



EMPLOYMENT TRIBUNALS

Claimant: Mr P Murray

Respondent: British Frozen Food Federation

Heard at: Nottingham **On:** 7, 8 & 9 December 2020
7 January 2021 (in Chambers)

Before: Employment Judge Victoria Butler (sitting alone)

Appearances

For the Claimant: Ms Alfred, Counsel

For the Respondent: Mr Bailey, Counsel

RESERVED JUDGMENT

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

REASONS

Background to this hearing

1. The Claimant was employed by the Respondent as its Head of Commercial from 7 September 2015 until his dismissal with effect from 8 September 2019. He claims unfair dismissal, a redundancy payment and holiday pay.
2. The Claimant presented his claim to the Tribunal on 20 September 2019 following a period of early conciliation between 12 July 2019 and 9 August 2019. The Respondent presented its defence on 12 November 2019.
3. The claims for a redundancy payment and holiday pay were resolved between the parties at the hearing and I have dismissed those claims on a withdrawal by the Claimant.

The issues

4. There was no agreed list of issues presented at the hearing, but the issues I am required to determine are:
 - 4.1 Was the reason, or principal reason, for the Claimant's dismissal for the potentially fair reason of redundancy?
 - 4.2 If yes, was the dismissal fair or unfair in accordance with Employment Rights Act section 98(4) ("ERA") and, in particular, did the Respondent in all respects act within the so-called 'range of reasonable responses'?

The hearing

5. This case was heard on 7, 8 and 9 December 2020. There was insufficient time after the conclusion of the witness evidence and submissions for me to deliberate and give judgment. Accordingly, I made a reserved judgment in Chambers on 7 January 2021.
6. At the hearing, the parties presented a chronology, an agreed bundle of documents and witness statements. References to page numbers in this judgment are references to the page numbers in the agreed bundle.

The evidence

7. I heard evidence from:

On behalf of the Respondent:

- Mr John Hyman, former Chief Executive Officer
- Mr Nigel Broadhurst, Chair of the Respondent's Board

On behalf of the Claimant:

- The Claimant

8. I was satisfied that all three witnesses were honest and genuine and I thank them for this. This case is one of differing perspectives on the Respondent's rationale for making the Claimant redundant and the fairness of the consultation process, concluding with the decision to dismiss him.

The facts

Background

9. The Claimant was employed by the Respondent as its Head of Commercial from 7 September 2015 until his dismissal by reason of redundancy with effect from 8 September 2019. His employment was not subject to a collective agreement.

10. The Respondent is the U.K.'s frozen food trade association. It has around 300 members and currently employs around twelve employees. It is a not-for-profit organisation providing services for its members and representing them in relation to all matters concerning frozen food. In order to function, it requires regular membership income which forms its biggest income stream. The majority of its expenditure comprises staff costs, making up around 70% of the total running costs.
11. The Respondent's Board comprises ten members and its Chairman is Mr Nigel Broadhurst who is the Joint Managing Director of Iceland Foods Limited ("Iceland").
12. Over recent years, the Respondent has lost a considerable number of members (and, therefore, membership fees) consequent of industry consolidation. Alongside this, its overheads had increased.
13. In 2016, the Respondent had financial reserves of circa £300,000. By 2018, those reserves had decreased to circa £150,000/£160,000.
14. In early October 2018, the Respondent's auditors advised that absent reassurance that the reserves would be increased to £300,000, they would need to qualify the accounts. It was agreed with the auditors that the Respondent would increase the level of its reserves by £50,000 over the following three years.
15. Mr John Hyman (Chief Executive Officer ("CEO") at the time) was instructed to take steps to realise cost savings and maximise income. One such step was the termination of the Respondent's Head of Technical who was engaged as a subcontractor. This produced an initial cost saving of £50,000, albeit some of those savings were used to sustain the Respondent's ongoing running costs.
16. The Respondent's financial situation was discussed at a Board meeting on Tuesday 9 October 2018, and reflected in the minutes as follows:

"The auditors had raised concerns during the year end process and would potentially have to qualify the audit report due to concerns with future financial stability.

Nigel added that as the forecast showed a profit of £50,000 for the year, which was the saving on [MF's] salary, the auditors needed reassurance that this could be ring fenced and put into reserves at the year end. There was a concern from the auditors that the budgeted level of membership subscriptions might not be achieved and therefore it was agreed during the Board meeting that this would become the number one priority for the commercial team going forward.....

It was agreed during the meeting that if there was a significant shortfall v budgeted commercial income for the 2018/19 fiscal year then we would have to explore the options of a lower cost commercial team for the

2019/20 fiscal year and progress will be reviewed at the March Board meeting” (Page 46).

17. A further Board meeting was held on 21 November 2018 to provide an update on membership recruitment, at which the Claimant was present. The minutes recorded:

“Current new members YTD is 18 v 9 last year, so it was agreed that it is important to keep the momentum going...

It was agreed that industry consolidation remains an ongoing challenge to the BFFF and John will arrange a tele-conference in the new year ahead of the March budget meeting to focus on this topic and any potential changes to subscription bandings.....

It was agreed that there is a need to review the three-year commercial strategy, which will be built into the next strategy day.

Although it is important to look at the future vision, concerns were expressed as to the current deficit for subscription income. John stated that the whole team were still on board to deliver an overall BFFF profit of £50k for the year end. Nigel added that it was crucial to achieve this at year end, in order to increase the reserves figure and to satisfy the requirements of the audit.” (page 47A)

18. On 4 December 2018, the Respondent’s audit committee had a telephone conference with the accountants and the minutes recorded;

“The Federation’s reserves had reduced quite significantly due to two chief executives being in post simultaneously and then not meeting the budget again last year. The auditors had raised an issue with the going concern of the Federation and in order to provide them with some reassurance we had committed to increase the reserves by £50k at the 2019 year end.

John then detailed the key areas in the forecast:

People

£50k would be saved with [MF] leaving but this would increase to £65k due to Dan, Claire and Crystal leaving and savings being made. George had been recruited to replace Dan but was on a much lower salary and the roles to replace Claire and Crystal would now become part time.

Member benefits

BFFF now had a suite of 11 member benefits but members needed to be encouraged to use them. At present it was unlikely that we would achieve the budget of £35k income. Unfortunately, we had faced some issues around GDPR and our partners being able to contact the members directly. It was hoped that during the second half of the year we would start to see the financial gain. John added that through some

of the member benefits we have been able to gain more sponsorship for our main events e.g. Company shop sponsoring the business conference.

Member subscriptions

John advised that the commercial team have taken on the challenge and recruited 18 new members this year so far, compared to 9 this time last year...

Helen queried as to whether the commercial team would be able to bridge the gap in subs of £47k as this had not delivered for several years. John was confident of other commercial areas such as the conference being able to make up the deficit as ticket sales and sponsorship were both currently ahead of target. Helen asked for regular updates to be circulated to update on the latest forecast.

John added that industry consolidation was the main issue with regard to resignation of members. New subscription banding ideas would be put forward to the Board which includes a group scheme and a new band for larger companies.

Commercial team

Ali queried the cost of the commercial team in terms of staffing as this had increased significantly over the last couple of years. John added that the costs are being reviewed and were reducing due to the new membership account manager being on a lower salary than previously. Helen added that the Board confirmed with the auditors that a commercial team restructure would be looked at if the subs budget was not achieved.

Forecasts

Helen stated that accurate forecasts needed to be circulated to the audit committee and the Board on a regular basis in order to keep everyone up-to-date and ensure we were on track to deliver the committed £50k surplus." (pages 48-49)

19. Having agreed that membership subscriptions were the priority, the Board reviewed them towards the end of December 2018, and it was clear that the budgeted level would not be met. The Board was concerned that the Respondent would be unable to deliver the £50,000 surplus agreed with the auditors and about its overall financial sustainability.

20. In January 2019, the Board met and agreed that it had no alternative but to restructure the commercial team in order to realise cost savings and meet the commitment to the auditors to increase the reserves by £50,000 over the next three years. The Claimant's salary was circa £100,000 and he was the highest paid employee in the team. The Board believed that his functions could be absorbed by Mr Hyman and other members of the team. It considered removing other positions attracting a lower salary, but that would have required the

removal of multiple roles to achieve the required savings and further, would have been detrimental to the continued functioning of the department. However, the removal of the Claimant's role alone would secure significant savings and allow the continued functioning of the department.

21. This proposal was agreed by the Board and Mr Hyman was instructed to carry out a consultation process with the Claimant. Mr Broadhurst secured HR assistance from Iceland's HR team to assist Mr Hyman and the appointed HR manager was Ms Claire Woolley.

Informal consultation meeting

22. The Claimant was invited to attend an initial consultation meeting with Mr Hyman on 25 January 2019 with Ms Woolley in attendance. Mr Hyman explained to the Claimant the proposal to remove his role, the rationale behind it, and that a period of consultation would ensue. He also confirmed that as part of the consultation process, the Respondent would look at redeployment but, if there were no vacant or suitable alternative roles available, he could be dismissed. Mr Hyman confirmed the contents of the meeting in a letter of the same date:

"Dear Paul

Reference; proposed commercial restructure

Further to the announcement which I made to you today, I am writing to confirm the details which were discussed.

After much careful consideration, the British Frozen Food Federation (BFFF) Board believes that a restructure of the commercial department is necessary. The proposed restructure will include the Head of Commercial role.

The reason for this decision is to ensure the future financial sustainability of the British Frozen Food Federation.

Therefore, from the date of the announcement, we have formally entered a period of individual consultation with you, regarding the proposed changes, which may last up to 28 days. During this time, through a series of individual meetings, we will discuss the details and options available to you as a result of this proposed change. In such circumstances our aim is always to explore and identify any reasonable redeployment opportunities wherever practical, thereby achieving continuity of employment. However, if we are unable to find you a suitable role this may result in a redundancy situation...." (pages 50-51).

23. The letter also confirmed two dates for further consultation meetings on 29 January 2019 and 13 February 2019, albeit omitted to advise the Claimant of his right to be accompanied.

First consultation meeting

24. The Claimant attended the first formal consultation meeting on 29 January 2019. Mr Hyman explained at the outset that the Claimant had the right to be accompanied. The Claimant confirmed that he wished to exercise that right and the meeting was adjourned until 6 February 2019. The Claimant also told Mr Hyman that he would be unable to attend the meeting scheduled for 13 February 2019 due to a hospital appointment.
25. The first consultation meeting proceeded on 6 February 2019 and the Claimant was accompanied by Mr S Pocock (colleague). Mr Hyman recapped on the proposal to remove the Claimant's role and the rationale behind it. He explained that the Respondent had been running at a loss for the previous two years and that its reserves were below the required level of £300,000. Consequently, the Respondent needed to increase its surpluses and the auditors had threatened to qualify the accounts. The Claimant was on the highest salary and its saving would assist in reducing the Respondent's overall costs and ensure that it delivered the required £50,000 surplus per year. Mr Hyman stressed that the Claimant's performance was not in issue.
26. The Claimant was disappointed that Mr Hyman had not discussed the situation with him previously, or allowed him the opportunity to explore additional cost savings before arriving at a redundancy situation. The Claimant challenged the Board's proposal and believed that he could make further cost savings, thereby avoiding his dismissal. He also challenged the Board's rationale for arriving at the decision to remove his role in the absence of the latest year-end estimate. Mr Hyman explained that the Board had arrived at its proposal following the first year-end estimates, alongside the auditors' concerns.
27. Ms Woolley advised the Claimant that he could suggest counterproposals to avoid his redundancy.
28. The Claimant said that he needed to speak to his legal counsel before attending any further consultation meetings and it was left that the Claimant would confirm a further date in February for the second meeting (pages 55a – 55l and 53 – 54).
29. Following the meeting, Ms Woolley e-mailed Mr Broadhurst to give him an update. She explained that the Claimant was "*very challenging throughout the meeting*"; he felt that the process was unfair; he would have been able to propose alternative cost savings for the Respondent; the decision was predetermined; and, he would be taking legal advice before the next consultation meeting. She said:

"I do believe Paul is trying to extend the timeline and make the process as difficult as possible, which is not unexpected in the circumstances."
(page 58)

30. Mr Broadhurst replied that afternoon thanking Ms Woolley for her support and stating:

“I need to bring it to a close as soon as possible – I assume the next meeting will be the final one? Having uncertainty hanging over a small head office team is both distressing and difficult. When do you think the matter will be concluded?” (Page 57).

31. Ms Woolley responded:

“hopefully that should be the last meeting before we close the consultation, we just need to ensure everything we have covered has ensured a meaningful consultation period has taken place” (page 56).

32. On 20 February 2019, Mr Broadhurst copied Ms Woolley’s e-mail to the Board. He said he was hopeful that the ‘process’ with the Claimant would end on 28 February, although acknowledged that he would have to hear any appeal.

33. Mr Broadhurst also addressed a Board proposal to appoint an alternative CEO and estimated the additional cost of doing so being circa £60,000, albeit conversations in this regard could not take place until after 28 February 2019 (i.e. after the end of the Claimant’s consultation period). He stressed that despite the Respondent being able to manage the additional cost of £60,000, *“reserves and cash flow will consequently remain a challenge by the year-end and will need careful management. This will be recovered via savings from PM over the period from September–April but of course not in year”* (pages 60 – 63).

The second consultation meeting

34. The second consultation meeting took place on 28 February 2019. The Claimant presented three counterproposals which he had e-mailed directly to the Board. The three proposals were, in summary: (1) removal of both the CEO and Head of Commercial to be replaced by a Chief Operating Officer (“COO”) which he believed would deliver a significant annual cost saving; (2) the sale and lease back of the Respondent’s headquarters; and (3) removal of the Event Manager role with the responsibilities of that position coming under his remit (pages 70 to 71). Given that the Board would be required to consider the counterproposals, the meeting was adjourned to allow the same to happen.

Discussion of the counterproposals

35. The Board agreed that Mr Hyman would not be involved in the discussion of the counterproposals considering that one involved the removal of his role. Accordingly, the remainder of the Board met on 4 March 2019 to discuss them. It discounted the proposal to remove the CEO and Head of Commercial role and replace them with a COO. It was felt that as a trade association, having a CEO as the main face of the organisation was crucial. It went on to consider

whether the Claimant had the skills to take on the role of either CEO or CEO, but concluded that he did not.

36. The Board considered the second proposal to sell and lease back the Respondent's headquarters, but felt it would be a short-term fix and needed to retain the premises as a significant asset/investment. Selling the premises was a last resort and the Respondent was not in that position yet.
37. The third proposal to restructure the commercial team by removing more junior staff would not produce the cost savings required as compared to the removal of the Claimant's role. Accordingly, the Board rejected all three proposals. The meeting was minuted, albeit the minutes did not set out the substance of the Board's conclusions (page 77).

The third consultation meeting

38. On 7 March 2019, Mr Hyman telephoned the Claimant in advance of the formal meeting to forewarn that his counterproposals had been rejected. However, the Claimant did not feel comfortable talking to him in the absence of a notetaker.
39. The consultation meeting proceeded the following day as planned and Mr Hyman explained to the Claimant that the Board had rejected his counterproposals. However, he was unable to explain why given that the minutes of the Board meeting were absent information, causing the Claimant immense frustration. Accordingly, Mr Hyman adjourned to telephone Mr Hyman and seek clarification and, thereafter, he relayed the rationale to the Claimant.
40. The Claimant continued to challenge the Board's rationale for the proposal to make his role redundant more generally, highlighting the income he was generating from events as a means to generating the required savings. Mr Hyman reassured the Claimant that his performance was not in question and explained again that the Respondent's focus was on member subscriptions.
41. The Claimant said he had a fourth counterproposal to make but said '*I need to build that one*'. He went on to challenge the adequacy of the consultation process as he felt it was unfair. In particular, he had not been given any time to consider the Board's responses to his counterproposals and respond to them. He also alleged that the decision to dismiss him was pre-determined.
42. Mr Hyman adjourned the meeting to consider the Claimant's representations and whether it was appropriate to bring the consultation process to an end. On discussing the matter with Ms Woolley, he concluded that there had been sufficient consultation and that the rationale for removing the Claimant's role had been explained fully and clearly to him, and remained sound. The Claimant had been given opportunity to make counterproposals which were considered and rejected by the Board and, further, there were no suitable alternative roles available.

43. Mr Hyman considered the appropriateness of moving the Claimant into a more junior role in the commercial team, but felt that this was not a viable solution given that, in his view, it would affect the Claimant's reputation in the industry, and the reputation of the Respondent. His belief was that it was unlikely that the Claimant would accept a decrease in his salary from £100,000 to one in the region of £40,000. Accordingly, he reconvened the consultation meeting and confirmed to the Claimant that the proposal to remove his role would proceed and he was, therefore, dismissed by reason of redundancy (pages 80-100).
44. The Claimant's notice period was six months and Mr Hyman advised him that he would be required to work it and assist with projects during this time. The outcome of the final consultation meeting was confirmed in a letter of the same date stating:

".....as a result, I confirm your position will become redundant and your employment with the company will be terminated by reason of redundancy. Your last date of employment will be 8th September. Consultation is now closed. If you wish to appeal against this decision you must provide the full reasons for your appeal in writing to Nigel Broadhurst within five working days of receipt of this letter" (pages 101 – 102).

The Claimant's appeal

45. The Claimant appealed the decision to dismiss him on 14 March 2019 citing the following grounds of appeal:

"1. That the consultation was a sham with the outcome predetermined at the outset.

2.. That the process was "closed down", to adopt Mr Hyman's terminology, prematurely, despite my contention that I had further cost saving proposals to submit, and also required time to consider your rejection of my three initial proposals, furthermore I was refused any corroborating information/data in support of that rejection which would have enabled me to challenge" (page 106).

46. An appeal hearing was arranged for 26 March 2019 chaired by Mr Broadhurst. The Claimant was accompanied by Mr Pocock and Mr Broadhurst was accompanied by Mr Vince Craig (McEvoy Foods).
47. At the outset, Mr Broadhurst advised the Claimant that Mr Hyman was leaving the Respondent and that Mr Harrow had been appointed as CEO in his place. The Claimant formed the view that the Respondent had deliberately hidden this information from him.
48. Thereafter, the Claimant was given opportunity to explain his grounds of appeal in full. Mr Broadhurst carefully explained the rationale behind the original proposal to make his role redundant and clarified that the Board had fully

considered his counterproposals. The Claimant confirmed that, after listening to Mr Broadhurst, he believed that the Board had discussed and considered his proposals.

49. Mr Broadhurst fully engaged with the Claimant during the meeting and confirmed that he would consider the Claimant's grounds of appeal which he established were:

- i. That the consultation process was a sham with a predetermined outcome which was unfair and personal;
- ii. That other members of his team had been told about his redundancy consultation process;
- iii. That if a proper "turnaround plan" had been introduced by Mr Hyman, the Claimant would have been able to deliver it;
- iv. That Mr Hyman's expectation that he perform various tasks during his six-month notice period, without access to the commercial team, was unfair and his request to be placed on garden leave;
- v. Consideration of why the Respondent was employing consultants in a role that he was capable of fulfilling; and
- vi. The Claimant's offer to stay for a further six months with a target of achieving £100,000 above the 2018/19 budget saving to avoid the Respondent losing his experience.

50. Mr Broadhurst adjourned the hearing and confirmed his outcome in writing on 1 April 2019, concluding:

- i. The consultation was not a sham with a predetermined outcome and the process was not drawn to a premature end;
- ii. Members of the Claimant's team had not been expressly advised that he was at risk of redundancy;
- iii. Allowing the Claimant time to establish a "turnaround plan" would not have produced the required savings quickly enough;
- iv. He agreed to the Claimant's request to be placed on garden leave, subject to being available to support Mr Harrow;
- v. There was no suitable alternative employment commensurate with the Claimant's seniority; and
- vi. The Claimant's proposal to stay for a further six months with a view to achieving the required cost saving was not the best way to secure the viability of the Respondent. (pages 131 – 130).

51. Towards the end of April 2019, the Respondent advertised a vacant junior role in the commercial team. By this time, Mr Hyman had left the Respondent and the Claimant was on garden leave. The Claimant was not alerted to the vacancy.

The Law

52. Section s.98 (“ERA”) provides.

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

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

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

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

.....

(c) is that the employee was redundant

.....

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.”

53. Section 139 ERA provides:

“(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease--

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

- (b) *the fact that the requirements of that business--*
(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish”.

54. In **Williams v Compair Maxam Ltd [1982] ICR 156**, the EAT laid down guidelines that a reasonable employer might be expected to follow in making redundancy dismissals. Reasonable employers might be expected to consider:

- Objective and fairly applied selection criteria;
- Early warning and consultation about the redundancy;
- If there is a union, consultation with that union; and
- Consideration of alternative employment

55. In **Polkey v AE Dayton Services Limited [1987] IRLR 503** it was held that an employer will normally act reasonably if it warns and consults employees; adopts a fair basis on which it selects them for redundancy; and, gives consideration to suitable alternative employment. Failure to follow a fair procedure will likely render a dismissal unfair unless the employer could reasonably conclude that doing so would be futile.

56. When considering the question of reasonableness, the Tribunal must not impose its own standards and decide whether they would have acted differently. Rather, the test to be applied when considering the fairness or otherwise of the decision to dismiss is whether the dismissal fell within the range of conduct which a reasonable employer could have adopted (“*the range or band of reasonable responses test*”) - **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.**

57. If the issue of alternative employment is raised, it is for the employee to say what job, or what kind of job, he believes was available and give evidence that he would have taken it - **Virgin Media Ltd v Seddington and Eland UKEAT/0539/08/DM.**

Submissions

58. The parties made oral submissions at the conclusion of the witness evidence. Whilst they are not set out in full, I have considered all the points made and all the authorities relied on where appropriate, even when no specific reference is made to them.

59. In summary, Ms Alfred for the Claimant submitted that ‘*the whole process was unfair*’ and placed great emphasis on how the Claimant could have made the required cost saving of £50k over three years, demonstrated by his success with recent events. Further, the decision to dismiss him was pre-determined.

60. Mr Bailey for the Respondent submitted that it made a legitimate business decision to remove the Claimant's role, particularly given the possibility of its accounts being qualified. Thereafter, it undertook a meaningful consultation with the Claimant and his dismissal was fair in all the circumstances of the case.

Conclusions

Has the Respondent established that the reason, or principal reason, for the Claimant's dismissal was for the potentially fair reason of redundancy?

61. The Respondent's Board minutes clearly document the auditor's concerns about the Respondent's finances, the possibility of the accounts being qualified and the commitment to the auditors to increase the reserves. Following year-end forecasting, the Respondent concluded that it had no choice but to reduce costs in order to meet its commitment to the auditors. It identified that the most effective way to achieve this was by removing the Claimant's role and absorbing his duties elsewhere. Accordingly, the Respondent had a diminished requirement for employees to do work of a particular kind in accordance with s.139(1)(b)(i) and, therefore, I am satisfied that a genuine redundancy situation had arisen.

62. The Respondent held a period of consultation with the Claimant during which means of avoiding redundancy were considered, but not adopted. At the close of the consultation, the Claimant was dismissed consequent of the Respondent's decision to remove his role from the structure and this was confirmed to him by way of letter dated 11 March 2019. Accordingly, I am satisfied that the Respondent has established that the reason for the Claimant's dismissal was for the potentially fair reason of redundancy.

63. Indeed, the Claimant does not challenge redundancy as the reason for his dismissal. His challenge is targeted at the process followed and how in his view, costs savings could have been realised from alternative sources, primarily events, thereby avoiding his dismissal. The Claimant's success at raising revenue from events was not disputed by the Respondent and was evident from documents in the bundle. However, the Respondent was entitled to conclude that, given its financial position, its priority in securing long-term viability was increasing membership subscriptions, and that revenue from events was not a long-term sustainable platform. It is not my role to interfere with this decision.

Was the dismissal fair in accordance with s.98(4) ERA and did the Respondent in all respects act within the range of reasonable responses?

64. In arriving at my conclusions, I have considered both the substantive and procedural fairness of the Claimant's dismissal.

The consultation process:

65. The Respondent both warned the Claimant about the proposed redundancy and consulted with him. The Claimant attended an informal meeting on 25 January 2019 at which he was advised of the proposal to remove his role from the structure and warned that, if the proposal was confirmed, it would result in his dismissal by reason of redundancy. Mr Hyman explained that the Respondent would carry out a formal consultation process, which he envisaged would entail two consultation meetings.
66. The Claimant received a letter following this meeting confirming the proposal and inviting him to consultation meetings on 29 January 2019 and 13 February 2019. Unfortunately, the letter omitted to advise the Claimant of his right to be accompanied. However, at the outset of the first formal consultation meeting on 29 January 2019, Mr Hyman rectified the omission and explained to the Claimant that he had the right to be accompanied. The Claimant confirmed he wished to exercise that right, and the meeting was adjourned to allow him to seek a companion. I am satisfied that this was an oversight on the part of the Respondent which was remedied by adjourning the meeting and rescheduling it for a date on which the Claimant could be accompanied.
67. The adjourned meeting took place on 6 February 2019. The Claimant was clearly upset and frustrated at the prospect of losing his job and challenged Mr Hyman on the rationale behind the proposal, expressing his opinion that, if he had been aware of the wider financial concerns earlier, he could have assisted in remedying them. Mr Hyman's view was that the Claimant had been aware of the Respondent's financial position and explained the background and concerns leading to the proposal to dismiss him again.
68. The Claimant was advised that he could submit counterproposals to avoid his dismissal. Admirably, he spent considerable time and effort developing three rational counterproposals which he submitted directly to the Board. Considering one of those proposals involved the removal of Mr Hyman's role, the Board properly excluded him from its discussions about the same.
69. I am satisfied that the Board gave due consideration to the counterproposals and did not act unreasonably in rejecting them. When the Claimant attended the second formal consultation meeting on 8 March 2019, Mr Hyman was not equipped to explain why the Board had rejected them given that it had failed to document its rationale. This was an entirely unsatisfactory situation for the Claimant to find himself in and he was understandably frustrated. Mr Hyman adjourned the meeting to speak to Mr Broadhurst to gain further clarity and was then able to explain the Board's conclusions in more detail. Ideally, Mr Hyman should have been fully briefed and able to discuss the reasons for the counterproposals being rejected at the outset. However, I am satisfied that having spoken to Mr Broadhurst, he was able to relay sufficient detail to allow the Claimant to understand why they could not be adopted. Further, at the appeal stage Mr Broadhurst went into more detail about the Board's discussions and the Claimant expressed his belief that his proposals were genuinely discussed.

70. The Claimant complains that the Respondent brought the consultation process to an end prematurely by (1) not allowing him opportunity to respond to the Board's rejection of his counterproposals; and (2) not allowing him the opportunity to submit further counterproposals. Whilst the Claimant understandably wanted to challenge the rejection of his proposals, I am satisfied that the Board gave them detailed consideration and there would have been little merit in a reconsideration. I am also satisfied that the Claimant had adequate opportunity to submit his counterproposals. If the Claimant had a fourth proposal, it was incumbent on him to submit it at the same time as the first three. He has not explained why he failed to do this and was aware of the Respondent's timescale for the consultation period. Whilst the Respondent should consider flexibility, it is not obliged to keep the process ongoing indefinitely. Accordingly, I am satisfied that it acted reasonably in not allowing the Claimant more time to build a further counterproposal.
71. The Claimant also complains about the Respondent's failure to tell him about the appointment of a new CEO before it was a fait accompli. I am entirely sympathetic with the Claimant because, on the face of it, the Respondent's plans in this regard were deliberately hidden from him. However, I accept Mr Broadhurst's evidence that it was an entirely separate matter to the Claimant's redundancy and the reality for the Respondent was that it needed to identify a replacement before Mr Hyman departed to ensure continuity of the role (NB: I deal with whether the CEO position was suitable alternative employment below).
72. The Claimant also asserts that the decision to dismiss him was pre-determined. I am not persuaded that it was. In any redundancy situation, there is always a proposal to make a role/s redundant. The purpose of consultation is to consider ways in which to avoid or mitigate redundancy but, in the absence of a viable alternative, the proposal will likely be ratified. I am satisfied that the Respondent gave serious consideration to the Claimant's counterproposals and would have adopted any one of them had they been a feasible alternative to redundancy. Unfortunately, they were not.

The pool for selection:

73. The Respondent is obliged to adopt a fair basis on which to select the Claimant for redundancy. In this case, I am satisfied that it was appropriate to place him in a pool of one. He was the highest earner in the commercial team with a salary far in excess to that of junior roles and his seniority and responsibilities meant that his role was not comparable with other members of his team.
74. The Respondent considered the removal of more junior positions as an alternative, but concluded that it would have to remove multiple roles to make the requisite cost saving. It had to balance cost savings alongside the viable running of its services in the future, and this was a reasonable position to take.

Suitable alternative employment

75. The Respondent must consider suitable alternative employment as a means to avoiding the Claimant's dismissal if it is available. It is not required, however, to create an alternative role for him if one does not exist.
76. The Claimant asserts that the Respondent failed to consider redeployment. Mr Hyman and Mr Broadhurst both gave evidence that there were no other jobs available at the time of the Claimant's dismissal on 8 March 2019 and the Claimant does not challenge this. Mr Hyman considered '*bumping*' before arriving at the decision to dismiss but, concluded that it was not appropriate to do so. The Claimant himself does not identify a specific junior role that he says would have been appropriate to place him in and, in the absence of any such assertion, I am satisfied that Mr Hyman's conclusion in this regard was a reasonable one.
77. Turning to the replacement of the CEO, Mr Broadhurst gave evidence that on considering the Claimant's first counterproposal (to remove the roles of CEO and Head of Commercial and replace them with a COO), the Board considered whether the Claimant was suitable to undertake either a CEO or COO role, but concluded that he did not have the skills and reputation within the industry to do so. The Claimant himself did not suggest that he could carry out the role of CEO, nor did this form part of his proposal or his claim before me. Accordingly, I am satisfied that it was not suitable alternative employment and the Respondent was not obliged to offer it to him ahead of appointing Mr Harrow.
78. When Mr Broadhurst heard the Claimant's appeal, he actively considered whether the Claimant could be slotted in to a short-term position being undertaken by a consultant. However, he concluded that these were short-term roles only and, therefore, not suitable. Viewed objectively, I consider that this was a reasonable view to form. Further, the Claimant in his position as Head of Commercial, was fully aware of the Respondent's use of subcontractors for various projects but at no point did he identify a specific role that he should have been offered, even at the hearing. I am satisfied that this is because he did not consider any such role to amount to suitable alternative employment.
79. Turning to the junior role advertised by the Respondent on 23 April 2019, the Claimant does not argue that this would have amounted to suitable alternative employment for him. Rather, he says in his witness statement that it was "*indicative of the fact that with a fair, constructive and proper consultation I am sure a solution could have been identified which resulted in me retaining my employment with the Respondent*" (paragraph 24). In saying this, he poses a challenge to the overall consultation procedure, rather than a complaint that he was not offered the role. If the Claimant suggests that it was a suitable alternative employment, I would expect him to say so. Post-dismissal, the Claimant was seeking senior level roles thereby affirming that the offer of a junior role within the Respondent organisation was not a suitable alternative.
80. Notably, at the time the role was advertised (1) Mr Hyman had left the Respondent; and (2) his HR support, Ms Woolley, was not employed by the Respondent. Considering the size and limited administrative resources of the

Respondent, failure to offer a role that even the Claimant himself does not assert was a suitable alternative, does not render the Claimant's dismissal unfair.

81. Finally, the Claimant argues that the Respondent failed to consider part-time working, flexible working or a change of role. Firstly, part-time or flexible working would not have delivered the required cost-saving and secondly, I note that the Claimant had the benefit of legal advice throughout the consultation period and he did not propose this either (para 23 statement). Even if these options had been raised, they would not have changed the outcome.

Summary

82. The decision to place the Claimant at risk of redundancy was a genuine consequence of the position the Respondent found itself in at the time. It had precarious reserves and faced the possibility of its accounts being qualified. It identified that it could make a substantial cost savings by making the Claimant's role redundant and absorbing his duties elsewhere. Therefore, a genuine redundancy situation had arisen.

83. Whilst there are certainly flaws in the procedure followed by the Respondent in dismissing the Claimant, I do not find that they either singularly, or collectively, undermined the overall reasonableness of the process followed. Whilst I appreciate the Claimant's distress at being made redundant, the business rationale for his dismissal was genuine, the Respondent undertook meaningful consultation with him and gave serious consideration to his counter proposals. The Respondent was not unreasonable in rejecting those proposals, nor was it unreasonable in refusing to extend the consultation period to allow the Claimant to submit a fourth one.

84. I am satisfied that, given the size and administrative resources of the Respondent, the decision to dismiss the Claimant was within the band of reasonable responses of a reasonable employer and, therefore, fair. Accordingly, the Claimant's claim for unfair dismissal fails and is dismissed.

Employment Judge Victoria Butler

Date: 17 March 2021

Sent to the parties on:

18 March 2021

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For the Tribunal:

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