EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss Beverley Currie	**v**	Kilburn Park Medical Centre

Heard at: Watford **On**: 16 October 2019
Before: Employment Judge Loy

Appearances
For the Claimant: In person
For the Respondent: Mandy Fitzmaurice, HR Consultant

RESERVED JUDGMENT

The reserved judgment of the tribunal is that:

1. The claimant's claim of unfair dismissal is well-founded and succeeds.
2. The claimant would have been fairly dismissed within one week of her dismissal and for the reasons given below she is not entitled to any compensation for the unfairness of her dismissal.

REASONS

Introduction

1. The claimant was a Clinical Executive Assistant employed by the respondent. The respondent is a medical practice. The respondent is part of a wider health group known as Kilburn Primary Care Co-op Limited ("the Co-op"). The claimant claims that her dismissal on 14 September 2018 was unfair. Acas was notified under the early conciliation procedure on 30 November 2018 and the certificate was issued on 30 December 2018. The claim form was presented on 22 January 2019. The response form was received by the tribunal on 15 March 2019.

2. This respondent says that the claimant was fairly dismissed when her role was made redundant in a restructure undertaken by the respondent. That restructure created a new role of Practice Manager to coordinate and oversee all aspects of running the practice. The decision to create this new role led directly to the claimant and a co-worker, Linda Burke, being made redundant. Ms Burke was employed by the respondent as Patient Service Manager. The respondent says that the new role effectively merged together the roles held by the claimant and Ms Burke while adding additional responsibilities.

3. The claimant rejects this explanation. She says that her dismissal was not by reason of redundancy. It was because of unmanaged performance concerns and/or a perception held by the respondent of difficulties in the working relationship between herself and Ms Burke. The claimant also says that she was not adequately consulted by the respondent in connection with her dismissal and that alternative employment was available that she could and should reasonably have been offered as a way to avoid her dismissal. The claimant believes that the respondent was resolved to terminate her employment one way or another and that is unfair.

Claims and Issues

The claim

4. This is a claim for unfair dismissal contrary to section 94 of the Employment Rights Act 1996 ("the ERA").

The issues

5. The respondent accepts that it dismissed the claimant. That is therefore not a matter that the tribunal needs to determine.

6. The following are the issues that do arise for determination by the tribunal.

7. **Issue 1. Has the respondent proved that the reason or principal reason for the claimant's dismissal was a potentially fair reason as required by section 98(1) or (2) of the ERA?**

   7.1 The respondent relies on redundancy as its potentially fair reason as provided for in section 98(2)(c) of the ERA.

   7.2 The claimant does not accept that this was the reason or principal reason for her dismissal.

8. **Issue 2. Did the respondent act reasonably or unreasonably in treating that reason as a sufficient reason in the circumstances for dismissing the claimant as required by section 98(4) of the ERA?**

   8.1 This issue is to be decided in accordance with equity and the substantial merits of the case. One of the circumstances to be considered is the size and administrative resources of the respondent's undertaking.

   8.2 The respondent says that it did everything to be expected of a reasonable employer.

   8.3 The claimant says that even if the reason or principal reason for her dismissal was redundancy, the respondent acted unreasonably because (1) it failed to consult her; and (2) it unreasonably failed to offer her alternative employment that was available.

Procedure, documents and evidence heard

9. The tribunal heard evidence from the claimant on her own behalf. She called no other witness.

10. The tribunal heard from the following witnesses on behalf of respondent: Germaine Brand, the Business Development Manager of the respondent practice (who was also the claimant's line manager) and from Mandy Fitzmaurice. Miss Fitzmaurice is the Managing Director of an HR consultancy. In October 2017 Miss Fitzmaurice helped Miss Brand to design and carry out the restructure out of which this claim arises. All three witnesses produced written witness statements. Neither party objected to the tribunal reading the witness statements provided.

11. There was a hearing bundle of 102 pages. The tribunal informed the parties that although the bundle had been read, they should nevertheless direct the tribunal's attention to any document upon which they wanted to rely.

Fact-Findings

12. **The claimant's role of Clinical Executive Assistant**

    12.1 As has been recorded, Miss Brand is the Business Development Manager of the respondent medical practice. She was also the claimant's line manager.

    12.2 She told the tribunal that the respondent first reviewed its clinical management structure in October 2017. This first restructure led to the creation of two new roles: Clinical Executive Assistant and Patient Services Manager. The objective being to improve service provision to patients. The claimant took up the post of Clinical Executive Assistant. The job description for the role of Clinical Executive Assistant is at page 39 of the bundle. Linda Burke took up the post of Patient Services Manager. The claimant had been employed as Reception Team Leader up to the point of the first restructure.

    12.3 The roles were intended to replace the traditional model of having a single Practice Manager with overall responsibility for clinical management. However, the two new roles were not a simple division of the previous Practice Manager's role. Some duties associated with that previous role were transferred to other employees.

13. **The disbanding of the Clinical Executive Assistant and Patient Service Manager Roles which led to the claimant's dismissal**

    13.1 Miss Brand told the tribunal that matters did not go to plan. At paragraph 8 of her witness statement she says that, "the Claimant and Ms Burke did not get along and as a result gaps in the services emerged." Miss Brand says that this led to work not being done and having to be picked up by others including herself, a position she described as unsustainable. In August 2018, the partners who own the practice (and who are ultimately responsible for the clinical delivery of its services) asked Miss Brand to revert to the traditional structure of a single Practice Manager.

    13.2 The respondent is a very small employer consisting of 10 employees. It does not have its own professional support services. Miss Brand therefore again turned to external professional HR and employment law support from Mrs Fitzmaurice to implement the instructions of the

partners. Miss Brand and Mrs Fitzmaurice concluded that the way forward was to disband the two separate roles of Clinical Executive Assistant and Patient Services Manager and to create a new and more senior single position of Practice Operational Manager (“Practice Manager”) with overarching responsibility for practice management.

13.3 The job description for the Practice Manager role is at pages 43 to 49 of the bundle. It is clear from that document that this new role has a materially greater range of responsibilities from either the Clinical Executive Assistant role held by the claimant or the Patient Services Manager role held by Ms Burke or, indeed, both of those roles taken together. For example, the new role is a senior operational management position with direct overall responsibility for matters such as finance, HR, health & safety, procurement, premises, IT and being first point of contact with regulators.

14. **The meeting of 7 September 2018**

14.1 On 7 September 2018, the claimant was asked to attend a meeting with Miss Brand and Mrs Fitzmaurice that same day. The claimant was not told in advance what this meeting was to be about. The tribunal was not given any notes of the meeting of 7 September 2018, but the letter of the same date (bundle page 40) sets out the key points about what happened at the meeting. The accuracy of that letter was not disputed between the parties. The tribunal therefore took it as an accurate reflection of the meeting itself.

14.2 The claimant was told that a decision had been taken to return to having a single Practice Manager and therefore to disband the roles of Clinical Executive Assistant and Patient Services Manager. The explanation given for this decision was that the current arrangements were “not working for a variety of reasons as we had hoped.”

14.3 The claimant was told that she was at risk of redundancy and that the meeting was the “commencement of a formal consultation with [her] …”. The claimant was informed that the respondent envisaged that the consultation process would be concluded by close of business on Friday 14 September 2018.

14.4 She was told that she was welcome to apply for the new post but that she would be considered alongside external candidates as part of the “recruitment process”. The claimant was given until Monday 10 September to decide whether she intended to apply for the new Practice Manager position.

14.5 She was informed that there were no other alternative roles available into which she could be redeployed. It was explained that if she was either not interested in applying for the Practice Manager role or unsuccessful with her application, that she would be dismissed by reason of redundancy on Friday 14 September 2018.

14.6 In addition to the letter, the claimant was also given a statement of her financial entitlements (bundle page 42) should redundancy occur,

along with the job description of the new Practice Manager role (bundle pages 43-48). All three documents were handed to her at the meeting on 7 September 2018.

14.7 She was also told that she would not be expected to come to work during the consultation process but that she could arrange a meeting with Miss Brand to discuss any questions she may have.

14.8 During the meeting the claimant told Miss Brand and Mrs Fitzmaurice that she did not want to be considered for the new role of Practice Manager. She gave as her reason for that decision that she was not qualified to do the role and that she could not compete with experienced external candidates. There is no dispute between the parties on these points. In paragraph 1 of the claimant's own witness statement she says, "I was offered the opportunity to apply for the position as Practice Manager along with other candidates but declined as I was not qualified to do this job."

14.9 Paragraph 21 of the witness statement of Miss Brand and paragraph 15 of the witness statement of Miss Fitzmaurice are to the same effect as paragraph 1 of the claimant's witness statement.

14.10 Miss Brand and Mrs Fitzmaurice encouraged the claimant not to be hasty and suggested that she take the weekend to think things over. The claimant was adamant that she did not wish to be considered for the new role. On that basis Miss Brand told the claimant that her redundancy would be confirmed with effect from 14 September 2018.

14.11 A discussion then took place between Miss Brand and the claimant on the financial and practical terms on which she would leave. The claimant was told that she would be paid in lieu of notice and that the partners had agreed to an enhanced redundancy payment and a goodwill payment (bundle page 42).

15. **Formal confirmation of redundancy**

15.1 By a letter dated 10 September 2018 (bundle page 50), the respondent confirmed the claimant's dismissal by reason of redundancy with effect from 14 September 2018. The penultimate paragraph of that letter sets out the claimant's right to appeal which she would need to exercise within 7 days. No such appeal was made.

15.2 No further meetings or correspondence took place before the claimant's dismissal took effect. Simply put, the respondent's position was that since the claimant had ruled herself out of consideration for the role of Practice Manager and there being in the respondent's view no further alternative employment available, there was nothing further to discuss or consider. If the claimant had any further concerns, she could contact Miss Brand to arrange a meeting (see respondent's letter of 7 September, bundle page 41).

16. **The claimant's letter of grievance of 19 November 2018**

16.1 On 19 November 2018, the claimant sent to the respondent a letter described as a formal grievance (bundle page 64). This was some 8 weeks after her dismissal and well beyond the period for appeal. In that letter the claimant raised some of the issues that she now raises in these tribunal proceedings. Amongst other things she complains that:

I. She had unfairly been made redundant.

II. She had not been given adequate notice of her redundancy rendering her unable to be represented at the meeting.

III. She had not been offered any further consultation.

IV. She had not been given any advice regarding legal representation or her legal rights.

V. She had not been given clear reasons at to why she was at risk of redundancy.

VI. New staff were subsequently employed in roles she could and should have been offered.

17. **The respondent's response to the claimant's grievance against redundancy.**

17.1 On 26 November 2018, the respondent replied to the claimant (bundle page 67).

17.2 This letter states clearly that the time period for appeal against redundancy had expired but that the respondent would in any case seek to address the issues raised by the claimant in her letter of 19 November 2018.

17.3 That letter states that the reason for the redundancy was legitimate, that the claimant had been invited to apply for the new position of Practice Manager (which she had declined) and that no other employment vacancies existed.

17.4 That letter also states that there is no legal requirement to give notice of a meeting to inform an employee that they are at risk of redundancy or to give advance notice as to the purpose of that meeting. The letter denies that the claimant was not told of her legal rights or her right to appeal.

17.5 In that letter the respondent denies that the redundancy and consultation process was not followed correctly and fairly and categorically denies all allegations made by the claimant.

17.6 The letter points out that the total redundancy and goodwill payment made to the claimant was in excess of the required statutory redundancy payment and draws attention to some errors made by the respondent in the calculation of those additional payments. All of those errors were in the claimant's favour.

The Law

18. The reason for dismissal

18.1 The respondent relies on redundancy as its potentially fair reason for dismissal. Redundancy is defined in section 139(1) ERA. The statutory words are:

> '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.

18.2 In Abernethy v Mott Hay and Anderson [1974] ICR 323 Lord Cairns said that "a reason for dismissal is a set of facts known to the employer, or it may be beliefs held by him, which cause him to dismiss the employee".

18.3 Section 98(2)(c) ERA identifies redundancy as defined in section 139(1) ERA as a potentially fair reason for dismissal.

19. The fairness of a dismissal

19.1 If an employer can show a potentially fair reason for dismissal the requirements of section 98(4) ERA, which determine the fairness of a dismissal, also need to be satisfied. The statutory words are:

> "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.

19.2 In Williams v Compair Maxam Ltd 1982 ICR 156 the Employment Appeal Tribunal ("EAT") laid down guidelines that a reasonable

employer might be expected to follow in cases of redundancy. The EAT however stressed that it was not for the tribunal to impose its standards and decide whether the employer should have behaved differently. Instead the tribunal had to ask whether "the dismissal lay within the band or range of conduct which a reasonable employer could have adopted". Those guidelines include an expectation that the employer would warn and consult employees about the redundancy as a matter of procedural fairness.

19.3 The importance of procedural fairness to the requirements to section 98(4) ERA was emphasised by the House of Lords' ruling in Polkey v AE Dayton Services Ltd 1988 ICR 142, HL. Lord Bridge stated in that case:

> 'In the case of redundancy… the employer will normally not 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 redeployment within his own organisation.'

19.4 An unreasonable failure to consult would make a dismissal unfair even if that failure would have made no difference to the decision to dismiss. Only if the employer could reasonably have concluded at the time of dismissal that consultation would be "utterly futile" and the decision to dismiss would be unaffected by any consultation with the employee could a dismissal in breach of procedural fairness be reasonable.

19.5 There are no hard and fast rules setting out the subject matter for consultation in every case. Each case will depend on its own particular facts and circumstances. In most cases, including the present case, consultation would normally include the following:

- A warning that the individual is has been provisionally selected for redundancy
- An opportunity for the employee to comment on his or her redundancy selection assessment
- Consideration as to what, if any, alternative positions of employment may exist
- An opportunity for the employee to address any other matters he or she may wish to raise.

19.6 The role of the tribunal in assessing fairness (including the adequacy of consultation) in a particular case is by applying the "band of reasonable responses" test. That tribunal should ask: did the employer's action fall within the range of reasonable responses open to an employer? (*see* British Leyland (UK) Ltd v Swift 1981 IRLR 91, CA*;* Iceland Frozen Foods Ltd v Jones 1983 ICR 17, EAT; Foley v Post Office HSBC Bank plc (formerly Midland Bank plc) 2000 ICR 1283, CA)

Conclusions

20. **Issue 1. Has the respondent proved that the reason or principal reason for the claimant's dismissal was a potentially fair reason as required by section 98(1) or (2) of the ERA?**

    20.1 Applying the statutory wording of section139(1) ERA and the decision in *Abernethy*, the tribunal finds that the reason for the claimant's dismissal was by reason of redundancy.

    20.2 The tribunal reminds itself that the requirement is for the respondent to show that the dismissal is wholly or mainly attributable to redundancy as defined in section 139(1) ERA. While there does appear to have been concern about the working relationship between the claimant and Miss Burke the tribunal finds, after consideration of all the evidence, such matters were relevant only to the extent that they may have exacerbated the problems of a management system that was failing to deliver the needs and requirements of the respondent practice. The system was failing in any event, and the any exacerbating reasons why the system was failing were incidental to that fact.

    20.3 The tribunal finds that reason for the decision to restructure was based wholly on the perceived need to deliver a more effective clinical management service to the respondent practice. The tribunal explicitly rejects the claimant's allegation that the restructure was a smokescreen to remove her from the respondent's employment. There was simply no evidence, either directly or by inference, to support that allegation. The tribunal accepts that the partners at the surgery had raised with Miss Bland concerns with the current structure which the partners believed was not delivering the needs of its clinical staff and, by extension, the patients of the practice. The tribunal notes in this regard that the split role management structure in operation before the first October 2017 restructure was a departure from the unitary leadership model adopted more frequently in the sector and by this respondent prior to the October 2017 restructure.

    20.4 Accordingly, the tribunal concludes that the respondent sincerely believed that the reason for the claimant's dismissal was redundancy.

    20.5 Having accepted the sincerity of the facts and circumstances in the respondent's mind when it dismissed the claimant, it is necessary to consider whether those fact and circumstances meet the definition of redundancy in section 139(1) ERA. The relevant sub-paragraph is section 139(1)(b)(i) which requires the dismissal to be wholly or mainly attributable to the fact that the *"requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish."* The tribunal is satisfied on the facts of this case that the respondent's requirements for the work of the particular kind that the claimant had been employed to do (Clinical Executive Assistant) were expected to cease. There would no longer be a role of Clinical executive Assistant. It was to cease. Some of its duties were to be incorporated

into a new single role of Practice Manager, other duties were to be distributed elsewhere. The role of Practice Manager was to require a far greater range of tasks and responsibilities requiring different skills and attributes those that had been required in the claimant's role.

20.6 The tribunal therefore concludes that the claimant was dismissed by reason of redundancy within the meaning of sections 139(1)(b)(i) and 98(2)(c) ERA.

21. **Issue 2**. **Did the respondent act reasonably or unreasonably in treating that reason as a sufficient reason in the circumstances for dismissing the claimant as required by section 98(4) of the ERA?**

21.1 The respondent was under a duty to consult with the claimant in advance of a decision to dismiss her by reason of redundancy.

21.2 The meeting of 7 September 2018 was described by the respondent in its letter of the same date as the commencement of a consultation process. However, it cannot be said that anything that happened at that meeting or subsequently amounted to reasonable consultation with the claimant. At the meeting of 7 September 2018, the claimant was informed (not consulted) about a set of decision that the respondent had already taken in advance of that meeting. A decision had already been taken to restructure. A decision had already been taken to remove the claimant's role and to create a new role of Practice Manager. A decision had already been taken that no alternative employment was available for which the claimant could be considered other than the new role of Practice Manager. The claimant was not invited to have any input into any of these decisions before they had been taken and she was not permitted to raise any other matter in advance of those decisions that she may have wanted the respondent to consider.

21.3 The claimant was invited to raise any concerns or to arrange a meeting with Miss Bland if she wished to do so. However, the reality was that it had already been made clear to the claimant that there was nothing of any substance left to be discussed. This was a case where the whole process was driven through entirely as a matter of management prerogative. The duty to consult was not in the circumstances of this case reasonably discharged by leaving it to the claimant to arrange a further meeting after what she had been told verbally and in writing on 7 September.

21.4 While it may not be necessary to consult an employee on strategic business decisions in every case, there were other matters in this case, most notably alternative employment, on which the claimant was reasonably entitled to have an input in advance of a final decision being taken. It was also clear in this case that the claimant wished to challenge whether her redundancy was genuine, and that was a matter that she was entitled to raise as part of any reasonable consultation process. This is therefore not a case where it could reasonably be said that consultation would have been utterly futile.

22. **What difference would proper consultation have made to the claimant's dismissal?**

22.1 Having found that the claimant's dismissal was unfair, the tribunal must also consider under the "**Polkey principle"** what difference it would have made to the claimant's dismissal if everything that should have been done by the respondent had been done to a reasonable standard.

23. **Alternative employment**

23.1 The claimant alleged that the respondent failed to consider her for alternative roles in its employment.

23.2 The tribunal has carefully considered each of the five alternative roles that the claimant identified in her evidence. Those roles are: Practice Manager, Accounts Administrator, Medical Report Administrator, Receptionist and Operations Manager.

24. **Practice Manager**

24.1 It was common ground that the claimant declined to be considered for this role at the meeting on 7 September 2018. Her evidence to the tribunal was that she would have applied for this role if she had been given more time during the consultation to consider her position and to prepare. The tribunal does not accept the claimant's evidence on this point. The contemporaneous evidence shows that the claimant was both offered the opportunity to be considered for the new Practice Manager role and that she declined that opportunity because she considered that she was not qualified for this new role.

24.2 The offer of consideration for the role is reflected in the respondent's letter of Friday 7 September 2018 (bundle page 40 para 6). The claimant's decision to decline the role is reflected in its letter of Monday 10 September 2018 (bundle page 50 para 3). The evidence of Mandy Fitzmaurice (see her witness statement para 15) corroborates the evidence of Miss Brand in the account of what the claimant said at the meeting of 7 September 2018 at which Mandy Fitzmaurice was present.

24.3 The claimant's own reason for not expressing an interest in the Practice Manager role was that "she was *not qualified* to do it" (emphasis added). This is evidenced in her letter of grievance dated 19 November 2018 (bundle page 65 para 2). Most importantly, this was also the claimant's position in her own evidence before the tribunal (see paragraph 1 of her own witness statement). Plainly qualification for a role is a different matter from being given more time to consider and to prepare for an interview.

24.4 Alternatively, the tribunal finds that the claimant was in fact given enough time to decide if she wanted to be considered for the Practice Manager role. Even when she rejected the opportunity at the first consultation meeting on 7 September 2018, she was told not to be

hasty and to think about it over the weekend (see witness statement of Miss Brand para 21). The claimant did not change her mind over the weekend.

25. **Accounts Administrator***.*

25.1 The evidence of Miss Brand was that there was no such role at the time the Claimant was dismissed (see her witness statement para 36). Some six weeks before the redundancy process a Mr Ramadan had accepted an offer from the respondent for temporary administrative work to cover a period of annual leave and to carry out a special project. That evidence was not contested by the claimant in cross-examination.

25.2 Miss Brand also said in her evidence (which again was not contested) that the claimant did not have the necessary skills to do this work. It required knowledge of the Quality Outcomes Framework and the Egton Medical Information Systems. Mr Ramadan had these skills. The claimant did not.

25.3 The tribunal accepts that the respondent's knowledge of this temporary vacancy preceded its decision to restructure. Plainly, the respondent cannot consider the claimant for an alternative role when it had not yet contemplated the redundancy of the claimant. The tribunal also accept the respondent's evidence that the claimant did not have the required skills for this role.

26. **Medical Reports Administrator**

26.1 The claimant identifies this as another role that she should have been offered as an alternative to her redundancy.

26.2 The respondent says that it was not a substantive role at all. Rather, it was a "one-off" piece of work that arose out of a backlog of tasks that were within the claimant's area of responsibility but that had not been dealt with. The respondent estimated that dealing with this backlog would have required four hours of work per week. The respondent did not suggest that the backlog resulted from any performance failure by the claimant. Rather, it was simply outstanding work that needed to be done.

26.3 The way in which the respondent resourced the backlog was by the engagement of a former Practice Manager known to the Co-Op. The Co-Op (and not the respondent) engaged the former Practice Manager and paid for the work undertaken within the Co-op's service fee.

26.4 There was no evidence to suggest that the respondent's explanation was inaccurate. There was therefore no vacancy for an employee of the respondent to carry out this task either on a temporary or permanent basis.

27. **Reception**

27.1 There was a disagreement between the parties regarding the resourcing of reception. The claimant believed that there was a need for additional resource on reception. The claimant also referred to her experience on reception at the respondent's practice. During cross-examination Miss Brand explained the respondent's position clearly. She said that whereas in the claimant's view there was a vacancy to be filled, Miss Brand considered that reception was already sufficiently resourced.

27.2 Regardless of this difference of opinion, the tribunal is satisfied that at the time of the claimant's dismissal, the respondent in good faith did not consider there to be any vacancy on reception into which the claimant could be redeployed on either a temporary or permanent basis.

28. **Payroll administration**

28.1 The claimant referred at the hearing to the potential for redeployment into payroll. The payroll function is outsourced by the respondent to a third party. The tribunal is satisfied that the respondent had no employment vacancy in payroll to which the claimant could have been redeployed.

28.2 The tribunal therefore finds that had the claimant been given the opportunity to raise any of these possibilities as alternatives to her dismissal the respondent would not have agreed to any of them and would have acted both reasonably and in good faith in not agreeing to do so.

28.3 Having considered the claimant's evidence on what she would have liked to say, the tribunal concludes that it would have been inevitable that the claimant would have been fairly dismissed at the end of a further one week period of consultation since none of the matters that the claimant would have wanted to raise in consultation would have avoided her dismissal.

28.4 The reality was that her position had become redundant. She did apply for the new role that became available. Had she so applied she would have been unsuccessful. She accepted in her own evidence that she was not qualified for the new role. The respondent would not have been able to locate alternative employment that would have retained the claimant in its employment even if the consultation process had been conducted reasonably.

28.5 The tribunal concludes that the claimant would have been fairly dismissed after one additional working week. It was agreed that the claimant's gross weekly pay was £423.07. The claimant will need to give credit against that financial loss for the enhanced element of the termination payments she received from the respondent. The total gross amount paid to the claimant (£6,399.57) exceeded the gross

amount due to her (£3,525.65) by an additional £3,307.68. The accuracy of these figures was not challenged by the claimant when she was directed to them in cross-examination. When this enhanced element is set off against the loss suffered by the claimant as a result of her unfair dismissal, her loss is reduced to nil. This is because the enhanced element of £3,307.68 is substantially more than £423.07 she would have received had she remained employed for a further week while proper consultation took place.

28.6 The claimant is not entitled to an award for loss of statutory rights since the tribunal finds that she would have been fairly dismissed had a proper consultation period been undertaken (Puglia v C James and Sons 1996 ICR 301, EAT).

29. To summarise:

29.1 The claimant's dismissal was by reason of redundancy.

29.2 The claimant's dismissal was unfair because of the respondent's unreasonable failure to consult sufficiently with her about her dismissal.

29.3 It cannot be said that consultation with the claimant would have been "utterly futile."

29.4 A proper consultation process would have taken a further one week to complete, but at the end of that period the claimant's dismissal would have been inevitable and fair. Proper consultation would only have delayed a fair dismissal for that short period of time. It would not have avoided it.

29.5 The claimant is not entitled to any compensation for the unfairness of her dismissal. She received a fully statutory redundancy payment which disentitles her to a Basic Award. She is not entitled to a Compensatory Award since she received an enhanced termination payment which exceeded the one week's pay to which she might otherwise have been entitled by way of compensation for loss suffered as a result of the unfairness of her dismissal.

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Employment Judge Loy

Date: 06/03/2020

Sent to the parties on: .06/03/2020

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For the Tribunal Office