dispute that she had signed page 11 of the document. Additionally, a reasonable inference can be drawn from the respondent's "Post Out" and "Post In" records (755 and 756) of 19 January and 21 January 2016 (the latter of which refers to the claimant having provided "Sick note & contract") that the contract was sent to her and, having signed it, she returned it. The additional Young Persons Training Officer role was also a fixed term contract with the same expiry date of 1 July 2018.
- 18 Also in connection with the reason for dismissal, the claimant did raise other matters including, first, the cost of the respondent's skills team delivering certain basic numeracy and literacy training that had given rise to a degree of friction with employees within the Wise Group with which she liaised and, secondly, having felt marginalised, bullied and stressed by the behaviour of one of her managers but I am satisfied that none of these other matters constituted the reason or principal reason for the claimant's dismissal or impacted upon her dismissal such as being the reason why she was selected for redundancy; and in that respect I note that the manager referred to played no part in the process of selecting the claimant as redundant.
- 19 In the circumstances set out above, the requirements of the respondent's business for employees to carry out work of a particular kind (for the purposes of these proceedings that kind of work being as a Youth Worker or Youth Coach) had ceased or diminished or were expected to do so. Thus, I am satisfied that the statutory definition of redundancy in section 139(1)(b)(i) of the 1996 Act is made out and that this was the reason for the claimant's dismissal.

20 In summary of this first consideration, therefore, the respondent has discharged the burden of proof upon it to satisfy me that the reason for the claimant's dismissal was redundancy, which is a potentially fair reason sections 98(1) or (2) of the 1996 Act.

*In all the circumstances (including the size and administrative resources of the respondent's undertaking) and considering equity and the substantial merits of the case, did the respondent act reasonably or unreasonably in treating the reason for the dismissal of the claimant as a sufficient reason for dismissing the claimant?*

21 I now turn to consider the question of whether (there being no burden of proof on either party) the respondent acted reasonably as is required by section 98(4) of the 1996 Act. That is a convenient phrase but the section itself contains three overlapping elements, each of which the Tribunal must take into account:

21.1 first, whether, in the circumstances, the respondent acted reasonably or unreasonably;

21.2 secondly, the size and administrative resources of the respondent;

21.3 thirdly, the question "shall be determined in accordance with equity and the substantive merits of the case".

22 In addressing 'the section 98(4) question', I am alert to two preliminary points. First, I must not substitute my own view for that of the respondent. In UCATT v Brain [1981] IRLR 224 it was put thus:

"Indeed this approach of Tribunals, putting themselves in the position of the employer, informing themselves of what the employer knew at the moment, imagining themselves in that position and then asking the question, "Would a reasonable employer in those circumstances dismiss", seems to me a very sensible approach – subject to one qualification alone, that they must not fall into the error of asking themselves the question "Would we dismiss", because you sometimes have a situation in which one reasonable employer would and one would not."

This approach has been maintained over the years in many decisions including Iceland Frozen Foods (re-confirmed in Midland Bank v Madden [2000] IRLR 288) and Sainsburys v Hitt [2003] IRLR 23, and, in the redundancy context, Williams v Compair Maxam Limited [1982] IRLR 83.

23 Secondly, I am to apply what has been referred to as the 'band' or 'range' of reasonable responses approach to my assessment of whether I consider that the respondent did act reasonably in all the circumstances: see Iceland Frozen Foods Limited -v- Jones [1982] IRLR 439, Post Office v Foley [2000] IRLR 827) and Graham v The Secretary of State for Work and Pensions (Job Centre Plus) [2012] EWCA Civ 903.

24 Moving on from the above two preliminary points, the decision of the House of Lords in Polkey v AE Dayton Services Ltd [1988] ICR 142 firmly established procedural fairness as an integral part of the reasonableness question in section 98(4) of the 1996 Act in the following terms:

“In a case of redundancy the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by deployment within his own organisation.”

- 25 Taking this into account, I am satisfied that Mr Roberts on behalf of the respondent did, first, warn the claimant of the possibility of redundancy when he wrote to her and other affected employees on 15 June 2018 (141) and, secondly, consulted with her about this situation at meetings held on 20 June 2018 (145) and 6 July 2018 (185) and provided her with feedback on her performance at interview at their meeting on 11 July 2018 (191). I am further satisfied that those were genuinely meaningful consultations entered into by Mr Roberts with an open mind.
- 26 Next there is the question of whether the respondent adopted a fair basis on which to select for redundancy. The first element in this regard is the choice of the ‘pool’: Taymech Limited v Ryan UKEAT/663/94. As set out above, the pool of employees chosen by the respondent comprised those 20 employees whose roles were funded by the YEI funding that was coming to an end. It decided not to widen that pool to include other employees, such as Trainers, Assessors and NCS Youth Workers, the funding for whom was not ending and who had completely different job descriptions and qualifications compared with those within the chosen pool: they were not interchangeable. The above two preliminary points of an employment tribunal not substituting its own view and the range of reasonable responses apply equally to the choice of pool. The question for a tribunal is whether the employer genuinely applied its mind to the choice of pool: Capita Hartshead Ltd v Byard [2012] IRLR 814. In this case I am satisfied on the basis of the evidence from the respondent’s witnesses (in this respect primarily that of Ms Gardner as summarised above) that it did do that and that the choice of pool was reasonable.
- 27 As to the actual selection of the claimant to be made redundant, it is certainly arguable that her role was unique in that she was the only Senior Youth Worker employed by the respondent and, as such, she comprised a pool of one. The respondent did not proceed on that basis, however, but fairly included her in the pool along with the other 19 employees and allowed her to express an interest in any of the jobs in the new structure. Ultimately, she chose to be considered only for one of the eight roles as a Youth Coach. As this situation involved a new staffing structure, I consider that it was reasonable for the respondent not to have proceeded with selection on the basis of a matrix of criteria commonly found in a redundancy situation which involves a simple reduction in the number of posts but to proceed by interviewing candidates to select those best suited to the roles in the new structure: Morgan v Welsh Rugby Union [2011] IRLR 376. The candidates were each asked identical questions that were focused upon the experience and knowledge that would be required for the Youth Coach role. The interviewing panel comprised two senior employees of the respondent who individually gave scores reflecting how they considered the candidates had answered questions and then those individual scores were discussed, moderated and agreed to produce the final score of each candidate. I am satisfied on the basis of the evidence before me that those scores were given in good faith:

Samsung Electronics (UK) Ltd v Monte-D'Cruz [2012] UKEAT 0039/11. It is not for me to embark on a re-assessment exercise: British Aerospace plc v Green [1995] IRLR 433.

- 28 Having gone through the interview process the overall scores ranged from 76 to 38 with the claimant's score being 46, which was not high enough to secure a Youth Coach role. The claimant did not challenge her scoring at the time.
- 29 The final element from Polkey of the employer needing to take such steps as may be reasonable to avoid or minimise redundancy by deployment within its own organisation introduces the question of whether the respondent considered whether the claimant could be redeployed into an alternative vacancy rather than being dismissed; that consideration applying throughout the redundancy process including during the claimant's period of notice.
- 30 The first point in this regard is that the claimant was given the opportunity to apply for all of the jobs in the new staffing structure and a role in Cumbria, and although she initially expressed an interest in the Community and Employment Engagement Officer role she later decided that she only wish to be considered for one of the Youth Coach roles. When the claimant was not successful, I accept the evidence of Ms Gardner that she enquired of all the managers within the respondent as to whether there were alternative jobs available that might be suitable for the claimant but there were none but then an alternative role of a Work Experience Coordinator was identified but the claimant did not wish to be considered for that role.
- 31 After the claimant's employment ended on 2 August 2018 two new roles became available one as Bright Water Training and Community Project Manager (242), the other as a youth worker for the Kick the Dust project (244). I accept Ms Gardner's evidence, however, that those roles were not available during the consultation process as the grant funding for them had not been secured. It is also apparent from the correspondence (245) that when the claimant raised these roles with Ms Gardner she invited her to apply for any role that was still open but she did not do so. In oral evidence the claimant explained that this was because the application dates had passed but she confirmed that she had not approached the respondent to enquire whether she could, nevertheless, still submit a late application.
- 32 Finally with regard to alternative roles, in evidence, the claimant sought to compare herself with other of the respondent's employees who had not been made redundant but I am satisfied on the basis of the evidence of the respondent's witnesses that her comparisons were inaccurate. One employee, for example, was a trainee and the claimant would not have been eligible for her role as she was not a trainee while another was employed on fixed term basis as a Training Officer funded solely from a different source and a third applied for and was appointed to the Administrator role for which the claimant had not applied.
- 33 In the above circumstances, therefore, I am satisfied that, as is required of me by section 98(4) of the 1996 Act, the respondent acted reasonably in treating the reason for the dismissal of the claimant as a sufficient reason for dismissing her.

**Conclusion**

- 34 In conclusion, my judgment is that the reason for dismissal of the claimant was redundancy and that the respondent did act reasonably in accordance with section 98(4) of the 1996 Act.
- 35 For the above reasons the claimant's complaint under section 111 of the 1996 Act that her dismissal by the respondent was unfair, contrary to sections 94 and 98 of that Act, is not well-founded and is dismissed.

**EMPLOYMENT JUDGE MORRIS**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON 14 August 2019**

**Public access to employment Tribunal decisions**

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