



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Saeed

**Respondent:** United National Bank Ltd

**Heard at:** London Central                      **On:** 15, 16 & 19 August 2019

**Before:** Employment Judge Khan

## **Representation**

Claimant: In person

Respondent: W Haines, Consultant

# RESERVED JUDGMENT

The judgment of the tribunal is that:

- (1) The claimant was unfairly dismissed.
- (2) No order for compensation is made as the claimant has already received a statutory redundancy payment which offsets the basic award and he would have been fairly dismissed on the same date had the respondent acted fairly so no compensatory award is payable.

# REASONS

1. By an ET1 presented on 3 July 2018, the claimant complains that the respondent unfairly dismissed him. The respondent resists this claim.

## **The issues**

2. The issues on liability that I was required to determine are set out below:

- 2.1 Was the reason or the principal reason for the claimant's dismissal a potentially fair reason, namely, redundancy?

The claimant does not accept that there was a genuine redundancy situation.

- 2.2 If so, was the dismissal fair in accordance with section 98(4) ERA and in particular, did the respondent in all respects act within the band of reasonable responses?
- 2.3 If there was a procedurally unfair dismissal, would the claimant have been fairly dismissed in any event if the procedure had been fair?
- 2.4 Did the claimant cause or contribute to his dismissal?

### **The Evidence**

3. The claimant gave evidence himself.
4. The respondent called the following witnesses: Brian Firth, formerly Interim Chief Executive Office (now substantive CEO); Sharon Mandeville, Head of Retail Strategy & Marketing; Zeeshan Haider, formerly Head of Treasury & Investments (now Head of Wholesale Banking); and Beverley Dyson, Head of HR.
5. I allowed into evidence a statement from Sophia El-Eter (nee Addae), formerly employed by the respondent as HR Operations Manager whose new employer had refused to release her for this hearing. The respondent had not applied for a witness order. As the claimant challenged her evidence but was unable to cross examine Ms El-Eter I placed little weight on this statement.
6. The hearing bundle exceeded 400 pages and I only read the pages to which I was referred. Additional pages were added over the course of the hearing in response to further disclosure which I ordered.
7. I also considered closing submissions from both parties.

### **The Facts**

8. Having considered all the evidence, I make the following findings of fact on the balance of probabilities. These findings are limited to points that are relevant to the legal issues.
9. The respondent provides retail banking, wholesale banking, treasury and money transmission services. It is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority ("FCA").
10. The claimant commenced employment with the respondent on 2 June 2008. He was initially employed as a Customer Services Sales Team Leader. He was promoted three times: firstly, into the role of Sales and Service Team Leader in 2010; then into the role of Relationship Manager in 2014; and finally, into the role of Head of Branch Network ("HBN") in March 2016.
11. The HBN role was created for the claimant. There was no advert for this role and the claimant was not required to make a formal application or be interviewed. As will be seen, this was consistent with an overall culture in which senior staff were promoted, changed roles, acquired new

responsibilities or job titles without any formal and transparent recruitment and selection processes.

12. The claimant's new role was announced by Nejb Rahman, Head of Retail & Commercial Origination, on 8 March 2016. Although the respondent says that this announcement was not authorised, it accepts that the claimant was responsible for the branch network i.e. the retail bank from this date. This encompassed both retail sales and operational functions, and a total of 33 staff working across six branches.
13. When Mr Rahman left in May 2016, the claimant reported directly to Muhammad Aminuddin, CEO.
14. In the same month Sharon Mandeville was hired as a consultant to conduct a review of the retail bank. In essence, she concluded that there was too much focus on operational processes instead of customers. She recommended a separation between sales and operations with each branch having four members of staff: two to focus on customer sales and services, and two to be responsible for managing its operational requirements. Her recommendation was adopted by the respondent and this resulted in what became known as "Project Acorn".
15. To facilitate this restructure a dual reporting line was set up in June 2016 with the sales and services team reporting to the claimant and the operations team reporting to Azeem UI-Hasan, Head of Operations. The claimant had been responsible for the entire branch network for only three months. This also meant that from June 2016 the claimant's job title was inaccurate and misleading.
16. Project Acorn was delivered by Ms Mandeville together with the claimant, Mr UI-Hasan and Shokat Khan, who was hired as a Business Consultant on 15 August 2016 to work on this project. 31 of the 33 branch staff were redeployed into the new structure.
17. The claimant's promotion into the HBN role was not confirmed until 15 November 2016 when his salary was increased to £50,000. The main reason for this delay was the respondent's reluctance to agree to the claimant's job title. This was understandable as the claimant was no longer responsible for managing the entire branch network. Ms Mandeville, who now line managed the claimant, told him that one of the reasons for the delay was that the respondent wanted to standardise job titles and had decided that "heads of" titles would only be used for managers who reported directly to the CEO. This standardisation did not take place.
18. On 22 December 2016 the respondent announced, via its intranet portal, Uconnect, that Ms Mandeville had been appointed into the role of Head of Retail Strategy and Marketing. This vacancy was not advertised and there was no application or interview process for this appointment.
19. Mr Khan was appointed substantively into the role of Operations Manager in the London Branch on 3 January 2017. This vacancy was not advertised and there was no application or interview process. This

appointment was not announced on UConnect.

20. I accept Ms Dyson's evidence that by this date responsibility for branch operations had been delegated by Mr Ul-Hasan to Mr Khan. This is because the claimant agreed that Mr Khan was working in operations although he assumed that Mr Ul-Hasan retained overall responsibility for branch network operations. This is also because I accepted the respondent's unchallenged evidence that much of the operations network had been centralised by this date so that the work required to manage this part of the retail business had substantially diminished.
21. By March 2017 a new relationship branch network team of 12 was in place. This consisted of one community relationship banker and one community relationship manager in each of the six branches. The claimant had recruited these new staff and he was responsible for managing this team.

### **Service Quality Management & Signature Banking Manager**

22. Mr Khan was given the title of Service Quality Management ("SQM") & Signature Banking Manager ("SBM") with effect from 19 June 2017. This was not advertised and there was no application or interview process. This was not announced on UConnect.
23. Ms Mandeville's evidence in relation to this role was contradictory. In her witness statement she described this as one of two key roles in the retail bank structure. However, her evidence to the tribunal was that Mr Khan was given this job title to look at the feasibility of setting up a signature banking service. The scope of this project was then widened to include SQM. This project never took off. When questioned, Mr Firth was unable to confirm whether this was a permanent appointment. I therefore find that this was not a substantive role. It was a feasibility project. Mr Khan was in fact assisting with Anti-Money Laundering ("AML") remediation work and covering the vacant London branch manager role. He also continued to oversee the operations branch network.
24. Mr Aminuddin was placed on garden leave in January 2018 when Mr Firth was appointed Interim CEO.

### **One Team, One Target ("OTOT")**

25. By the end of 2017 there were adverse variances in actual budgeted lending and deposits across the branch network of £39m and £23m respectively. These targets applied to the claimant's team. Newly in his interim role and concerned by the poor performance of the sales team, Mr Firth made the decision to amalgamate the management for the relationship branch network and operations branch network teams into one reporting line. He communicated this decision to senior colleagues including Ms Mandeville and Beverley Dyson, Head of HR, in late January 2018. This culminated in a restructure project known as OTOT.
26. On 24 January 2018 Ms Mandeville emailed the claimant about expanding the role profile of a member of his team when she wrote:

“This should free you up to do more strategic planning stuff. It will also alleviate pressure if we go ahead with the plans to put Branch Operations Staff into our reporting line (which as far as I know is still the plan)”.

The claimant agreed that there should be one reporting line. He understood, however, that if this restructure went ahead he would take over responsibility for managing the operations team.

27. Ms Mandeville was responsible for delivering the OTOT project. She devised a new organisational chart for the retail business and a timetable for the launch of the project. There were two new roles in this chart:

27.1 Retail Services Manager (“RSM”) to which all branches would report.

27.2 London Branch Services Manager (“LBSM”) which combined the vacant London and Ilford branch manager roles.

28. Ms Mandeville says that the RSM role was an amalgamation of the following:

28.1 Management of the relationship branch network i.e. the claimant’s HBN role.

28.2 Management of the operations branch network.

28.3 The SQM & Signature Banking Manager role.

29. Ms Mandeville drafted job descriptions for the two new roles and these were agreed by Ms Dyson.

30. The claimant agreed that the RSM role was an amalgamation of his HBN role with the operations role and included an SQM element. Although the work required to manage the operations branch network had diminished and the SQM & Signature Banking Manager role had not materialised, by amalgamating these elements with the claimant’s HBN role, this role had ceased as it had been restructured out of existence. This restructure also meant that the respondent’s requirement for branch managers had diminished as the LBSM role was a consolidation of two full-time posts.

31. Ms Dyson instructed Ms Mandeville to put the claimant and Mr Khan at risk of redundancy. Mr UI-Hasan was not put at risk because the branch operations network was not deemed to be a significant part of his overall role. This was a reasonable assessment given that much of the operations network had been centralised and management of the residual branch network had been delegated to Mr Khan for over 12 months. Turning to the inclusion of Mr Khan in this pool, as I have already found that the SQM & Signature Banking Manager role was not substantive the deletion of this job title and project should not have placed him at risk. However, the Operations Manager role that had been created for Mr Khan and which he had continued to fulfil had not been retained in the new structure which placed him at risk of redundancy.

32. The claimant was first informed about this restructure on 21 February 2018 at a one-to-one meeting with Ms Mandeville when he was shocked to discover that his role would be deleted. Ms Mandeville referred to the two new roles. I accept the claimant's evidence that Ms Mandeville encouraged him to apply for the LBSM role instead of the RSM role. I find that she did this as she did not believe he was capable of taking on the RSM role for reasons I set out below.
33. The claimant met with Ms Dyson the next day. He felt that he should have been slotted into the RSM role. I accept the claimant's evidence that when he questioned the need for a recruitment process, Ms Dyson told him that other people were interested in the RSM role and a recruitment process was required to ensure fairness. Although Ms Dyson denied saying this, I find that it was said because the claimant's recollection was very clear and was consistent with an email that he sent to Ms Dyson later that day in which he summarised their discussion. During this meeting Ms Dyson referred to the respondent's proposal to remove "heads of" roles. This was misleading as it gave the impression that the restructure was related to this standardisation project. She knew that it was not.
34. The claimant had a telephone discussion with Mr Ul-Hasan and Zeeshan Haider, then Head of Treasury & Investments, on 23 February 2018. They encouraged the claimant to apply for both new roles. The claimant was adamant that he was only interested in the RSM role. In his evidence to the tribunal, the claimant agreed that status was as important to him as job function and he also agreed that it was important that his job title reflected his professional development. He also explained that he would not have accepted the LBSM role had it been offered to him as this would have represented a demotion.
35. The new structure was announced on UConnect on 27 February 2018.
36. The claimant was placed formally at risk of redundancy at a meeting with Ms Mandeville and Sophia Addae, HR Operations Manager, on 5 March 2018. The claimant felt that the RSM job title did not convey the appropriate level of seniority. He requested details of the salary and grade for both new roles. He also queried whether there were any available roles in compliance as he was interested in working in this area. Ms Mandeville replied the next day when she confirmed that she had made a recommendation to the Board to change the RSM job title; she confirmed that the salaries for the RSM and LBSM roles were within the ranges of £55,000 – £70,000 and £45,000 – £60,000 respectively.
37. Ms Mandeville also referred to an MLRO vacancy. This was not suitable for the claimant as it required a vocational qualification and FCA approval, neither of which he had.
38. The claimant had previously understood that the creation of a single reporting line for the retail bank would mean that he would take over responsibility for operations. He was instead being taken through a restructure exercise and now faced redundancy. I accept his evidence that what the claimant perceived to be a reversal in his fortunes led him to believe that the restructure exercise was predetermined. He felt that the

respondent wanted to appoint him into the LBSM role instead of the RSM post.

39. The respondent gave no consideration to whether the RSM role amounted to suitable alternative employment with the claimant's substantive post. Mr Firth did not consider this and he was unable to confirm whether this exercise had been undertaken by any members of his senior management team. However, in evidence to the tribunal the claimant accepted that the RSM role was not equivalent to his HBN role. He agreed that less than 30% of the job description for this new role related exclusively to sales. His view was that the RSM role was essentially the same role that he had performed between March – June 2016. In assessing whether the RSM role amounted to suitable alternative employment a direct comparison had to be made with the HBN role that the claimant was substantively employed to do at the date of the restructure. The fact that the claimant had been responsible for managing the entire branch network for three months in 2016 was not a relevant factor for this comparative exercise.

40. On the claimant's own evidence, the RSM role did not amount to suitable alternative employment. This is also apparent for the following reasons:

40.1 As well as having a wider ambit to include operational management and a new SQM element, the new role had a substantially greater focus on leadership and strategy than the claimant's substantive role.

40.2 The RSM would be responsible for managing a combined team of 33, whereas in his substantive role the claimant managed a sales team of 12.

40.3 This greater level of responsibility was also reflected in the salary range for this role of £55,000 – £70,000, whereas the claimant's salary was £50,000.

I therefore find that the respondent was not required to slot him into this new role.

41. Although the RSM role was not advertised there were four internal applicants, including the claimant and Mr Khan. Neither candidate was treated preferentially notwithstanding that they were now at risk of dismissal. It is notable that the respondent did not have a redundancy policy. All four candidates were interviewed.

42. Ms Dyson's evidence was that the claimant did not meet all the requirements for the RSM role but he was interviewed because he met more than 50% of the required skills for this post.

43. Ms Mandeville went further than this in her evidence. She felt that the claimant was a better fit for the LBSM role which was more about relationship building than his HBN role which was more of a leadership and sales role. She said the claimant was not a natural leader and he had struggled to put together a sales plan. In respect of the RSM role, her evidence was that the claimant only fully satisfied three and partially satisfied another three of the 14 requirements for prior experience set out

in the job description that she had created. It follows that she did not believe that the claimant was appointable into this role.

44. The first round of interviews was held on 22 March 2018. The panel consisted of Ms Mandeville and Trevor Davies, Money Laundering Reporting Officer. The questions were based on the RSM job description. Only the claimant and Mr Khan progressed to the second and final stage interviews.
45. The second and final round of interviews were conducted by Mr Firth and Mr Haider on 28 March 2018 when neither the claimant nor Mr Khan were appointed. The focus of these interviews was to assess the fit of each candidate into the strategic plan for the business with reference to the core requirements of the RSM role of leadership, the delivery of sales targets and operations management.
46. It is agreed that the claimant's interview lasted approximately 30 minutes. I accept the respondent's evidence that this was because the claimant gave short answers including one-word answers and generic responses. This is consistent with the way in which the claimant gave evidence at times to the tribunal. I also find that the claimant's preparation for this interview was limited. He was complacent as he felt that the RSM role was essentially the same as his HBN role and he relied on the knowledge and experience he had acquired during his employment with the respondent. He also felt that he was not going to be successful however well he performed at interview.
47. Mr Haider and Mr Firth scored the claimant 36 and 30 respectively out of 70. Both gave the claimant zeros for some of his answers. Their notes of the interview were not disclosed. I was instead taken to emails both had forwarded to HR with summary feedback. In his summary, Mr Haider explained that he could not recommend the claimant for the role because:

"he can manage the branch network in its present form...however, I do not feel that he had the strategic vision or leadership qualities to fulfil the requirement of the role..."

Mr Firth wrote in similar terms:

"NS has more operations and sales experience [than Mr Khan], but he has failed to deliver when managing the sales team because he cannot performance manage...neither candidate would be an inspiring leader, who could manage the branches to achieve their targets. I believe this is a major function of their role...Both candidates failed to convince me that that they knew how to reach the target market and turn them into UBL customers..."

48. I accept Mr Haider's evidence that whilst he was aware of the adverse performance of the claimant's team in 2017, he was prepared to recommend the claimant for appointment based on his performance at interview. This is because Mr Haider was able to provide a clear rationale for his scoring with reference to the answers the claimant had given at interview: the claimant failed to give any coherent answers in relation to sales; he failed to articulate how he would reach the respondent's target



market i.e. new clients; he was unconvincing on strategy; and the claimant also failed to explain how he would address poor performance and coach staff. The claimant did not therefore perform well at this interview.

49. Mr Firth agreed that he based his evaluation of the claimant not only on his interview but on the performance of the sales team in 2017. He said that this role encompassed three elements: ensuring that operations ran smoothly and were legally compliant; ensuring that sales targets were met; and leading the branch network. He felt that the claimant's capacity on the operations element was adequate based on his interview answers and his knowledge of him. However, he felt that the claimant lacked the capability to deliver sales targets or to lead. This was based not just on the interview but his view that the claimant had recruited and trained the sales team, and he had failed to manage their performance and drive up sales in 2017.
50. I find that whilst Mr Haider had an open mind, Mr Firth did not believe that the claimant was capable of undertaking the RSM role. As CEO his view took precedence. He had made this assessment before the interview based on his knowledge and assessment of the claimant's management skills. Given the adverse performance of the sales team in 2017 and the degree to which Mr Firth held the claimant to be responsible for this, it is likely that the outcome of the final stage of the interview process was predetermined. However, as I have found, the claimant did not perform well at this interview.
51. Both Mr Haider and Mr Firth scored Mr Khan 37 out of 70.
52. The claimant received the interview notes and score sheets on 6 April 2017. He was told that an appointable candidate was required to achieve a score above 70% i.e. at least 50 out of 70.
53. He then attended a redundancy consultation meeting on 10 April 2018 with Ms Mandeville and Ms Addae when he was told that he was at risk of dismissal. A second consultation meeting was scheduled on 17 April 2018.
54. The claimant requested that this meeting was rearranged until after 8 May 2018 when his trade union representative would be available. The respondent did not agree to this and in these circumstances the claimant agreed to attend this second consultation meeting unaccompanied. I find that the respondent's refusal to rearrange this meeting was reasonable. The claimant did not propose a new meeting date within five working days (as would have been required had the statutory right to be accompanied applied) but more than three weeks later.
55. At this meeting the claimant complained that the redundancy process had been fabricated.
56. Ms Mandeville wrote to the claimant on 20 April 2018 to confirm that the outcome of the consultation process was that he would be dismissed by reason of redundancy and she invited him to a final meeting on 24 April 2018.
57. At the final meeting the claimant was given formal notice of dismissal

effective on 11 May 2018 and placed on garden leave until this date.

58. The claimant's employment ended on 11 May 2018. He received a statutory redundancy payment of £4,826 together with all other payments due on the termination of this employment.
59. During the consultation period the claimant expressed an interest in working in risk in addition to compliance. I accept the respondent's evidence that only two junior roles became available in these areas between the start of the consultation period and the claimant's dismissal. These were a Junior Compliance Officer (salary of £32,000) and Risk Analyst (salary of £40,000). HR approached the recruiting managers for both roles and supplied them with copies of the claimant's current job description and his CV. Neither of these roles were deemed to be suitable for the claimant. These roles required relevant experience, vocational qualification and / or FCA clearance which the claimant did not have. Another factor militating against the claimant's redeployment was that the respondent was in the middle of AML remediation work which meant that experience was paramount and there was little to no capacity to train the claimant on the job. The claimant accepted that the Risk Analyst role was not suitable. His evidence was that he would have accepted the role of Junior Compliance Officer as this would have been a change of career direction. Noting how strongly the claimant felt about status and pay I do not find that it is likely that the claimant would have accepted this job if it had been offered to him. I also find that this was not a suitable role for him based on the requirements for the post.
60. Mr Khan was subsequently appointed into the LBSM role.
61. The respondent was unable to recruit externally into the RSM role. In the interim Ms Mandeville assumed responsibility for managing the branch network. The RSM role was eventually abandoned and the new role of Head of Retail Assets and Business Development created. This position was filled in September 2018. I accept the claimant's unchallenged evidence that the successful applicant was a good friend of Mr Haider.

### **The Relevant Legal Principles**

62. Section 139(1) ERA provides that an employee will be deemed to have been 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 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.

63. A tribunal is entitled only to ask whether the decision to make redundancies was genuine, not whether it was appropriate in the circumstances. The respondent must show that its decision to make redundancies was based on proper information and consideration of the circumstances. A good commercial reason is capable of justifying a decision to make redundancies.

64. If the employer is able to show that there was a genuine redundancy situation so that it had a potentially fair reason for the dismissal the general test for fairness under section 98(4) ERA must then be applied. This provides:

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.

65. The overriding consideration for the tribunal under section 98(4) ERA is one of fairness and whether the decision to dismiss, including the procedure followed by the employer that culminates in dismissal are within the band of reasonable responses which a reasonable employer might have adopted (see Iceland Frozen Foods v Jones 1982 IRLR 439; Sainsbury's Supermarkets Ltd v Hitt 2003 ICR 111).

66. In the context of a redundancy dismissal the EAT set out guidelines in Williams and others v Compare Maxim 1982 ICR 156 for assessing fairness. These guidelines, transposed to circumstances in which there is no involvement of a trade union, can be summarised as follows:

- (1) Was the employee warned and consulted about the redundancy?
- (2) Were the selection criteria objectively chosen and fairly applied?
- (3) Was there consideration of any alternative available work?

This list should not be treated as absolute and a tribunal must consider the particular circumstances of each case. For example, a system for selection for redundancy which includes managerial assessment of ability and performance as well as objective criteria will not automatically render a dismissal unfair.

67. Section 123(1) ERA provides that

...the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in the all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

68. A tribunal will be expected to consider making a reduction of any compensatory award under section 123(1) ERA where there is evidence that the employee might have been dismissed if the employer had acted

fairly (see Polkey v AE Dayton Services 1988 ICR 142; King and ors v Eaton (No.2) 1998 IRLR 686).

## **Conclusions**

### **Issue (1): Was the reason or the principal reason for the claimant's dismissal a potentially fair reason, namely, redundancy?**

69. I find that there was a genuine redundancy situation. The respondent amalgamated the claimant's HBN role with the management of the operations branch network and SQM work. This decision arose from the adverse variances in lending and deposits in 2017 and the need to create one reporting line. This had the effect that the respondent's requirement for the HBN role had ceased. The respondent also consolidated two branch manager roles into one, thereby reducing its requirement for work of this kind.

70. I also find that this was the reason for the claimant's dismissal:

70.1 The effect of the OTOT project was to delete the claimant's substantive role and he was placed at risk of redundancy.

70.2 The new RSM role did not amount to suitable alternative employment so that the respondent was not required to slot him into this role.

70.3 The claimant applied for the RSM role. He was interviewed but not appointed into this role.

70.4 He did not apply for any other role, including the LBSM role.

70.5 Between the start of the consultation period and the date of his dismissal there were no other potentially suitable roles into which he could have been redeployed.

71. I also find that had the respondent believed the claimant to be capable of undertaking the RSM role it is likely it would have appointed him without any process. This is what it did with Ms Mandeville, Mr Khan and with the claimant himself in respect of his HBN role. However, because it did not have such confidence in the claimant, it conducted a redundancy exercise. Although this was not a sham redundancy, as I have found that the respondent no longer had a requirement for an HBN role, by proceeding with this exercise the respondent had already determined that the claimant was not suitable for the RSM role.

### **Issue (2): If so, was the dismissal fair in accordance with section 98(4) ERA and in particular, did the respondent in all respects act within the band of reasonable responses?**

72. I find that the claimant's dismissal was unfair. Whilst I find that there was an apparently fair consultation process, the selection pool was reasonable and the respondent made reasonable endeavours to explore redeployment, I find that the selection process was predetermined and

therefore inherently unfair.

73. But for this predetermination, the following would have been fair:

73.1 The consultation process was within the band range of reasonable responses. The claimant met with Ms Mandeville and Ms Dyson separately before he was formally put at risk on 5 March 2018. The respondent explained the rationale for the OTOT project. The claimant was given the opportunity to comment on these proposals and make further enquiries, and the respondent considered these. He was provided with his interview scores and feedback. He then attended two formal consultation meetings prior to the final meeting on 24 April 2018 when his dismissal was confirmed. The respondent also explored alternatives to dismissal with the claimant.

73.2 The respondent's choice of pool was within the band of reasonable responses. It was entitled to include only the claimant and Mr Khan and exclude Mr UI-Hasan as the HBN and Operations Manager roles were being deleted and the restructure did not have a substantial impact on Mr UI-Hasan's role.

73.3 The selection process adopted by the respondent was a two-stage competitive interview process. I find that the selection criteria applied by the claimant were reasonable as these were based on the job description and requirements for the RSM role. The first round of interviews was conducted by Ms Mandeville and Mr Davies and based on the job description for the RSM role. The second and final round was conducted by Mr Firth and Mr Haider and was based on the strategic plan for the business but also with reference to the requirements of the role of operations management, delivering sales targets and leadership.

74. However, I find that the way that the selection criteria were applied to the claimant was unreasonable.

74.1 Both Ms Mandeville and Mr Firth believed that the claimant did not have the attributes required for the RSM role, especially in respect of his leadership qualities and his ability to deliver on sales. They had both formed this view before he was interviewed.

74.2 Given this view, it is surprising that the claimant was interviewed for the role and was short-listed by Ms Mandeville to proceed to the second round. I find that Ms Mandeville was in fact deferring the decision to Mr Firth and Mr Haider but this decision had already been made.

74.3 I have found that whilst Mr Haider had an open mind, Mr Firth did not. Accordingly, even before the first interview, the decision had already been made by the respondent that the claimant would not be appointed into this role.

74.4 The selection process had a premeditated outcome. It was

conducted in bad faith. This made this selection process inherently unfair.

75. I do not find that the respondent failed unreasonably to redeploy the claimant:

75.1 I have found that the RSM role did not amount to suitable alternative employment. I do not therefore find that the claimant should have been slotted into this role.

75.2 The claimant did not apply for any other roles.

75.3 I have found that there were no other potentially suitable roles into which the claimant should have been redeployed.

**Issue (3): If there was a procedurally unfair dismissal, would the claimant have been fairly dismissed in any event?**

76. I find that had the respondent applied the selection criteria fairly the claimant would have been fairly dismissed at the same time i.e. on 11 May 2018.

76.1 The RSM role was objectively different to the claimant's substantive role, it had a greater focus on leadership and was a more strategic role. Given the adverse performance of the sales team in 2017 the respondent was also keen to ensure that the post-holder was able to deliver on sales targets.

76.2 Mr Haider's interview scores, his feedback and recommendation which were based on his assessment of the claimant's interview performance illustrated that the claimant did not demonstrate that he had the required attributes for the RSM role. He awarded the claimant 36 points out of 70. This was significantly lower than the 50 points the claimant required, at minimum, to be appointed into the role.

76.3 I have considered the degree to which the claimant's performance can be attributed to his belief that the outcome had been predetermined. I do not find that this was a determinative factor for the claimant's interview performance on 28 March 2018. I have found that the claimant's approach to this interview was also informed by a degree of complacency. He felt that he had the requisite skills and experience for the RSM role, and he therefore relied on the knowledge he had acquired during his employment with the respondent. He did not accept and did not therefore appreciate that the RSM role was an objectively different and higher level role to his substantive post. As Mr Haider's scoring showed, the claimant was unable to demonstrate that he had the attributes required for this new role. For these reasons, I do not find it likely that had the claimant believed the selection process to be objectively fair, his approach would have been very different or his performance would have been so improved that he would have achieved a score of 50 or more at the second interview stage.

77. I therefore find that there was a 100% likelihood that the claimant would have been fairly dismissed in any event.

**Issue (4): Did the claimant cause or contribute to his dismissal?**

78. Because of my findings above it is not necessary for me to make findings on contribution. Had I been so required, I would not have found that the claimant contributed to his dismissal.

79. The respondent contends that the claimant contributed to his dismissal in two respects.

79.1 Firstly, it says that the claimant failed to engage fully with the consultation process. As the respondent did not explain how any alleged failure by the claimant to engage with this process contributed to his dismissal I make no findings on this.

79.2 Secondly, it says that the claimant contributed to his dismissal by failing to apply for the LBSM role. The claimant agreed that he was not interested in this role as he viewed it as an inferior post to his own and therefore a demotion. Mr Khan was in fact appointed into this role. It is notable that Mr Khan outperformed the claimant in both interview rounds for the RSM role. He had also been covering the London Branch Manager role for over 12 months which was one of the two roles that the respondent amalgamated into the LBSM position. For these reasons, I find that had the claimant applied for the LBSM role it is more likely that Mr Khan would have been appointed. I do not therefore find that the claimant contributed to his dismissal by failing to apply for this post.

**Remedy**

80. I am able to dispose of remedy as follows.

**Basic award**

81. As the claimant received a statutory redundancy payment from the respondent of £4,826 no basic award is payable under section 119 ERA.

**Compensatory award**

82. I have found that there was a 100% likelihood that the claimant would have been fairly dismissed on 11 May 2018 had the respondent applied a fair selection process. Accordingly, I would apply a 100% reduction to the compensatory award under section 123(1) ERA.

83. For these reasons, I make no order for compensation.

**Employment Judge Khan**

29 November 2019

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

3 December 2019

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FOR EMPLOYMENT TRIBUNALS