EMPLOYMENT TRIBUNALS

Claimant: Mr V Demuth

Respondent: Done Bros T/a BetFred

Heard at: Birmingham Employment Tribunal (Hybrid Hearing)

On: 01 September 2020 to 03 September 2020

Before: Employment Judge Mark Butler
Mrs I fox
Ms L Wilkinson

Representation
Claimant: In Person
Respondent: Ms S Murphy

JUDGMENT

1. It is the unanimous decision of this tribunal that:
    a. The claimant has been unfairly dismissed.
    b. A *Polkey* reduction of 90% will apply
    c. The claim for direct age discrimination does not succeed and is dismissed.

2. The claimant is awarded the net sum of £3,761.88 in remedy.

3. The claimant has not received any benefits during his period of employment. No recoupment issues arise.

REASONS

These are the full written reasons as requested by the parties, having already received judgment and oral reasons that were handed down at the end of the hearing, on 03 September 2020. There have been 2 additions added to these written reasons that did not form the basis of the oral judgment following such matters being raised by the claimant by email subsequent to the hearing. These relate to the hearing process. These are recorded at paragraphs 10-14 and 29-31.

4. The claims in this case arise following a claim form that was presented by the claimant on 11 April 2019. The claims he brought were for: unfair dismissal, direct age discrimination, a redundancy payment, notice pay and holiday pay. The claims that were live at this hearing were the unfair dismissal claim and the claim for direct age discrimination. This claim followed the claimant having been dismissed by reason of redundancy on 13 February 2019.

5. The pleadings in the case are relatively short. The issues which were identified from these pleadings, and which this tribunal were asked to determine, were recorded in the Case Management Order of Employment Judge Jones, which followed a Preliminary Hearing on the 12 December 2019. The issues are recorded at paragraph 4 of that Order, which was at p.26 of bundle. These are the issues that were determined by this tribunal.

6. We were assisted by a bundle that runs to page 158. Although there are a few more pages than 158, as there are additional in the form of a,b,c and d at page 124.

7. The claimant gave evidence on his own behalf and had no further witnesses.

8. On behalf of the respondent, we heard evidence from three witnesses:

    a. Mr McDonald, who was the respondent's Head of Retail Support, and the person who conducted meetings with the claimant as part of the redundancy process. Mr McDonald was also the decision maker in relation to the appointment to the role of Head of Field Services;
    b. Ms Sue Coy, who is the respondent's Head of Security and who conducted the claimant's appeal against dismissal; and
    c. Ms Nicola Ward, who is currently a HR manager with the respondent. Ms Ward attended two meetings held with the claimant by Mr McDonald, attending in the capacity of note taker.

9. The tribunal did not consider it necessary to question the credibility of any of the witnesses of fact in this case.

<u>Cross examination of the respondent's witnesses by the claimant</u>

10. The claimant cross-examined Mr McDonald on the afternoon. At circa 15.30- 15.40 there appeared to be cross-examination of Mr McDonald on matters that were not relevant to the claimant's pleaded case. As such, the judge did ask the claimant to explain the relevancy of the questions being asked. It was explained to the claimant that if he considered the questions to be relevant to his case then he would need to explain their relevancy and he would then be allowed to continue with asking such questions.

11. At circa 11.20am on the second day of the hearing, whilst cross-examining Ms Coy, the claimant started to cross-examine on matters relating to a TUPE issue. As this was not part of the claimant's case, he was again asked to ask questions only relevant to his case.

12. At the end of cross examining each witness, the claimant was asked to consider whether he had any further questions for each witness respectively. And on each occasion, he replied to confirm that he had completed his cross examination.

13. At no point was the claimant prevented from cross-remaining on matters relevant to his case. In fact, he was encouraged to review his notes to see whether he had any further questions for the witnesses he was cross-examining when he indicated he had completed his questioning.

14. I only record this due tot his having been raised by the claimant following the hearing, and consider it prudent to record the process that the tribunal adopted in this respect.

<u>List of Issues</u>

15. As recorded at paragraph 4 of the Case Management Order of EJ Jones.

<u>Law</u>

Age discrimination

16. The age discrimination complaint brought by the claimant was one of direct age discrimination. Protection against direct age discrimination is provided for at s.13 of the Equality Act 2010, which provides that

    (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
    (2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

17. The tribunal reminded itself of the burden of proof in discrimination cases, which is expressed at section 136 of the Equality Act 2010.

Unfair dismissal: general

18. In determining whether unfair dismissal, it is for the employer to show the reason for the dismissal is a potentially fair reason within s.98 ERA. A potentially fair reason is one which relates to redundancy s.98(1)(b) ERA.

Unfair Dismissal: consultation

19. In a redundancy case of this type there must be fair consultation. The requirements of fair consultation in the Employment context are summarised in **R v British Coal ex p. Price [1994] IRLR 72** at para 24:

    ""fair consultation means"

    (a) Consultation when the proposals are still at a formative stage.
    (b) Adequate information on which to respond.

(c) Adequate time in which to respond.
(d) Conscientious consideration by an authority of the response to consultation."

20. Further guidance on consultation comes from the seminal case of **Williams v Compair Maxam [1982] ICR 156**. in general, reasonable employers should act in accordance with the following principles if circumstances permit:

    a. The employer will seek to give as much warning as possible of impending redundancies;
    b. Whether or not an agreement as to the criteria to be adopted has been agreed with a trade union or employees, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.
    c. The employer should seek to ensure that the selection is made fairly in accordance with these criteria.
    d. The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.

Unfair dismissal: bumping

21. The duty on the employer when seeking alternative employment is only to the extent of taking reasonable steps. There are situations where it might be reasonable to look for a vacancy that might be manufactured in some way, which can include at the expense of another employee. In **Lionel Leventhal Ltd v North UKEAT/0265/04** Bean J said that 'It can be unfair not to give consideration to alternative employment within a company for a redundant employee even in the absence of a vacancy'.

22. In **Stroud RFC v Monkman UKEAT0314/13** it was pointed out that Bean J's judgment continues by stressing that it will always be a question of fact, not of legal obligation. This is consistent with the other authorities on this subject. In **Byrne v Arvin Meritor LUS (UK) Ltd UKEAT/0239/02**, Burton P explained:

    "The obligation on an employer to act reasonably is not one which imposes absolute obligations, and certainly no absolute obligation to "bump", or even consider "bumping". The issue is what a reasonable employer would do in the circumstances, and, in particular, by way of consideration by the Tribunal, whether what the employer did do was within the reasonable band of responses of a reasonable employer?"

23. This was approved in dicta in **Samuels v University of the Creative Arts [2012] EWCA Civ 1152** (where bumping was an incidental question) by Arden LJ who said that ' ... the key is that it is not compulsory for an employer to consider whether he should bump an employee.... It is a voluntary procedure.'

Unfair dismissal: fairness

24. We directed ourselves to section 98(4) of the employment Rights Act 1996, which is not repeated here. We reminded ourselves that the burden of proof on the issue of fairness was neutral. In considering the fairness of the decision to dismiss, we were guided by the principles that were developed in **Foley v Post Office and HSBC Bank plc v Madden [2000] IRLR 3**, namely:

    a. In applying section 98(4) the Employment Tribunal must consider the reasonableness of the employer's conduct.
    b. The Employment Tribunal must not substitute its own view for that of the employer as to what was the right course to adopt for that employer.
    c. On the issue of liability, the Tribunal must confine itself to the facts found by the employer at the time of the dismissal.
    d. The employer should ask: did the employer's action fall within the band of reasonable responses open to an employer in those circumstances?

25. We also reminded ourselves that the reasonable responses test applied not only to the decision to dismiss but also to the procedure by which that decision is reached.

Unfair dismissal: Polkey reduction

26. The law on *Polkey* reductions is well established, and was comprehensively reviewed by the judgment of the EAT in **Software 2000 Ltd v Andrews [2007] IRLR 568**. That judgment has more recently been reviewed by the EAT in **Grayson v Paycare (A Company Ltd by Guarantee) UKEAT/0248/15/DA**. In his judgment Kerr J., reviewed the judgment of Elias J (as he then was) in that case, and (stripping it of its now redundant references to the repealed Dispute Resolution regulations and associated legislation), he summarises the principles to be applied when considering whether to make a Polkey reduction, as follows, at para. 21 of his judgment:

    "21. Elias J's summary provides a useful reminder that Tribunals need to disentangle in their minds distinct questions that may need to be addressed in particular cases. The following are possible formulations of the questions that may arise in particular cases:

    (1) How long the employee would have continued working for the employer, but for the dismissal; this is the question that in ordinary cases must be answered on the balance of probabilities, to assess loss;

    (2) Whether either party has adduced evidence entitling the Tribunal to conclude (the burden of satisfying the Tribunal being on the employer) that the employee would or might have ceased to be employed in any event had fair procedures been followed;

    (3) Is the evidence relied on to support a *Polkey* reduction in

compensation too unreliable or vague to be useful, and is the exercise of seeking to reconstruct what would have happened too uncertain to ground any sensible prediction based on it?

(4) If not, what is the chance - not the probability or likelihood - that that would have happened at a time in the future, and if so at what point in the future might that chance have produced the relevant event, namely the end of the employment?

(5) Has the employer satisfied the Tribunal that there was a chance of the employment terminating in the future, and if so how great or small was that chance? This is commonly expressed as a percentage.

(6) Has the employer satisfied the Tribunal that employment would have continued, but only for a limited fixed period, whether or not for reasons wholly unrelated to the circumstances relating to the dismissal itself?

27. The respondent's position is that 100% reduction should be made, but if the tribunal does not agree then there should be a reduction at the very least of 50%, on the basis that a fair procedure would have made no difference at all. The claimant's position is, as one would expect, that there should be no reduction.

<u>Submissions</u>

28. We were assisted by written closing submissions by the claimant, which was supplemented by oral submissions. We were also assisted by oral submissions by the Ms Murphy. The tribunal reviewed and took account of these submissions during deliberations. These are not repeated here.

29. Evidence was concluded on day 2 of 3 at 12.20pm. As a tribunal we were minded that we would need time to deliberate on the morning of day 3 with a view to reaching and handing down a decision with sufficient time to consider remedy if it were required. As such, we afforded both parties some time to consider what they wanted to say in closing submissions. This was done with the claimant being a litigant in person in mind. The parties were asked to come back at 14.00 to make closing submissions.

30. On returning to the hearing room at 14.00, the claimant was asked whether he had had sufficient time to consider what he had to say in closing. He responded by explaining that he could make his closing submissions but that he had struggled to access documents that he had at home, and asked whether we would be happy for him to read from his phone screen. This caused no concerns to the tribunal. At no point did the claimant indicate that he was not ready to make closing submissions and that he needed more time.

31. I record the above as the claimant has now suggested that it was unfair for the tribunal to require him to make closing submissions on the afternoon of day 2, but that the tribunal should have heard these on the morning of day 3. I make five observations in relation to this:

a. the claimant was afforded time to consider what closing submissions he would like to make.
b. The claimant indicated that he was in a position to make his closing submissions after the extended lunch break, although he did explain that they would not be as detailed as they could be, so long as he was able to refer to a document on his mobile form, which he was allowed to do
c. The claimant at no point indicated that he needed more time
d. To have left closing submissions to the morning of day 3 would have made it difficult to conclude the case within the 3-day listing, and so requiring closing submissions on day 2 was part of the tribunal actively managing the case to ensure it was concluded within the time estimate
e. The claimant's closing submissions were limited, if at all, due to him having not brought a document with him to tribunal, despite knowing that the case was across the three days. I can only presume that the document he was referring to was his written closing submissions, which the tribunal had received an electronic copy and had considered in any event.

Findings of Fact

We make the following findings of fact based on the balance of probability from the evidence we have read, seen, and heard. We do not make findings in relation to all matters in dispute but only on matters that we consider relevant to deciding on the issues currently before us.

32. The claimant was initially appointed by the respondent as a Field Service Engineer on 10 June 2009. Following success in his employment, he was promoted to Senior Field Engineer in June 2014, and subsequently promoted again to Technical Services Manager in September 2014. This is not in dispute.

33. The claimant's role was changed to the newly created role of Field Service Manager in January 2016. Although the claimant maintains that he at no point accepted this new role, this appears implausible in the circumstances. The claimant's witness statement at paragraph 15, when expressing matters concerning this new role states '...reluctantly agreed in principal to the split in my responsibilities and to take on the position as Field Service manager'. Alongside this, the claimant undertook the duties of the Field Service Manager, signed off emails as the Field Service Manager and updated his professional biography on Linkedin to reflect his change of role with the respondent. This is all consistent with the signed change to terms and conditions that can be seen at p.37 of the bundle. We do note that the claimant raises an issue with this document, however, given the consistency with the above, we do find this to be a genuine document that reflected the change in the claimant's employment with the respondent.

34. At the point of creating of the Field Service Manager role in January 2016, there was a total of two Field Service Managers. The claimant occupied one of the posts, as per above, with the other occupied by Mr Kerr. This remained the position until February 2019.

35. On or around 13 July 2018, the respondent's contract with TOTE, a third-party commercial partner, ended. This had an impact on the number of staff the respondent needed at racecourses, of which was part of the remit of the Field Service Manager.

36. The respondent needed to reduce its workforce number following the conclusion of the contract with TOTE. As part of this reduction exercise, the respondent decided to reduce the number of Field Service Managers from 2 to 1. The two Field Service Manager roles were to be combined into one role, with the new title Head of Field Services. This was Mr McDonald's unchallenged evidence.

37. On 15 November 2018, the claimant, and others were informed of potential redundancies of Field Service Engineers. This is clear from the email sent from Mr McDonald to the claimant at p.38 of the bundle. However, this does not inform the claimant that the claimant's role of Field Service Manager was at risk of redundancy. This email has a focus on Field Service Engineers which were put at risk of redundancy at this time, and we agree with the claimant's evidence on this. And it is plausible that he would be forwarded this email as line manager to those engineers. This is also supported by the email of 31 Dec sent by Mr McDonald (p.58 of the bundle), which indicates that the claimant and Mr Kerr would be involved in assessing engineers that were at risk of redundancy.

38. At some point, although we cannot be specific, between 15 November and 22 December 2018, the claimant was made aware that the two roles of Field service Manager were at risk of redundancy. This is clear from the email found at p.40 of the bundle, and in the attached PowerPoint presentation which was created by the claimant himself. The claimant must have had knowledge of his role being at risk of redundancy at some point in advance of creating this PowerPoint presentation. In particular from the PowerPoint presentation:

    a. at p.43 of the bundle, the first point on that slide references redundancies next to FS Manager, referring to Field Service Manager, as it is in a presentation entitled BetFred Field Services: Next Steps,
    b. further at p.44 of the bundle, on the slide, it is stated "The business has arrived at the conclusion that the requirements for 2 field service manages is no longer sustainable. To this end, we are both at the moment considered at risk…"

39. Throughout the period in question, that being from the point of the claimant's role being at risk of redundancy up until dismissal, the claimant was sent emails containing lists of current vacancies that were available with the respondent. The claimant did not challenge that these had been sent to him and received, but merely asserted that he had not opened them. The claimant also had access to the respondent's portal, where details of current vacancies could be found. However, we accept that the claimant was not aware of this portal and did not access this portal. The respondent did not discuss the portal or the email lists with the claimant in consultation.

40. The respondent laid out the process that they intended on following in a letter written by Mr McDonald dated 28 Dec 2018 (p.56 of the bundle). This signalled the start of the redundancy process. This letter reinforced that the 2 Field Service Manager roles were being made redundant, and that it was being replaced by a single role of Head of Field Services. This explained that consultation would take place between 07 January 2019 and 08 Feb 2019. The remainder of this letter explained the process for applying for the role of Head of Field Services. Stage 2 was the interview stage. There was no further mention of redundancy consultation in this letter.

41. The role of Senior Field Services was not put at risk of redundancy (p.58 of the bundle).

42. Both the claimant and Mr Kerr applied for the role as Head of Field Services.

43. The claimant was invited to be interviewed for the role of Head of Field Services on 22 January 2019 (email at p.59 of the bundle). This email indicates that on this date there will be an interview for the role in question and ‘a walkthrough’ of the assessment [the claimant] received as part of a recent consultation letter.

44. The claimant was interviewed for the role of Head of Field Services on 22 January 2019. A record of the answers given by the claimant under interview are at pp.65-71 of the bundle. Mr Kerr was also interviewed for the role of Head of Field Services, and a copy of his answers given under interview can be found at pp.84-89 of the bundle.

45. At this meeting on 22 January 2019, following the interview questions, there was no consultation in respect of redundancy. This is Mr McDonald’s oral evidence.

46. The respondent produced a matrix of skills for the purposes of assessing the claimant and Mr Kerr in relation to the Head of Field Services role, and in effect for redundancy. An assessment of both candidates based on that matrix would determine who would be offered the job of Head of field Services and who would be made redundant. The claimant was given a score of 48/50. Mr Kerr scored 49/50.

47. In terms of scoring for the Head of Field Services role, the claimant scored 3 out of 4 for length of service and 3 out of 4 for abilities concerning CCTV. Whereas Mr Kerr scored 3 out of 4 for length of service and 4 out of 4 for abilities concerning CCTV. All other scores on the matrix for both candidates were scored at the maximum score of 4 out of 4.

48. Mr Kerr had greater experience with CCTV equipment, and this was accepted by the claimant. Although the claimant further explained that Mr Kerr was given this experience for reasons related to his age, he did not bring any evidence to support this and therefore this is not a finding tha this tribunal makes. The tribunal accepted Mr McDonald’s explanation that projects were spread out across the team. In terms of scoring, Mr McDonald scored Mr Kerr a maximum of 4 for experience with CCTV and the claimant scored 3 out of 4, based on the answers they both gave

respectively during interview.

49. A second meeting between Mr McDonald and the claimant took place on 12 February 2019. Ms Ward attended this meeting to take notes and to act as a witness, should that have been needed. This meeting is entitled ‘Second and Final Consultation meeting’. In this meeting the claimant was given feedback on his interview. A brief discussion on a proposal made by the claimant in relation to a new CCTV role took place. And the claimant was then informed that he was unsuccessful in his application. The claimant raised a question over whether bumping could take place. (notes of this meeting are at pp.99-102 of the bundle).

50. Mr McDonald did give some consideration to what other roles were available for the claimant, including whether he could reallocated to an alternative role, and more specifically a Service Desk Role which required consideration of whether this would be a suitable alternative role for the claimant. In respect of reallocation, this was not considered appropriate and not taken any further by Mr McDonald. With respect the Service Desk Role, this role was not discussed with the claimant. Mr McDonald decided that this would not be suitable for the claimant. The reasons why Mr McDonald concluded that this role was unsuitable was because it was a £20,000 reduction in salary and involved an 80-mile daily round trip.

51. The claimant would not have accepted the Service Desk Role even if had been offered to him. The tribunal reaches this conclusion based on the lack of evidence presented by the claimant to suggest that he would have accepted the role. The claimant’s evidence was only that that was not a decision that Mr McDonald should have made without the involvement of the claimant. The claimant at no point indicated in any evidence that he would have been willing to take this role.

52. The decision in respect of who was being appointed to Head of Field Services and therefore whose position was being made redundant, was made by Mr McDonald. It is he who assessed the candidates and it is he who made the decision. Ms Ward had no role in this decision-making process.

53. The claimant did not see the matrix or his scores during the purported consultation meetings.

54. There was no meaningful consultation in the meeting of 12 February 2019, as with the first meeting. This was accepted in oral evidence by Mr McDonald.

55. During the second meeting we find that Ms Ward made no reference to the claimant’s age, as alleged. There is no record on the minutes of that meeting, these minutes were signed as accurate by the claimant at the time, the accuracy of the minutes were never questioned following that meeting, and Ms Ward making reference to the claimant’s age in that meeting was not raised as part of his appeal against the decision. This all assisted the tribunal in making that finding. The matter of age was only referenced by the claimant’s Trade Union representative towards the end of the appeal hearing itself.

56. The claimant was sent a letter confirming his redundancy dated 14 Feb 2019, (pp.105-106 of the bundle).

57. The claimant lost access to his email address when his contract was terminated.

58. The claimant exercised his right to appeal the decision to dismiss him by reason of redundancy.

59. The claimant was invited to an appeal hearing. This was initially due to take place on 14 March 2019 (see letter dated 27 Feb 2019, signed by Ms Coy at p.108 of the bundle).

60. In response to this letter the claimant confirmed to Ms Coy by email dated 06 March 2019, that he was appealing the decision on two grounds: Mr McDonald's critical thinking on this matter was compromised and his decision was based on subjectivity not objectively and, secondly, there are procedural errors in the redundancy process. There was no further detail as to what these grounds consisted of (see p.109 of the bundle).

61. The appeal was re-arranged to take place on 25 March 2019. Notes of this hearing are at pp.114-119 of the bundle.

62. This appeal hearing was the first time the claimant raised that he was not a Field Service manager but a Technical Services Manager. It was the first time the matter of age discrimination was raised, and this was only at the end of the appeal hearing.

63. The outcome of the appeal was that it was unsuccessful. This was communicated to him by letter on 01 April 2019 (pp.124a-e of the bundle). Within this letter there were a list of roles that were available with the respondent during the period that the claimant's role was at risk of redundancy up until his dismissal by reason of redundancy. There were at total of 8 roles that became available. All of which were roles below the claimant's grade.

64. Following employment, the claimant was applying for roles that were of a similar level and seniority to that which he previously held with the respondent.

Conclusions

65. The burden rests with the claimant to establish that there are primary facts from which this tribunal could conclude that the decision to appoint Mr Kerr to the role of Head of Field Services was an act of age discrimination. Given our findings above, the claimant has failed to discharge this burden. There has been no evidence that supports a finding that there is a prima facie case that Mr Kerr's appointment, and therefore his own redundancy, was motivated in any way by age. Indeed, the scoring of the claimant and Mr Kerr for that role only differed in one respect, that is a score that was given for experience with CCTV Operations. A matter, which the claimant accepted Mr Kerr had more experience with. Given that the claimant's age discrimination complaint rested on a comment made by Ms Ward in the

second meeting that he had with Mr McDonald, which we find did not take place, who is an individual who had no role to play in scoring individuals or making decisions in respect of this appointment, nor in deciding who was involved in the CCTV project, this claim had to fail. This also forms the basis of the complaint on the application of a fair redundancy criteria. And therefore, I do not need to repeat myself on this point.

66. In terms of the correct pool, the claimant has not discharged the burden in establishing that there was an incorrect pool selected when considering redundancies. No evidence has been brought in this respect. At its height, the claimant's case is that he simply should not have been in the pool that was being considered for redundancy. However, based on our findings he was in the correct pool, being one of two Field Service Managers, one of which was being made redundant.

67. We reminded ourselves of the band of reasonable responses test which applies to deciding complaints of unfair dismissal. This does not only cover the decision to dismiss by reason of redundancy, but also the process involved. Of note in this respect is the principles as laid down in **Williams v Compare Maxam**. We do take account of the fact that BetFred is a large National company, which must come into consideration pursuant to s.98(4) of the employment Rights Act 1996. We also considered the case law presented to us by the claimant on the issue of "bumping". However, note that the claimant provided nothing in terms of persuasive evidence that convinced the tribunal that this a case where the respondent ought to have "bumped" another employee from an alternative role.

68. This is a case where we have seen very little evidence of consultation taking place. There was no discussion concerning the impact of redundancy or on alternative solutions. There was no discussion concerning selection criteria or scoring, nor was the claimant informed of how he scored. In terms of alternative employment, the respondent merely identified one potential role for which the claimant was given any meaningful consideration for and instead relied on him having access to emailed lists and a central portal at which company vacancies would be maintained. Interestingly, the day after he was informed that he was unsuccessful in his application for head of Field Services, his contract was terminated. No other alternatives were considered at that point. It was telling that Mr McDonald, the person responsible for consultation accepted in oral evidence that no consultation took place with the claimant concerning redundancy in the two meetings which had been termed consultation meetings. This tribunal has no doubt that this was not within the band of reasonable responses. There has been almost a complete failure to consult on reductant with the claimant in this case, and therefore the claimant's complaint of unfair dismissal succeeds.

69. Turning to the issue of Polkey reduction, which the respondent has asked us to consider. We conclude in the circumstances that there will be a 90% Polkey reduction in this case. We reach this assessment based on the following:

   a. The claimant in his own evidence expresses a reluctance to take any role that he considered a demotion.
   b. through the claimant's schedule of loss and in his documents

concerning mitigation, we are further satisfied that the claimant is reluctant to apply for and therefore accept roles that are outside of his core skill set and level of competency, hence why his applications since redundancy have focussed on engineering roles of a similar level.

c. The list of roles available with the respondent during the period where his role was at risk do not appear to match the claimant's skill set nor level of seniority, or at the very least the claimant has not presented evidence that they were, that he would have applied, considered or accepted any such role.

d. Bumping to a Field Service Engineer role was made difficult by these roles also under risk of redundancy, and in any event would have been a demotion for the claimant, which given the conclusion above, the claimant was highly unlikely to accept.

70. On the basis of that identified at paragraph 69, we conclude that a significant reduction is required to reflect that even had there been meaningful consultation, including but not limited to considering alternative roles, there was a high probability that the claimant would still have been made redundant. This is due to the roles that were available were of a lower grade than that of the claimant's previous role and any role of a lower grade was highly likely to be rejected by the claimant. However, based on the Tribunal's industrial experience, given the claimant's age and proximity to retirement, and in circumstances where a lower level job may be considered better than no job, we do not place this as high as a 100% reduction. In these circumstances we conclude that a 90% Polkey reduction will apply.

REMEDY

71. The claimant has already received a basic award in the form of a redundancy payment. Remedy is therefore limited to compensatory award.

72. Given the vast experience of the claimant in the workplace, his skill set and his success in securing temporary work, all of which are relevant factors, the claimant's compensation is limited to a period of 12 months from the date of dismissal.

73. Total compensatory award without adjustments (annual net pay of (£29,744) + car and fuel benefit of (£5,200 + £4,446) + loss of statutory rights (£450) + pension losses (£5,356)) is £45,295.

74. Adjusting for a Polkey reduction of 90% and an increase of 25% which this tribunal considers just and equitable given the lack of consultation, the final figure awarded to the claimant is the net sum of £3,761.88

There has been a request to reconsider the Polkey reduction made by the claimant. Consideration of this request will follow.

Employment Judge **Mark Butler**

Date_23 October 2020____

FOR THE TRIBUNAL OFFICE

Notes
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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