



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant and Respondent

Mrs Z Pearson

IBM United Kingdom Limited

HELD AT: Croydon

ON: 23 and 24 January 2020
(and 14 February 2020 in Chambers)

BEFORE: Employment Judge K Bryant QC

Appearances:

For Mrs Pearson: Mr T Dracass (Counsel)

For the Respondent: Mr R Dennis (Counsel)

RESERVED JUDGMENT AND REASONS

JUDGMENT

1. The Claimant's claim for unfair dismissal fails and is dismissed.

REASONS

Introduction

1. In this case the Claimant bring a case for 'ordinary' unfair dismissal, ie under section 98 of the Employment Rights Act 1996 ('**ERA**'). There was a claim under the Equality Act 2010 but that was withdrawn and dismissed some time before this hearing.
2. Dismissal is accepted by both parties as is the fact that the Claimant's dismissal was by reason of redundancy.
3. The single statutory question for the tribunal is, then, whether the dismissal was fair or unfair within the meaning of, and taking account of the matters set out in, section 98(4) of the ERA.

Evidence and findings of fact

4. The tribunal has been provided with an agreed trial bundle and has read and taken into account those documents to which it was referred by the parties and their witnesses.
5. Witness evidence was called on behalf of the Respondent from Brian Bunton (Availability Delivery Manager), Andrew Jones (Service Delivery Leader) and Joanne Mitchell (former Transformation Director and latterly Automation Director).
6. The Claimant gave evidence on her own behalf and also called Elizabeth Groves, a former colleague who was also dismissed by reason of redundancy.
7. Each witness gave evidence by reference to a written witness statement, and in the case of the Claimant and Mr Bunton there were also written supplementary statements.
8. In light of all the evidence read and heard, the tribunal makes the following findings of fact:
 - 8.1 The Respondent is a technology company. It is organised into business units one of which is the Global Technology Services business unit. Part of that unit is the Technology and Support Services division ('**TSS**') and within TSS there is a Service Management team.
 - 8.2 The Claimant started employment in 2005 with a G4S company unrelated to the Respondent as a Dispatch Manager. She was then made redundant in March 2009 but re-employed in October 2009 in a role in its Field Engineering team the work of which included service and repair of ATMs (ie cashpoint machines). That role involved managing the parts used in ATMs and auditing and billing in relation to customer calls. In this role the Claimant's day to day task manager

was Simon Cox, territory manager for London and South East, and their line manager was Colin Pearson, the Claimant's husband.

- 8.3 On or around 1 July 2016 the Respondent bought the Engineering division of the G4S company, which included the Field Engineering team, and the Claimant, and others employed by the G4S company including Mr Cox and her husband, transferred to the Respondent's employment pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE').
- 8.4 After the TUPE transfer Mr Pearson remained (and still remains) manager of the Field Engineering team and Mr Cox continued to work in that team. However, the Claimant and various others were moved to the Respondent's Service Management team since their roles were seen as more administrative and/or support roles.
- 8.5 After the transfer the Claimant's line manager from around September 2016 was Andrew Williams and then, from October 2017, Mr Bunton.
- 8.6 The Claimant's job title with the Respondent was National Auditor and Billing, ATM Engineering. She was responsible for providing support to the ATM engineers, principally in relation to billing of customers. Her role was assessed as Band 5 within the Respondent's structure and she continued to be paid the same post-transfer as pre-transfer.
- 8.7 The Claimant explained what her work in fact involved day to day during her oral evidence as follows. The tribunal accepts that it was an accurate summary. Engineers would be assigned jobs by dispatch. The engineer would then attend the relevant customer's premises and would open a 'call' on the system. The Claimant's role involved opening each 'call', reading the notes entered by the engineer, checking that the call had been closed correctly and checking whether it was chargeable to the customer, as opposed to being already included under that customer's contract and therefore not separately chargeable. If it was chargeable then she would issue an invoice to the customer. That represented around 60% of the Claimant's role.
- 8.8 The other 40% or so of the Claimant's role involved one of the Respondent's customers, ie RBS, which the Claimant says does things slightly differently. About twice a week they would send a batch of around 1,000 calls to the Claimant. Engineers would have entered notes on the system in much the same way as for other customers, but instead of the Respondent sending a list of calls to the customer, RBS would send a list to the Respondent. The Claimant's role was then to look at the list and check it against the Respondent's system; with other customers it was the other way round, the customers doing the check and querying a bill rather than the Claimant doing the checks from the customer's list.
- 8.9 Immediately following the TUPE transfer, the Claimant's work remained exactly as it had been with G4S immediately before the transfer and it remained so, apart from taking on additional customers, until her dismissal. The one significant change was that in around November 2016 the Claimant moved from being office-based to working exclusively from home.
- 8.10 Once working from home the Claimant was more or less entirely autonomous. She confirmed in her oral evidence that she was, she

felt, very good at her role, knew exactly what she needed to do, and so did not need any help from anyone else. In short, she just got on with her job without interference or input from others. She said, and the tribunal accepts, that she only spoke with Mr Williams around 6 times in the year or so during which he was her line manager.

- 8.11 There was some considerable debate during the course of the hearing as to who was the Claimant's day to day task manager. Mr Williams and then Mr Bunton, both parties accept, were the Claimant's successive line managers who dealt with such matters as performance appraisals and the like. However, it is said that the Claimant also had a day to day task manager. She says that throughout the period after the TUPE transfer her task manager remained Mr Cox, even though he was in a different team. The Respondent, on the other hand, says that by January 2018, if not before, it was Dan Vincent, who was a manager in the Service Management team.
- 8.12 The Claimant confirmed in oral evidence, when asked by the Employment Judge what day to day management she needed, that she did not require any. She may well, as she claims, have had regular contact with Mr Cox, given that they had worked together for some years prior to the transfer and he continued to report to her husband, but it seems unlikely that he retained any management role in relation to the Claimant given that they worked in different teams post-transfer; the tribunal finds that he did not retain any such management role. Whether or not Mr Vincent had any formal management role in relation to the Claimant, she accepts that they spoke a few times and that, as a result, Mr Vincent had knowledge of her previous experience, of the work that she was doing post-transfer and of the way in which she did that work.
- 8.13 In January 2018, shortly after Mr Bunton took over as the Claimant's line manager, they conducted her 2017 annual appraisal. It is clear from the record of the appraisal that Mr Bunton sought input from Mr Vincent as well as Mr Williams. The Claimant accepts that she was aware of this and that she did not suggest that this was inappropriate or that he should also speak with Mr Cox.
- 8.14 In late November 2017 a large restructuring exercise commenced across the Respondent's business. As part of this, an announcement was sent to all employees within TSS inviting them to nominate employees for an Employee Consultation Committee ('ECC') which was being formed for a forthcoming collective consultation exercise. Following a nomination and election process, the ECC was formed with employee and management representatives. The ECC first met on 6 December 2017 and then met weekly until mid-March 2018.
- 8.15 At its first meeting, the ECC discussed the rationale behind the proposed restructure and the proposed reduction in headcount, which was at that time 153 from a total workforce of 780 in TSS. The consultation process was discussed in some detail as was a proposed timetable, including steps to identify volunteers for redundancy.
- 8.16 The ECC also discussed the ranking process that would be implemented in the event that compulsory redundancies were necessary following the voluntary process. The proposed ranking

criteria, a summary of their meaning, and the maximum score for each, were proposed as follows:

- 8.16.1 Role Relevance: whether a role was seen as in a growth area of the business, an area which was static or a declining area (maximum score 20);
 - 8.16.2 Level vs PRG: whether the role actually being performed was at or above or below the PRG banding for that role (10);
 - 8.16.3 Skill Level: the skill level of the individual in question (20);
 - 8.16.4 Potential: the potential of the individual to develop into a larger role in the business (20);
 - 8.16.5 Performance: the level of the individual's performance (20);
 - 8.16.6 Approach to Work: the individual's approach to their work (20).
- 8.17 The ECC discussed detailed guidance as to how to score roles and individuals and the sorts of evidence that might be relevant. They also discussed what would happen if two individuals received the same ranking score: the first tie-breaker would be to look at which employee scored higher in higher priority criteria (the order being that set out above), then, if that did not resolve the tie, any active disciplinary record would be taken into account and, finally, if still tied their length of service would be used so that the employee with shorter service would be selected to be at risk of redundancy over the employee with longer service.
- 8.18 The ECC agreed to divide TCC into three for the purposes of the redundancy consultation exercise, ie (a) sales and those supporting or managing sales, (b) delivery people, ie those who were actually working on customer equipment and those managing them, and (c) everyone not in the first two categories. The three groups were then sub-divided: the third category was split into Operations and Service Management, the latter of which included the Claimant's role. It was proposed and agreed that the 75 existing posts within Service Management would be reduced by 43.
- 8.19 The ECC also agreed the proposed ranking methodology, including the criteria and the weighted scoring as outlined above. An email was sent to all affected employees after each ECC meeting with a link to the minutes of that meeting. Contact details for the employee representatives on the ECC were also provided to affected employees and they were able to ask questions of the ECC via those representatives.
- 8.20 A programme was established for training managers in the ranking process. The training took place in December 2017 and the ranking commenced in early January 2018.
- 8.21 Also in January 2018, the ECC discussed a redeployment process for any employees who became at risk of compulsory redundancy. It was agreed that such employees should be made aware of the redeployment process and that they were expected to be proactive in pursuing redeployment. This would include updating their CVs as appropriate and searching for alternative roles via the Respondent's internal recruitment tool, the Global Opportunity Marketplace ('GOM'), to which all employees have access and which advertises internal

vacancies in the Respondent and other IBM group companies worldwide.

- 8.22 Following a review of the restructure proposal, the overall target headcount reduction within TSS was reduced from 153 to 125. The number was further reduced following the process of seeking volunteers for redundancy. Ultimately, the required headcount reduction within Service Management, ie the number of roles to be made compulsorily redundant, reduced to 41.
- 8.23 When it came to scoring in accordance with the agreed criteria, line managers were sent a spreadsheet with details of the employees they were being asked to score. The first two criteria had already been scored, since these related to the role rather than the individual performing that role, but managers were asked to check those scores. They were also asked to score the remaining criteria, seeking evidence from other sources as appropriate in accordance with the training they had been given.
- 8.24 Mr Bunton received a spreadsheet for those he was asked to score, including the Claimant. The Claimant's pre-populated scores were 0 for Role Relevance and 10 for Level vs PRG. All roles within Service Management had been given 0 for Role Relevance, since all those roles were seen as of declining relevance to the Respondent's business. A score of 10 for Level vs PRG would reflect an actual role that was above the employee's assessed PRG band. Examples given in the guidance would be where someone takes over a role from another higher banded employee or who is performing a role that is being performed by higher banded employees. The focus is on the role that the individual is actually performing compared with their assessed band, rather than on skills or experience that may make the individual suitable to move into a different role, which are matters assessed by the later criteria.
- 8.25 An email was sent to all managers undertaking the scoring exercise, including Mr Bunton, which said that the pre-population of the first two criteria was not an exact science. Managers were asked to say if they felt there were any exceptions such that the pre-populated score may not be appropriate. Mr Bunton replied querying the Level vs PRG score for a number of his direct reports, including the Claimant. He was aware that the pre-populated score had been calculated as an average across Service Management, where the majority of roles were assessed as band 7, whereas the Claimant's role had been assessed as band 5. He felt that the Claimant was undertaking a band 5 role, ie was performing at the same band as her assessed band. This, and other, feedback was assessed and a number of the pre-populated scores were adjusted as a result. This included the Claimant's score for Level vs PRG which was reduced from 10 to 5.
- 8.26 Mr Bunton was responsible for scoring the remaining criteria for his direct reports. In order to obtain relevant evidence for scoring the Claimant, he sought input from Mr Williams, the Claimant's former line manager, and Mr Vincent, who he understood to be the Claimant's day to day task manager and had worked more closely with the Claimant than he had. He also looked back at the Claimant's previous year's

performance appraisal. Mr Bunton considered seeking input from a Mr Hughes who had line-managed the Claimant for some weeks immediately after the TUPE transfer but did not feel that was necessary given that he had managed her for such a short period. He did not consider it appropriate to ask Mr Pearson for input as he was the Claimant's husband. He did not ask Mr Cox for input as he did not understand Mr Cox to have any management responsibility for the Claimant.

- 8.27 Mr Bunton gave the Claimant a score of 14/20 for Skill Level, which is the second highest possible score and reflects 'High skilled', 7/20 for Potential, which reflects someone who is 'Career stable', 14/20 for Performance, which reflects 'High performance' and 15/20 for Approach to Work, which reflects someone who is 'Keen and willing'.
- 8.28 It came to senior management's attention in January 2018 that another manager within the Service Management team, Barry McGugan, had asked his direct reports, whom he was scoring as part of the ranking exercise, for evidence and possibly even for suggested scores to help him with the scoring process. This was not consistent with the agreed process or with the training that had been given to Mr McGugan and other managers. As a result, senior management spoke with Mr McGugan who assured them that he understood the agreed process and would follow it. Nevertheless, senior management gave his scores particular scrutiny during the later moderation process to ensure consistency with the agreed approach.
- 8.29 The scoring having been completed by the relevant line managers, a process of moderation known as 'normalisation' took place. The first stage involved the line managers and senior managers discussing each employee's scores in turn. There was then a second and third stage normalisation at increasingly higher levels of management and involving consideration of a broader pool of roles and employees.
- 8.30 Once the normalisation process was complete, as a result of which the Claimant's score remained at 55, a tie-break was required as 55 was the cut-off score for those at risk of redundancy. 6 employees in Service Management scored 55 and only 2 had to be put at risk of redundancy. 3 of the 6 had a higher score for Potential and so they were removed from consideration. None of the remaining 3 had any active disciplinary record and so the final decision was based on length of service. The Claimant had the shortest length of service (including her pre-transfer service with G4S) and so she and the employee with the next shortest service were selected as being at risk of redundancy.
- 8.31 Employees were informed that those at risk would be told on 19 March 2018 or before 3pm on 20 March 2018. The Claimant was informed by email sent at 2.12pm on 20 March 2018. She found this email, including its timing, upsetting.
- 8.32 Employees who were at risk were invited to attend meetings with management as the start of individual consultation. Because of the distribution of those at risk, and the desire on the part of the Respondent to hold meetings with employees as soon as was practicable, some employees were invited to meet with someone other than their line manager.

- 8.33 The Claimant attended an 'at risk' meeting with Mr Jones, who was Mr Bunton's second line manager. Mr Bunton had too many direct reports who were at risk to conduct all of the meetings himself. It was also felt that since the Claimant's husband was at a management level above Mr Bunton it would be appropriate for someone more senior to conduct the meeting with the Claimant. In advance of the meeting Mr Jones reviewed the Claimant's scores and spoke with Mr Bunton to make sure he could answer any questions that she may have.
- 8.34 The meeting with the Claimant took place by phone. The Claimant was accompanied on the call by her husband. During the call she said that she was unhappy with the scores for Role Relevance, Level vs PRG and Potential. Amongst other matters, they also discussed the redeployment process and the Claimant was encouraged to review the GOM for available posts.
- 8.35 After the meeting, but on the same day, Mr Jones sent the Claimant an email confirming that she was at risk of redundancy, encouraging her to look on the GOM for alternative roles and asking her to let him or Mr Bunton know if she required any additional support.
- 8.36 Mr Jones sent the Claimant a copy of his notes of their meeting which she confirmed, by reply on 23 March 2018, were accurate but she said that she did not accept that her role was redundant when it was generating revenue. She also said that due to a stressful situation in her personal life she did not wish to have any further meetings until the final meeting. She then commenced a period of sick absence.
- 8.37 Mr Bunton invited the Claimant to a telephone interim consultation meeting but she declined, again saying that she did not wish to have interim meetings due to her personal stressful situation.
- 8.38 Mr Bunton sought advice from HR given the Claimant's apparent disengagement from the process, and he was advised to offer an extension of the consultation period. Mr Bunton tried to contact the Claimant by email and phone but received no reply.
- 8.39 He then sought further advice as a result of which he sent an email to the Claimant on 9 April 2018 saying that he had extended the consultation period and offering assistance with redeployment including looking on the GOM on her behalf and asking that she send him her CV. He received no reply.
- 8.40 Having sought yet further advice, Mr Bunton wrote to the Claimant by post on 16 April 2018 asking how he could support her and saying that he would look on the GOM for her. He did then look on the GOM but could not see any available posts that he thought would be suitable.
- 8.41 The original end date for individual consultation had been 9 April and Mr Bunton asked to meet with the Claimant by telephone on 30 April 2018 to conclude the extended consultation process. The Claimant replied on 17 April 2018 saying that she would attend the call and also requesting various things including the scores of everyone in her selection pool. She was told that she could see her own scores (which she already had) and the cut-off score, but not anyone else's scores.
- 8.42 Ordinarily, an employee would be handed a letter at the final consultation meeting giving them notice of dismissal by reason of redundancy which would also indicate that the dismissal would be

effective at the end of their notice period unless an alternative role had been found in the meantime. Because the final meeting with the Claimant was to take place by phone, Mr Bunton sent her a copy of her dismissal letter in advance of the meeting so that they could discuss any issues arising from it.

- 8.43 The meeting took place as scheduled on 30 April 2018. The Claimant was again accompanied by her husband. Mr Bunton said that unfortunately no suitable alternative role had been identified and that the Claimant's employment would end on 9 July 2018 by reason of redundancy unless a suitable role could be found before then. During the call the Claimant questioned her scores for Role Relevance, Level vs PRG and Potential. She also said that she was on an engineer's contract and so should not have been in the Service Management pool at all.
- 8.44 Following the meeting Mr Bunton sent another copy of the dismissal letter. The Claimant remained on sick leave throughout her notice period.
- 8.45 The Claimant appealed against her redundancy dismissal on 30 April 2018. Her grounds of appeal included (a) a challenge to her scores for Role Relevance and Potential (but not Level vs PRG), (b) an assertion that Mr Bunton and those he consulted, ie Mr Williams and Mr Vincent, did not understand her role, and (c) a complaint that roles, including a role for Tesco, had not been advertised.
- 8.46 Ms Mitchell was appointed to deal with the Claimant's appeal and the Claimant was informed of this by email on 15 May 2018. When she was asked to deal with the appeal, Ms Mitchell was moving between roles and had a period of leave booked, but felt that she would have enough time to give to the appeal once she started in her new role. By 29 May 2018 Ms Mitchell had not contacted the Claimant and the Claimant emailed to point out that she had lodged her appeal over 4 weeks earlier. On 14 June 2018 Ms Mitchell contacted Mr Bunton to obtain all of the relevant paperwork concerning the selection and consultation process and she also contacted the Claimant on the same day. A telephone call was arranged for 18 June 2018.
- 8.47 The call took place as arranged and the Claimant was again accompanied by her husband on the call. Ms Mitchell listened to and noted the Claimant's concerns. She wrote to the Claimant by email later that day summarising her understanding of the Claimant's key concerns, namely the scoring of Role Relevance and Potential, whether the scoring had been done with sufficient understanding of her role and whether the correct process had been followed in relation to identifying potential alternative roles. Mr Pearson replied on the Claimant's behalf saying that she also wanted to add that she had been refused sight of the scores of others in her pool, which Ms Mitchell said she would also investigate.
- 8.48 As part of her investigation, Ms Mitchell had discussions with Mr Bunton, Mr Jones and Mr Williams. She also made enquiries about a Tesco Service Manager role which had been raised by the Claimant during the appeal meeting. The Claimant had also said during the meeting that Mr Bunton should have spoken to Mr Cox during the

scoring process, but she had been told that Mr Cox was not part of the Claimant's management and so she did not speak with him.

- 8.49 Ms Mitchell set out her conclusions and her reasoning in a report which was sent to the Claimant on 11 July 2018. The Claimant's appeal was not allowed.
- 8.50 Before the outcome of the Claimant's appeal was known, Mr Bunton sent her an email on 3 July 2018 saying that since she remained off sick he thought he should inform her of the process for returning her company laptop by courier. The Claimant has argued that this is evidence that the outcome of her appeal was pre-judged.
- 8.51 In her evidence to the tribunal (principally in her supplementary witness statement), the Claimant has referred to two roles in connection with a contract the Respondent had won with Tesco that she says would have been suitable for her, ie Service Manager and Client Support Manager.
- 8.52 The Tesco contract was won by the Respondent in around February 2018 and it started from May or June 2018, ie before the expiry of the Claimant's employment. There were Service Manager and Client Support Manager roles associated with this contract. The Client Support Manager role was at band 5 but was based in Zagreb, Croatia. It was also paid at a significantly lower rate than the Claimant's role and would involve employment by the IBM's Croatian company. The role was advertised on the GOM in around April 2018 but the Claimant did not apply for it. The Claimant accepts that even if she had looked on the GOM and seen this role advertised, she would not have applied for it. The Service Manager role was at band 7, ie two grades higher than the Claimant, and it was never advertised. The reason is that an existing Service Manager, who will be referred to as LG, moved from an equivalent role on the Respondent's RBS contract to the same role on the Tesco contract.

Submissions

9. The Claimant gave oral closing submissions. It was said that there were a number of ways in which the Respondent acted unreasonably. The Claimant accepted that the range of reasonable responses test applies both to procedural and substantive issues, but said that the Respondent's conduct was unreasonable to the extent that it crossed the threshold, by some margin, of conduct that was outside the range of reasonable responses of a reasonable employer.
10. The Claimant made four main points:
- 10.1 Simon Cox's input should have been obtained when scoring the Claimant in accordance with the agreed criteria. It was said that the Claimant is adamant that Mr Cox remained her day to day task manager throughout her employment with the Respondent and that he was best placed to know what she was doing day to day and her career history.
- 10.2 The selection criteria were not applied fairly. The first criticism was with regard to the Level vs PRG score. It was said that although Mr

Bunton only queried the pre-populated score, this was taken as a positive assertion that the score was wrong and resulted in a reduction from 10 to 5. The elevation of a query to a positive assertion was said to be 'very shaky'. It was also said that Mr Vincent had replied to Mr Bunton's request for input on the basis that he thought the Claimant was in a band 6 role. This suggested a mismatch between the Claimant's band and the role she was undertaking which should have resulted in an increase in her score back to 10. Mr Vincent's assumption that the Claimant was in a band 6 role was also said to be relevant to the score for Potential.

- 10.3 Reasonable efforts were not taken to find a suitable alternative role, in particular the Tesco Service Manager role. It was said that the Claimant was already operating at a band 6 level and had the skills to do a band 7 role. It was not reasonable for the Respondent to decide to move LG from a Service Manager role with RBS to one with Tesco. What should have happened, it was argued, was that the Tesco role should have been made available to the Claimant and others who were at risk of redundancy.
- 10.4 There were unreasonable failings in relation to the appeal against dismissal which also did not address or remedy any of the above failings. Two points were made here: first, there was inordinate and unreasonable delay in dealing with the appeal and, second, there was no proper investigation, especially with regard to the Claimant being scored by someone with sufficient knowledge of the Claimant's skills, ie Mr Cox.
11. It was said on the Claimant's behalf that taking the above points individually or collectively should lead to a finding of unfair dismissal.
12. The Respondent made closing submissions by reference to written submissions which were developed orally. The Respondent referred to the well-known case of *William v Compair Maxam* ([1982] ICR 156) as cited in *British Aerospace v Green* ([1995] ICR 1006) in support of the contention that the question for the tribunal is whether the Claimant's redundancy dismissal was within the range of conduct that a reasonable employer could have adopted.
13. The Respondent addressed a number of matters that it said were not in issue, which it is not necessary to repeat here, before turning to those that were.
14. The first was the scoring. The Respondent addressed each of Role Relevance, Level vs PRG and Potential:
 - 14.1 The Claimant was in the right pool and Role Relevance was pre-populated at 0 for everyone in the Claimant's pool save for two managers whose roles, as the Claimant accepted, were important to the ongoing business because of their relationships with particular customers.
 - 14.2 Level vs PRG was not a criterion, it was said, challenged in the Claimant's witness statement. In any event, the answer to this point

was straightforward: the Claimant's role was scored as band 5 when she transferred under TUPE and her substantive role never changed, as she accepted in cross-examination. In so far as Mr Vincent seems to have thought that the Claimant was in a band 6 role he was simply wrong. As Ms Mitchell confirmed, this was a matter for line management rather than the day to day task managers.

- 14.3 With regard to Potential, the Respondent referred to Mr Vincent's input given to Mr Bunton which showed that the score given was appropriate.
15. The Respondent also addressed the contention that Mr Cox should have been involved in scoring the Claimant. It was said that in fact Mr Vincent rather than Mr Cox was the Claimant's day to day task manager; Mr Cox was in a completely different team. It was also said that the managers who did have input into the scoring were suitable. They were the ones who had input into the Claimant's performance appraisal in January 2018 and the Claimant had not objected at that time that Mr Cox was not asked for input. It was clear that both Mr Williams and Mr Vincent had extensive knowledge of the Claimant's role and of her skills, performance and attitude and they were in fact complimentary of those.
16. The second issue raised in the Respondent's written submissions was a response to a contention that the Claimant was not allowed to score herself. This was not in fact a contention pursued by the Claimant in closing submissions. In any event, the Respondent referred to the evidence concerning Mr McGugan asking his direct reports for feedback and to management's robust response when they found out what he had done as demonstrating that there was no unfairness to the Claimant.
17. The next issue concerned alternative employment. It was said that the Respondent made reasonable efforts to find alternative employment for the Claimant and reference was made to *British United Shoe Machinery v Clarke* ([1978] ICR 70). The Claimant was repeatedly encouraged to look on the GOM but did not do so. With regard to the Tesco Service Manager role, this was reallocation of accounts between existing Service Managers and there never was a vacant role. The other role, the Tesco Client Support Manager, was advertised on the GOM and the Claimant accepts that she would not have applied for it in any event as it was based in Croatia.
18. Finally, the Respondent addressed the criticism of the appeal process. It was said that the outcome was not pre-judged; asking for the return of company property shortly before the expiry of a notice period was standard practice. As for the delay in dealing with the appeal, the Respondent referred to the reasons given by Ms Mitchell, namely that she was initially moving between roles and then had a period of pre-booked annual leave.

Discussion and conclusions

19. It is agreed by the Claimant that her dismissal was by reason of redundancy. Therefore, as accepted by both parties, the question for the tribunal is whether, both substantively and procedurally, the decision to dismiss the

Claimant and the procedure leading to that dismissal were within the range of reasonable responses of a reasonable employer. In other words, did the Respondent behave in such a way that no reasonable employer could have behaved? The tribunal has considered all of the evidence presented to it as part of its deliberations, but notes that the Claimant's case is limited to a number of specific criticisms as outlined above and discussed further below.

20. The first point made by the Claimant concerns Mr Cox and the failure on the part of Mr Bunton to seek input from Mr Cox when scoring the Claimant. The tribunal has already found that Mr Cox was the Claimant's day to day task manager before the TUPE transfer in mid-2016 but that he did not retain any management role in relation to the Claimant post-transfer. Apart from a period of a few weeks after the transfer, the Claimant's line manager at all material times up to the redundancy exercise was Mr Williams and then Mr Bunton, both of whom had input into the scoring. They both had infrequent contact with the Claimant given the more or less autonomous nature of her work, and so Mr Bunton also sought input from Mr Vincent, as he had done for the Claimant's 2017 performance appraisal in January 2018. It is clear from the contemporaneous documentation that Mr Vincent had detailed knowledge of the work the Claimant did and her approach and performance in doing that work. Whether or not Mr Vincent was formally the Claimant's day to day task manager, or indeed whether the Claimant had any such manager, remains unclear, but what is clear, the tribunal finds, is that Mr Bunton acted reasonably in not seeking input from Mr Cox, a manager in a different team. It is also relevant to note again, in this context, that the Claimant's 2017 performance appraisal was completed in January 2018 with input from Mr Bunton, Mr Williams and Mr Vincent and there was no suggestion, from the Claimant or anyone else, that Mr Cox should have any input into the appraisal.
21. The next point made by the Claimant concerns the scoring exercise. Which scores are the subject of criticism has varied during the internal process and during these proceedings, but the main focus of attack at this hearing has been on the Level vs PRG score with reference also being made to the score for Potential.
22. As with all aspects of the consideration under section 98(4) of the ERA, the question is whether the Respondent's approach was outside the band of reasonable responses. There is much guidance from the appellate tribunal and courts as to the approach employers should take to redundancy scoring. Criteria should, as far as possible, be objective rather than depending solely on subjective opinion. In this case, the criteria were clearly reasonable and, indeed, were the subject of extensive consultation and agreement with employee representatives. They should then be fairly applied. As the Claimant accepted in closing submissions, the tribunal's role in a case such as this is not to embark on any sort of rescoring exercise. What scores the tribunal would have given to the Claimant, if indeed it has enough information properly to make such an assessment, is irrelevant. Once the tribunal is satisfied that the Respondent had set up a proper and fair system for selecting those at risk of redundancy, then the question, as the Claimant also

- accepted, will be whether there are any obvious mistakes or inconsistencies in the scoring. If there are not, then the scoring will have been fair.
23. In this case, the Level vs PRG score was one of two pre-populated scores. This score was intended to reflect an objective assessment of whether the role being performed by the Claimant was at, or above or below, the PRG banding for that role. It was not a criterion that reflected her approach to her work, her performance or her potential to do a different role; it was simply a comparison between her actual role and her graded role. The Claimant's role had been assessed at band 5 following the TUPE transfer. It had not been reassessed since and the Claimant accepted that apart from being assigned some new customers her role remained the same throughout the post-transfer period. On that basis, it is difficult to see any legitimate basis for criticising a score based on the Claimant's actual role and her PRG grade being the same. The Claimant has focussed on two matters. The first is that she was originally scored 10 for this criterion but this was reduced to 5 following a query from Mr Bunton. In the tribunal's judgment it was entirely appropriate for Mr Bunton to query the original score and for the score then to be changed; in accordance with the scoring guidelines, a score of 5 rather than 10 was more appropriate. The second matter relied on by the Claimant is that Mr Vincent appears to have thought that her role was in fact at band 6. He was wrong about that, and it was not unreasonable, and certainly not an obvious error or inconsistency, for Mr Bunton to conclude that her actual role and her assessed band were the same.
 24. With regard to the score for Potential, there is again no obvious error or inconsistency. The score given to the Claimant reflected, in accordance with the agreed scoring guidance, someone who was stable in their career and was expected to contribute to the business at their existing level. From the evidence presented to the tribunal that was clearly a reasonable assessment for the Claimant. She was good at the job she was doing but showed no obvious signs of wanting to advance to a higher grade job. As she herself said in evidence, she was happy as things were. She said candidly in cross-examination, when it was put to her that she did not say during her performance review in January 2018 that she wanted to push beyond band 5, that she agreed but was not aware that she had to say if she wanted to progress.
 25. The next point relied on by the Claimant concerns alternative employment. At one point it appeared that there were two alternative roles in issue, but during the course of her evidence the Claimant accepted that the Client Support Manager role relating to the Tesco contract was based in Croatia and that even if she had looked on the GOM (which she did not) and seen it advertised (which it was) she would not have applied.
 26. That leaves the Service Manager role. The Claimant says that this should have been advertised as a vacant new role for which she would have been suited. The Respondent says that it was not in fact a vacant new role and there was simply a reassignment of customers to an existing Service Manager. The tribunal finds that the Respondent's approach to this, and to

- looking for suitable alternative roles for the Claimant, was reasonable in the circumstances. It was not unreasonable for the Respondent to organise its business in such a way as to reassign an existing Service Manager, LG, from one customer to another; LG was continuing to undertake the same role, ie Service Manager, but for a different customer and it was reasonable for the Respondent not to treat LG's existing role with RBS as redundant once it won the Tesco contract in around February 2018, and then to advertise the Tesco role as a vacancy for which the Claimant, and presumably LG, would have to apply. The Respondent's handling of this matter was not, in the tribunal's judgment, outside the band of reasonable responses.
27. In any event, even if the Tesco Service Manager role had been considered as a vacant new role, the tribunal would not have found that the Respondent should have considered it to be suitable alternative employment for the Claimant. The role was two bands higher than the Claimant's existing role and attracted a considerably higher salary. The role was also very different, and involved significantly greater responsibilities, than the Claimant's current role. The Claimant says that she would have been capable of doing the role, but whilst Mr Bunton had good knowledge, having sought input from others, of the Claimant's existing role and her performance and approach to that role, he could not reasonably have been expected to know of other skills or experience held by the Claimant when he asked her to provide him with a CV so he could help look on the GOM for suitable roles but she never provided him with any further information about her skills and experience. It transpires that there had been family events which caused the Claimant significant distress, as a result of which she accepts that she did not look at the GOM at any time during the consultation process or her notice period and effectively disengaged from the individual consultation process. The tribunal makes no criticism of the Claimant in those circumstances, but equally the Respondent, which extended the consultation period for some time given the Claimant's sick absence, did not act unreasonably in not taking account of information it had requested from the Claimant but which was not provided.
28. Finally, there is the question of the appeal against dismissal. Although the first of these was not at the forefront of the Claimant's closing submissions, three aspects of the appeal process have been criticised by the Claimant. The first is that the appeal is said to have been pre-judged because Mr Bunton sent the Claimant instructions for the return of her company laptop before the outcome of the appeal was known, the second concerns delay and the third is the failure to obtain evidence from Mr Cox.
29. The failure to speak with Mr Cox has already been dealt with above in relation to the redundancy process before dismissal: in the prevailing circumstances it was reasonable not to obtain input from Mr Cox both pre-dismissal and on appeal. It was also reasonable to send instructions for the return of company property before the outcome of the appeal was known. The Claimant was under notice which was shortly to expire and she had not in fact been working for many weeks by this time. If her appeal had been allowed and she had returned to work either in her previous role or another that required her to have a laptop then she would, the tribunal finds, have been allowed to keep

the company laptop or it would have been given back to her if she had already returned it by then. The fact that the instruction to return the laptop was sent before the outcome of the appeal was known was a feature of the time it took to complete the appeal process and was not any indication of pre-judgment.

30. Finally, the tribunal turns to the delay in dealing with the appeal. The time taken to complete the appeal process was considerably longer than the period envisaged by the Respondent's own guidance but the period from Ms Mitchell first contacting the Claimant to the outcome of the appeal was clearly, in the tribunal's judgment, reasonable. Ms Mitchell had to consider the documentary evidence provided to her, speak with the Claimant and other relevant witnesses and then consider her decision and her reasons for it. That leaves the period of 6 weeks or so from presentation of the appeal to the first contact from Ms Mitchell, the length of which was less than ideal. There was an initial period of around two weeks before Ms Mitchell was selected to hear the appeal. There was then a period during which Ms Mitchell was moving from one job to another and then a period of annual leave. The tribunal notes that this was a large redundancy exercise with many employees made compulsorily redundant a number of whom appealed against their dismissal. The Respondent therefore had to find a number of managers, at the appropriate level of seniority and with no previous involvement in the relevant employees' redundancy processes, to hear those appeals. The Claimant found the delay upsetting and it seems likely to the tribunal that many appeal managers would have taken rather less time to make first contact with an employee appealing against their redundancy dismissal. However, in all the circumstances, the tribunal has concluded that it cannot be said that no reasonable employer could have acted in the way that the Respondent did in this case. The time taken to conclude the appeal was less than ideal, but was not unfair.

31. In the circumstances, and having considered all of the evidence and submissions presented by the parties, the tribunal finds that the Claimant's dismissal was within the range of reasonable responses of a reasonable employer and was fair. Her claim for unfair dismissal therefore fails and is dismissed.

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Employment Judge K Bryant QC
14 February 2020 – Croydon

