



# EMPLOYMENT TRIBUNALS

**Claimant: Mr S S Bhogal**

**Respondent: The Culture Trip Ltd**

**Heard at: London Central                      On: 23-24 March 2021**

**Before: Employment Judge Gordon Walker (sitting alone)**

## **Representation**

Claimant: Mr O'Callaghan, counsel

Respondent: Mr Sheehan, counsel

# RESERVED JUDGMENT ON LIABILITY

1. The claim of unfair dismissal is not well-founded and is dismissed.

This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was video (V), conducted using Cloud Video Platform (CVP). It was not practicable to hold a face-to-face hearing because of the COVID-19 pandemic.

# REASONS

## Introduction

1. The Respondent is an online travel company. The Claimant was employed by the Respondent from 5 February 2018 until his employment was terminated on 4 September 2020.
2. On 20 November 2020, the Claimant presented a claim of unfair dismissal, pursuant to section 98 Employment Rights Act 1996 ("ERA"). The Respondent contested the claim, maintaining that the Claimant was dismissed fairly on grounds of redundancy.

## Claims and issues

3. At the outset of the hearing, it was agreed that I would determine the issues of liability first and would thereafter consider remedy, if appropriate.
4. The legal and factual issues were agreed at the start of the hearing. In respect of liability those issues were as follows:

### *Reason for dismissal (s.98(1)-(2) ERA)*

1. *What was the reason or principal reason for dismissal? The parties agreed that there was a redundancy situation within the meaning of s.139 ERA and that the Claimant was dismissed for a potentially fair reason, namely redundancy.*

### *Reasonableness of decision to dismiss (s.98(4) ERA)*

2. *If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant?*
3. *Did the Respondent adequately warn and consult the Claimant? The Claimant accepts that he was adequately warned but asserts that the Respondent did not genuinely consult with him, because:*

- 3.1 *The Respondent did not fully or adequately answer the questions he posed about the process; and*
- 3.2 *The Respondent did not extend the closing date for applications for alternative vacancies, notwithstanding that the consultation process itself had been extended.*
4. *Did the Respondent adopt a reasonable selection decision? The Claimant asserts that the Respondent acted unreasonably by:*
  - 4.1 *Placing him in a pool of one. He asserts that Vidya Murali, David Binns and Lucie Phillips should have been placed in the pool as they were also involved in operational roles. He asserts that the Respondent incorrectly based its decision on an inaccurate job title (of Analyst);*
  - 4.2 *Appointing his colleagues (David Binns and Lucie Phillips) to vacant positions after announcing the Claimant's role was at risk;*
  - 4.3 *The decision to select the Claimant for redundancy was unfairly influenced by the fact that the Claimant had fallen out with management, as evidenced by the fact that Ben Shacham had treated the Claimant unfairly over the preceding months and this unreasonably and unfairly influenced the Respondent's decision to select him for redundancy.*
5. *Did the Respondent take reasonable steps to find the Claimant suitable alternative employment? The Claimant asserts that there were suitable alternative roles that should have been offered to him, namely:*
  - 5.1 *Chief of Staff, although the Claimant accepts that this vacancy was withdrawn by the Respondent;*
  - 5.2 *Operations Manager in Media Sales and Content.*
6. *Was the dismissal within the range of reasonable responses?*

**Procedure, documents and evidence heard**

5. I heard evidence from the Claimant, and, on behalf of the Respondent, I heard from Ben Shacham (Chief Corporate Development Officer) and Sarah Nepomuceno (People and Culture Project Manager). Each witness produced a written witness statement. Each side submitted that their evidence was the more credible. I found that all of the witnesses provided reliable and truthful testimony.
6. The parties produced an agreed core and supplementary bundle, of 277 pages and 311 pages, respectively. A remedy bundle of 62 pages was also produced but not referred to during the course of the liability hearing. Two additional documents were disclosed by the Respondent during the course of the hearing: a slack conversation of 13 January 2020; and notes from the interviews conducted for the Operations Manager role.
7. The Respondent prepared a chronology and cast list. The parties provided written closing submissions and the Respondent made submissions in reply to the Claimant's closing submissions.

**Findings of fact**

8. The Respondent is a start-up company operating in the media and travel industries. It produces, publishes and distributes content relating to travel. This includes bookable content, which is often linked to a commercial partner's website. The Respondent generates commission when its users make a booking on a commercial partner's website. In autumn of 2019, the Respondent launched an online travel agency ("OTA") allowing its users to book such items directly on its own website, without using an affiliate partner.
9. Ben Shacham commenced his employment with the Respondent in June 2015. Prior to that, he worked with the Claimant at Price Waterhouse Coopers. Ben Shacham approached the Claimant and encouraged him to apply for a role at the Respondent.

**The Claimant's role**

10. The Claimant's employment with the Respondent commenced on 5 February 2018. His contract of employment, dated 6 December 2017, records his job

title as Operations Manager (Travel). His job title was subsequently changed to Analyst. This change was confirmed to the Claimant by email from the People Team dated 10 October 2018.

11. Initially the Claimant was line managed by Mark O'Donnell (Director of Commercial Content) and his work focussed on bookable content. Thereafter, with the launch of the OTA, the Claimant moved under Ben Shacham's line management, forming part of the "Bookable Inventory Squad" whose work focussed on the OTA.
12. The parties broadly agree what the Claimant's duties were. Ben Shacham accepted under cross examination that the description provided by the Claimant at paragraphs 3-7 of his witness statement was accurate. He therefore accepted that the Claimant's role was broader than simply analysing the data and trends of the Respondent's content, and it included operational elements such as ownership of projects.
13. The disagreement between the parties on this issue relates to the extent of the Claimant's operational duties (which the Respondent asserts were merely tangential to his analyst role), and therefore whether "Analyst" was an appropriate job title for the Claimant. The Respondent's position was that this title accurately reflected the principal work that the Claimant undertook, and that it was also chosen in order to clarify the Claimant's role to others in the business. The Claimant felt the job title was a demotion and complained about it at the time.
14. The text contained in the Claimant's performance reviews from 2018 and 2019 shows that he was significantly engaged in analysis work, and that these were the tasks for which he received particular praise from his line manager. The Claimant accepted under cross examination that analysis was a core part of his role. On the basis of this evidence, I find that the Claimant's core duties were those of an analyst, and that his analytical skills were of particular value to the Respondent.
15. I therefore accept the evidence of Ben Shacham that the change to the Claimant's job title did not reflect a material change to the Claimant's role; it simply better reflected the principal work that the Claimant was employed to do.

16. Sarah Nepomunceo accepted under cross examination that, contrary to the Respondent's usual practice, the Claimant was not consulted before the change of job title. Although I find that the Claimant's role did not materially alter, it is regrettable that the Claimant was not consulted before the change of job title. If he had been consulted, this may have avoided some of the subsequent misunderstanding and difference of opinion on this issue.

David Binns, Lucie Phillips and Vidya Murali

17. There was a factual issue to determine regarding the work that these three individuals were performing for the Respondent, and how similar this was to the Claimant's role.

18. The Claimant was cross examined on this issue. He accepted that he was unable to comment in any detail on the work that these individuals did.

19. Ben Shacham was also questioned in cross examination on this topic. Whilst certain points were put to him, his evidence regarding the work of Lucie Phillips and Vidya Murali, and the difference between the Claimant's and David Binns' roles was unchallenged.

20. I accept the Respondent's evidence as to the work that these three individuals were performing. I have done so because of the Claimant's admission, Ben Shacham's unchallenged evidence on this issue, and since I consider that the Respondent would logically be best placed to comment on the duties performed by other employees. I therefore make the following findings of fact.

21. David Binns was employed as Senior Operations Manager. The main purpose of his role was to implement and improve operational processes, as well as to project manage large cross-functional strategic projects. It is understandable that the Claimant believed that his role had similarities with that of David Binns, because there was a competency overlap between their roles. However, I accept the evidence of Ben Shacham that, whilst there was an overlap, they had different responsibilities and competencies, and there were large parts of David Binns' role that the Claimant was unable to do.

22. On 6 April 2020 and thereafter, Ben Shacham handed over elements of the Claimant's work to David Binns. As accepted by the Claimant under cross

examination, and as is evident from the content of the contemporaneous emails, Ben Shacham did this because the work was time critical work and the Claimant had communicated that he was struggling to perform those tasks at that time. This situation continued, and the Claimant stated in cross examination that he found this helpful as it gave him more time to devote to the redundancy process. Contrary to the Claimant's assertion during the redundancy process, moving tasks from the Claimant to David Binns does not demonstrate that the Claimant was able to perform David Binns' role. Rather, it shows that David Binns had the competency to perform elements of the Claimant's role.

23. David Binns reported to Lucie Phillips (Director of Operations) who was a senior manager. Vidya Murali was also a Director of Operations (reporting to Xavier De Pauw, SVP Finance and Operations). They both operated at a much more senior level to the Claimant and performed a different role to that which he undertook. Vidya Murali was dismissed on grounds of redundancy in the same process as the Claimant.

24. Following the launch of the OTA, and given the importance of this new area of the Respondent's business, the Respondent decided that David Binns and Lucie Phillips should shift the focus of their operational work from the Content to the Travel and Experiences area of the business. As a consequence, they were moved to the Travel and Experiences team in April 2020. I find that this was simply a change in focus to the work that they were previously doing, and that they were not appointed into new or vacant positions.

25. Lucie Phillips and David Binns were subsequently promoted in June 2020 (to VP Operations and Director of Operations, respectively).

#### Redundancy situation

26. The coronavirus pandemic had a hugely detrimental impact on the travel sector. The Respondent went from having nearly 2,000 bookings in January 2020 to only 89 bookings in April 2020.

27. The Respondent's senior leadership team met in February and March 2020 to consider what costs savings could be made. Initial measures (including a hiring freeze and a pay cut for the senior leadership team) were not sufficient, and

the Respondent therefore proposed that almost half of its employees (115 employees out of a total workforce of 237) would be made redundant. In fact, a total of 89 employees were made redundant across the Respondent's business.

28. Ben Shacham made the decision to place the Claimant's role at risk of redundancy. He also reached the decision regarding the composition of the pool and took the final decision to terminate the Claimant's employment. It was put to Ben Shacham in cross examination that he could have expanded the pool to include David Binns, Lucie Phillips and Vidya Murali. However the Claimant did not challenge, and I therefore accept, Ben Shacham's evidence that he considered the appropriate pool and concluded that, as the Claimant's role was neither interchangeable nor similar to anyone else's, and as the Claimant had a distinct role and function, it was appropriate to place the Claimant in a pool of one.

#### Collective consultation

29. Due to the number of proposed redundancies, the Respondent carried out a collective consultation process, the facilitation of which was led by Sarah Nepomuceno.

30. On 31 March 2020 Kris Naudts (then CEO, now Chairman of the Respondent) made a company-wide announcement by video call. This was followed up by an email from the People Team, inviting employees to stand as employee representatives and explaining the collective consultation process.

31. Seven employee representatives were appointed. The Claimant was assigned to the Marketing, Travel and Media Sales group of affected employees. They elected Sabina Shaida to act as their employee representative.

32. The Respondent held eight meetings with the employee representatives in April and May 2020, to provide training to the representatives and to facilitate collective consultation.

33. After each collective consultation meeting, the People Team produced or updated a running document of questions that had been raised, and sought to provide answers to those questions that they deemed to be relevant. The

employee representatives were encouraged to share feedback and notes with their constituents.

34. As a consequence of concerns that were raised during the process, the timeline was extended to provide more time and to accommodate further collective consultation meetings. Initially the Respondent had proposed that the deadline for applications for alternative roles would close around 20 May 2020. This was delayed to by two days (to 22 May 2020), whereas the date for the individual consultation meetings was pushed back by one week.
35. Although the Claimant was not an employee representative, he was heavily involved in the process and submitted a large number of questions. He posed 112 questions directly to the People Team by email of 15 May 2020, having already raised these with Sabina Shaida as part of the collective consultation process. Additionally, he had raised questions through collective consultation about David Binns and Lucie Phillips' move to the Travel and Experiences team. The majority of these questions were answered during the collective consultation process, as was apparent from the documents contained in the supplementary bundle, and the Claimant's evidence under cross examination.
36. At the time of writing his email of 15 May 2020, Sabina Shaida had not shared the collective consultation answers with the Claimant. He therefore believed that the answers would not be forthcoming from the Respondent. It is understandable that the Claimant was anxious to obtain answers to his questions, particularly given the timeframes of the process. However, by posing his questions at both the collective and individual level, the Claimant placed an unnecessary burden on the Respondent's already overstretched People Team. The People Team consisted of six people and, as explained by Sarah Nepomuceno in evidence, they received hundreds upon hundreds of questions from employees regarding the process.
37. The Respondent has disclosed email and slack conversations that demonstrate the frustrations that Ben Shacham and the People Team felt at this time, specifically in relation to the Claimant's questions. Whilst I accept the submission of the Respondent that these were unguarded communications made during a highly pressurised period, I find that they were deeply unprofessional. In particular, the comment of Karen Kesner, a senior member

of the People Team, who forwarded the Claimant's questions to Ben Shacham with the comment *"No action needed on this – only sending for a good laugh."*

Individual consultation

38. Shortly after the announcement of 31 March 2020, on or around 2 April 2020, the Claimant met with Ben Shacham to have a brief catch-up about the redundancy announcement. The Claimant recalls that Ben Shacham made a number of statements during the course of the meeting, such as *"I'll help you look for a job and be a reference"* and *"there's a planned structure in place, which doesn't include your role"*. He considers that these statements show that the decision to dismiss had already been made.

39. When questioned under cross examination, Ben Shacham did not recall the specific statements alleged by the Claimant, but he accepted the general substance of them. However, he stressed the context of the statements, namely that he was seeking to manage the Claimant's expectations and to help him as a friend. The Claimant accepted under cross examination that the latter of the statements quoted above was simply Ben Shacham informing him why his role was at risk.

40. I find that Ben Shacham made statements during the course of the 2 April 2020, such as those quoted above, which the Claimant could reasonably have understood as meaning that a decision had already been reached on his continued employment. It is regrettable that Ben Shacham was not more careful in his choice of words, as this no doubt fuelled the Claimant's feelings that the process was unfair.

41. However, given the stark reality of the situation facing the Respondent, I find that Ben Shacham was merely being realistic and honest with the Claimant, and was in fact trying to support him. In light of the extensive consultation process that then followed, I do not find that a decision to dismiss had been made at this early stage.

42. On 14 May 2020, whilst the collective consultation process was still ongoing, at risk employees were notified that they could book an individual consultation meeting with a member of the senior leadership team, at which they could

discuss ways to mitigate or avoid redundancy, as well as ask any questions they might have about alternative roles.

43. At this time, the Claimant was awaiting a response to his email of 15 May 2020, and the 112 questions he had posed at both the individual and collective level. On 19 May 2020, having received the collective response, the Claimant reduced his list of questions to 22, most of which related to the process of applying for open roles.

44. The Claimant decided to delay scheduling his individual consultation meeting until he had received a response to his outstanding questions. He did not schedule a meeting until he was prompted to do so by a member of the People Team (Gemma Jones) on 21 May 2020. Whilst the Claimant's decision to wait for answers is understandable, it would have been best if he had engaged in the individual consultation process earlier, particularly since this was expressly stated to be an opportunity for the Claimant to pose questions about alternative employment. By delaying in scheduling his first meeting, the Claimant was left with little time to prepare his applications for alternative roles.

45. The Claimant attended two individual consultation meetings chaired by Ben Shacham, on 22 May 2020 and 3 June 2020. At the first meeting, the Claimant principally asked questions regarding alternative roles, and many of his outstanding questions on this topic were then answered.

46. At the second meeting (on 3 June 2020), the Claimant challenged the redundancy decision and discussed ways to avoid, reduce and mitigate redundancies. Although he did not use the terminology, the Claimant challenged Ben Shacham's decision as to the composition of the pool. Ben Shacham justified his decision and articulated his view as to the difference between the Claimant's role and that of David Binns and Lucie Philipps.

#### Alternative employment

47. All at risk employees were given the opportunity to apply for all vacant positions. An initial list of vacancies was produced on 15 April 2020. This was updated a number of times, and a final version was shared with at-risk employees on 13 May 2020. The application process opened on 13 May 2020 and closed on 22 May 2020.

48. As part of the collective consultation process, the Respondent published its proposed assessment process, which stated that candidates would be reviewed against specific, objective and fair criteria.
49. The Claimant applied for three roles: Travel Manager, Chief of Staff and Operations Manager. The Claimant withdrew his application for the first role.
50. On 29 May 2020 the Claimant interviewed with Kris Naudts for the Chief of Staff role, and he performed well. The Respondent then decided not to recruit for this position. The Respondent has still not recruited for a Chief of Staff. The evidence of Ben Schaham, which I accept, is that the Respondent does not need a Chief of Staff.
51. Understandably, the Claimant feels aggrieved that the Respondent withdrew a vacancy for which he performed well at interview. This sense of grievance has been exacerbated by the disclosure of a slack conversation dated 2 June 2020 in which Kris Naudts explains that “*feedback on [the Claimant] from around the business was deafeningly negative*”, and that he was not previously aware of the extent of this.
52. On 2 June 2020 the Claimant attended an interview for the Operations Manager role, chaired by Xavier De Pauw and Kate Glover. Again, he performed well at interview. Sarah Nepomuceno was the notetaker at the interview. Her notes of the interviews were disclosed at the start of the second day of the hearing.
53. The interview notes were in summary form. They record that candidates were asked a set of standardised questions that broadly adhered to the proposed assessment process. However the candidates were not asked every or identical questions.
54. The interview notes include a very short debrief section summarising the performance of the six candidates. There is no evidence that the “*lever scoring rubric*” referred to in the proposed assessment process was followed. This section records that Natalina Manni, who was subsequently offered the role, was a “*very strong candidate – stood out*”. The note next to the Claimant was: “*not right fit*”. A similar statement was made about another interviewee (Matt Watson): “*not fit for this role*”.

55. Also on 2 June 2020, but before the Claimant's interview, Lucie Phillips wrote an email to Kris Naudts in which she correctly presumed that Natalina Manni would be appointed to the Operations Manager role. In this email she stated that, despite their relatively junior level, she trusted Natalina Manni (and David Binns) to deliver.
56. The following day, on 3 June 2020, Sarah Nepomuceno sought feedback from Xavier De Pauw on the unsuccessful candidates. In his reply, Xavier De Pauw gave feedback on the three unsuccessful candidates that "*stood out*"; this included the Claimant. In each case, the candidate lacked the necessary experience when compared to Natalina Manni.
57. Sarah Nepomuceno communicated the feedback to the Claimant by telephone and email on 4 June 2020.
58. Given that he had not been successful in securing alternative employment, the Claimant was served with notice of termination of employment on 4 June 2020. His employment terminated after a period of garden leave, on 4 September 2020.

### Grievances

59. The Claimant lodged two grievances during the course of the redundancy process.
60. The first grievance, dated 27 May 2020, related to the consultation process and specifically the questions which he considered to have been unanswered during the process. The Respondent investigated this on the papers and communicated its decision not to uphold the grievance by email dated 9 June 2020.
61. The second grievance, dated 17 July 2020, was effectively an appeal against termination. The Respondent declined to hear this as it was presented outside of the timescale to appeal. The Respondent invited the Claimant to put forward extenuating circumstances, but he did not do so.

The Claimant's relationship with Ben Shacham and others

62. The Claimant asserts that his relationship with Ben Shacham deteriorated over time. He points to slack and email conversations in support of this assertion, which he says demonstrate that he was treated with indifference at best, and hostility at worst.
63. First, on receipt of the Claimant's email that precipitated the handover of work to David Binns on 6 April 2020, Ben Shacham communicated to Karen Kesner that the Claimant had not done any work in the previous two days. Ben Shacham accepted under cross examination that he jumped to conclusions on this point. Given this admission and the fact that the Claimant had expressed mental health difficulties in the email, it was inappropriate for Ben Shacham to make such a comment.
64. Second, and as previously mentioned, Ben Shacham expressed frustration regarding the Claimant's email of 112 questions to the People Team on 15 May 2020. The Respondent's communications behind the scenes on this point arose from understandable frustration but were nevertheless unprofessional.
65. These documents do demonstrate frustration and unprofessionalism on the part of Ben Shacham. But they must be read in the context of other documents, such as the slack conversation between the Claimant and Ben Shacham of 31 March 2020, which demonstrates a supportive approach. Whilst there may have been some deterioration in the relationship, given the stressful redundancy situation, I do not find that this was significant or sinister, or that it influenced the redundancy process.
66. The Claimant also relies on the fact that Ben Shacham handed over his work to David Binns. I find that this was not a hostile, but rather a supportive action, and one that the Claimant ultimately found helpful, as it allowed him to focus on the redundancy process.
67. There is evidence that others within the business held a negative view of the Claimant. In fact, according to the slack conversation of 2 June 2020, referred to above, *"feedback on [the Claimant] from around the business was deafeningly negative"*. It is not clear where this feedback came from or precisely what it related to. Ben Shacham was not a party to this slack

conversation. When asked about this in cross examination he explained that he had shared his frustrations about the Claimant's professional work with Kris Naudts prior to the redundancy process, and that the Claimant was made aware of these at the time. I find as fact, on the basis of Ben Shacham's evidence, that he was unhappy with certain elements of the Claimant's professional work prior to the redundancy process and that he raised them with the Claimant.

68. A slack conversation of 13 January 2020 (which was an additional document disclosed by the Respondent on the first day of the hearing) records Vidya Murali raising with Ben Shacham her frustrations regarding the Claimant. Ben Shacham received similar feedback on the Claimant from Lucie Phillips, who described the Claimant as not being a "team player". Ben Shacham raised this matter with the Claimant in a meeting on 12 February 2020.

### **The law**

69. Section 94 ERA provides that an employee with sufficient qualifying service has the right not to be unfairly dismissed by his employer. Section 98 ERA provides so far as relevant:

*(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, or*

70. Redundancy is defined at section 139 ERA as follows:

*(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.

71. The leading guidance on the fairness of redundancy dismissals, as set out in **Polkey v A.E Dayton Services Ltd** [1988] ICR 142 and **Williams v Compair Maxam** [1982] ICR 156, is that, in general, an employer acting reasonably will give as much warning as possible to affected employees of the impending redundancies; consult them about the decision, the process and alternatives to redundancy; adopt a fair basis on which to select for redundancy; and take reasonable steps to find alternatives such as redeployment.

72. As part of the selection process, the employer may first construct a pool of affected employees. The employer's reasoning should be considered with care to determine if it genuinely applied its mind to this issue, and whether its choice of pool was a reasonable one: **Capita Harsthead Ltd v Byard** [2012] ICR 1256.

73. In cases of selection by way of interview, a greater level of subjectivity is generally permitted, and if an employer departs from its own selection process, that will not necessarily, or in and of itself, render the decision unfair: **Morgan v Welsh Rugby Union** [2011] IRLR 376, approved in **Samsung v Monte-D'Cruz** UKEAT/0039/11DM.

74. In respect of redeployment, the duty on the employer is only to take reasonable steps, and not to take every conceivable step possible to find the employee alternative employment: **Quinton Hazell Ltd v Earl** [1976] ICR 296. An unrealistic standard should not be imposed on the employer: **British United Shoe Machinery Co Ltd v Clarke** [1978] ICR 70.

75. In considering all stages of the redundancy process, as well as the ultimate decision to dismiss, the issue for me is whether the employer's decision fell

within the band of reasonable responses open to a reasonable employer. It is not for me to substitute my own decision.

## **Conclusions**

### **Reason for dismissal**

76. The parties agree that the Claimant was dismissed on grounds of redundancy within the meaning of s.139 ERA. This is a potentially fair reason: s.98(2) ERA.

77. This conclusion is supported by the evidence of the severe downturn in the Respondent's business, due to Covid-19. As a consequence, the Respondent's need for an Analyst in the Bookable Inventory Squad diminished. In short, as there were so few travel bookings being made, there was very little data for the Claimant to analyse.

### **Warning and consultation**

78. The Claimant accepts that he was provided with a reasonable and adequate warning of the impending redundancy. He was formally warned on 31 March 2020, around two months prior to being given notice of termination of his employment.

79. The consultation process was reasonable. The Respondent carried out an extensive collective consultation process, which the Claimant participated in. Thereafter, he attended two individual consultation meetings. He was given the opportunity to discuss, to understand and to challenge the reason for dismissal, the selection process, and the alternatives to redundancy.

80. The Claimant asserts that the Respondent did not fully or adequately answer the questions he posed about the process. I reject this submission. I find that the Respondent acted reasonably in answering the Claimant's questions, because:

- a. The vast majority of the Claimant's numerous questions were answered by the Respondent. Many of the outstanding questions were then answered during the individual consultation process;
- b. Whilst there were still some outstanding points, there was nothing so significant as to render the consultation process unfair. The Claimant

placed particular reliance on his question regarding the composition of the interview panel, and the need for diversity. However, the composition of the interview panel was not an element of process that he challenged;

- c. I have had regard to the resources of the Respondent, and in particular the People Team, which consisted of just six individuals at the material time. Given the scale of the redundancy process, the People Team were inundated with questions from employees: they received “*hundreds upon hundreds*” as Sarah Nepomuceno put it;
- d. I have also taken into account the fact that the Claimant, in putting questions at both the collective and individual level, duplicated work for the People Team at a time when they were significantly overstretched.

81. Contrary to the Claimant’s submission, I find that the Respondent acted reasonably in its timeline for the redundancy process, because:

- a. The date for applications for alternative vacancies was extended, albeit not by the same length as the extension to the other dates in the process;
- b. The Claimant had a reasonable length of time to consider the alternative vacancies and draft his applications. The vacancy list was first published on 15 April 2020 and finalised on 13 May 2020. The closing date for applications was 22 May 2020;
- c. The Claimant’s first individual consultation process took place on the same date as the closing date for the applications. This gave him very little time to finalise his applications after the conclusion of the meeting. However, it was the Claimant’s choice to delay the date of the first consultation meeting, which he could have scheduled at an earlier date (scheduling for meetings having commenced on 14 May 2020). The Claimant’s reason for the delay was that he wished to receive answers to all of his questions beforehand. However, the consultation meeting was expressly framed as an opportunity for him to raise such questions about the applications process, which he did in fact do.

Selection process

82. The decision to place the Claimant in a pool of one was reasonable, because:

- a. Ben Shacham genuinely applied his mind to the composition of the pool and reasonably determined that the Claimant's role was unique;
- b. Vidya Murali, David Binns and Lucie Phillips held different roles to the Claimant's. Vidya Murali and Lucie Phillips were at a more senior level. Although there was a competency overlap between the Claimant's and David Binns' roles, their jobs were distinct, and the Claimant did not have the capability to perform every aspect of David Binns' role;
- c. The Respondent properly understood the Claimant's job. His core role was analysis and therefore the job title of Analyst accurately reflected the work that he was performing for the Respondent.

83. David Binns and Lucie Phillips moved into the Travel and Experiences team after the announcement of the redundancies. However, they were not, as the Claimant asserts, appointed into vacant positions at this time. They remained in the same roles, performing broadly the same work. The only change to their roles arose because, given the launch of the OTA and the importance of this venture, the Respondent reasonably determined that the focus of their work should shift to the Travel and Experiences team.

84. The Claimant asserts that the decision to select him for redundancy was unfairly influenced by the fact he had fallen out with senior management, and in particular Ben Shacham. I reject this submission because:

- a. Ben Shacham expressed some frustrations with the Claimant's professional work, and his perceived conduct during the redundancy process. However, these matters were neither significant nor extensive. They must also be viewed in context, whereby Ben Shacham also sought to provide support to the Claimant through the redundancy process;
- b. Whilst there was "*deafeningly negative*" feedback regarding the Claimant from throughout the business, it is unclear precisely what this relates to. It may refer to the evidence that two senior employees (Lucie

Phillips and Vidya Mirali) had raised concerns about the Claimant's behaviour and his lack of co-operation, which was raised with the Claimant. These individuals did not make decisions regarding the Claimant's redundancy or the selection process for alternative roles. Vidya Mirali was in fact dismissed in the same redundancy process;

- c. There is no evidence that these matters influenced the redundancy process. Ben Shacham made the decision to put the Claimant at risk and to terminate his employment. I was satisfied that he acted reasonably in his decision and was not influenced by negative feedback.

#### Alternative employment

85. The Respondent acted reasonably in providing the Claimant with details of potential vacancies, for which he was at liberty to apply.

86. The Claimant accepts that the Chief of Staff vacancy was withdrawn. There was therefore no alternative employment in this regard.

87. The Claimant implies, but does not expressly submit, that this vacancy was withdrawn in bad faith following the receipt by Kris Naudts of negative feedback on the Claimant. I reject this submission because:

- a. The Respondent has not recruited for the Chief of Staff role, and does not need one. I therefore find that the vacancy was withdrawn for a genuine reason;
- b. The Claimant relies on the slack conversation of 2 June 2020. Whilst this document shows that Kris Naudts had received negative feedback on the Claimant by 2 June 2020, there is no evidence that this influenced the decision to withdraw the vacancy;
- c. The Claimant criticises the fact that Kris Naudts was not called to give evidence. However, although there was a reference at paragraph 48 of the Grounds of Complaint to the slack conversation, this specific and serious allegation was not expressly pleaded. Nor was this point made clear when the issues were agreed at the outset of the hearing. I therefore do not draw an adverse inference from the fact that Kris Naudts was not called as a witness.

88. The Claimant submits that the Respondent acted unreasonably in respect of the Operations Manager role, as (1) the selection process was subjective and did not accord with the Respondent's published process; and (2) Lucie Phillips had a preferred candidate in mind before the Claimant had been interviewed. I reject these submissions because:

- a. As with all interview processes, the selection process for the Operations Manager role had a degree of subjectivity. The Respondent's proposed assessment process was not fully adhered to. There is no evidence that the lever scoring rubric was used, and candidates were not asked identical questions;
- b. However, it is not necessary for the Respondent to carry out an objective process, or one in accordance with its published process. This is clear from Morgan and Samsung. Further this was not a situation, like Morgan and Samsung, where there was a reorganisation and redundancy selection by way of competitive interview. In this case, the Claimant had already been selected for redundancy. His application for alternative employment was not part of the selection process per se, but represented a potential alternative to redundancy;
- c. The Claimant was not selected for the role due to his lack of hands-on experience. This was apparent from the interview notes and the subsequent more detailed feedback. The Claimant was not selected for the role as he (like at least two other candidates) lacked the necessary expertise and he was unable to compete against the stand out candidate (Natalina Manni);
- d. I do not draw any negative conclusions from the note that the Claimant was "*not right fit*". I have taken into account the relevant context to this, namely: (1) the very brief and summary form of these notes; (2) the fact that a similar statement was made about another interviewee; (3) the later more extensive feedback that was provided by the same interviewer (Xavier De Pauw); and (4) that Xavier De Pauw described the Claimant as being in the top three of the unsuccessful candidates;

e. I do not infer from Lucie Phillips email of 2 June 2020 that there was a preferred candidate in mind, and (if this is in fact submitted by the Claimant) that the interview process was therefore a sham. The email simply evidences that Lucie Phillips presumed that Natalina Manni would be appointed. This may simply be due to Natalina Manni's capability (which was praised in the email) and her relevant experience and stand-out performance at interview (as Xavier De Pauw concluded). The Claimant submits that an adverse inference should be drawn from the fact that the Respondent did not allow Lucie Phillips to give evidence. Lucie Phillips was not a decision maker on the appointment to the Operations Manager role. Further, this factual issue did not become clear until during the course of the hearing. Therefore, I draw no adverse inference in this regard.

Decision to dismiss

89. The Claimant's role was redundant. The Respondent followed a fair and reasonable process in accordance with s.98(4) ERA, but found no alternative to redundancy. The decision to dismiss therefore fell within the reasonable range of responses.

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Employment Judge **Gordon Walker**

Date 25 March 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON  
29/03/2021..

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FOR EMPLOYMENT TRIBUNALS