EMPLOYMENT TRIBUNALS

Claimant: **Mr N Corck**

Respondent: **ABF The Soldiers' Charity**

Heard at: **Croydon and via CVP** **On: 27/11/2020 and 12/3/2021**

Before: **Employment Judge Wright**

Representation:
Claimant: **In person**

Respondent: **Ms S Chan - counsel**

LIABILITY JUDGMENT

It is the unanimous Judgment of the Tribunal that the claimant's claim of unfair dismissal fails and is dismissed.

REASONS

1. The claimant presented a claim of unfair dismissal on 22/11/2019. The respondent claims the dismissal was for the fair reason of redundancy.

2. The respondent is a charity which provides support and benefits to persons who are serving or have served in the British Army, or their dependants.

3. The Tribunal heard evidence from Martin Rutledge, chief executive officer and Robin Bacon, chief of staff for the respondent. It also heard evidence from the claimant and from Mark Rayner, former regional director south-east and the claimant's line manager[1].

4. The claim was listed for one day. When timetabling the case at the outset, it became apparent that two days would be required to hear the evidence and submissions. This was due to the claimant having 70-80 questions to put to Mr Bacon (estimated to equate to approximately two hours) and Ms Chan indicating her cross-examination of the claimant would also take two hours). On the first day the Tribunal heard from all witnesses except for the claimant. The case therefore went part-heard and resumed on the 12/3/2021.

5. The respondent was given permission to recall Mr Rutledge on the second day, to give further evidence on one discrete point. The claimant did not have any further questions for him.

6. The Tribunal had a bundle of 186-pages and heard closing submissions from both parties.

Findings of fact

7. The claimant started to work for the respondent on 6/5/2008 and he was employed as an Executive Assistant (EA). He was born in 1952 and so he was age-65 at the time of his dismissal. He lived in Deal, Kent and worked at the Brompton Barracks in Chatham, Kent.

8. The claimant initially worked at the Shorncliffe office and the relocation to Chatham increased his commute, by car from 34-miles to 98-miles. The claimant said his commute was a 'bug-bear'.

9. At the outset, the claimant was on a 17-hours per week contract working three days per week. His hours increased over time so that by late-2018 he was working 28-hours per week over four days.

10. There were various reviews and briefing papers (pages 48, 60 and 68) which recommended a move to full-time staff, set out a five-year plan and re-organisation of the regions between 2009 and 2014. The Tribunal finds this to be a sensible approach to running the organisation.

[1] Mr Rayner said he had his own unfair dismissal claim against the respondent.

11. In 2014 there was a review of the respondent's 13 regions. The upshot was a recommendation that the West and South-West regions were merged and the South-East (Kent, East and West Sussex and Surrey (the claimant's region)) and the Home Counties were merged with one full-time Regional Director.

12. In September 2018, the Home Counties Regional Director gave notice of his retirement on 31/3/2019. This gave the respondent the opportunity to revisit the 2014 recommendation and to reorganise the regions as per that suggestion.

13. Mr Bacon was then tasked with reporting to the Governance committee with a review of the regions (page 115). He proposed amalgamating the Home Counties and South-East regions, with effect from 31/3/2019, with the result that would place two members of staff at risk of redundancy.

14. At this point, the South-West region had been merged creating one region and Mr Bacon suggested replicating that. His rational was the new South-East region would have:

> 'coterminous boundaries with the regional Army headquarters (HQ 11 Infantry Brigade and South East, based in Aldershot); this is emulated elsewhere in our regional laydown, less for the East Midlands and East Anglia Regions, due to the size of their areas.'

15. Mr Bacon in a review of the regions dated 6/11/2018, said the staffing implications were that instead of the two current part-time Regional Directors (including Mr Lane who was retiring), there would be one full-time Regional Director based at Aldershot and a full-time fundraising manager operating across the new region. He proposed to make the claimant's role of EA a full-time role, with a new job description that had increased fundraising focus and to enable the respondent to better manage the increased database and data compliance requirements.

16. He therefore proposed to put the claimant's part-time EA role at risk of redundancy and said the new role would be available to the claimant 'should he wish to apply for it'. There was to be no change in location. Mr Bacon also calculated redundancy costs for the claimant (pages 115-120).

17. The Board of Trustees approved the proposal on 7/11/2018. As such, Mr Bacon wrote to the claimant on 14/11/2018 putting him on notice that the part-time EA role would be at risk of redundancy (page 121).

18. During a telephone conversation on 21/11/2018, the claimant informed Mr Bacon of his understanding, that he had been given an assurance in 2014 that he could remain in his role until he chose to retire. Mr Bacon's note made after the conversation records that the claimant said:

> 'He did not wish to retire yet and would be prepared to go full time if it meant he could stay employed with the [respondent] – albeit he would ask for some flexibility in his travel to work – he currently drives in on 3 days per week (Deal to Chatham).'

19. The note went on to record Mr Bacon had informed Mr Rutledge and the Director of Regions of the claimant's:

> '… readiness to go full time and they are both content. This will make consultation straightforward.'

(page 123)

20. The Tribunal finds that Mr Bacon understood the claimant had agreed during this conversation that he would accept the full-time EA role and that Mr Bacon, Mr Rutledge and the Director of Regions were content for the claimant to slot into the revised and full-time EA role.

21. The Tribunal finds the claimant and Mr Bacon were at cross-purposes. Mr Bacon thought the claimant had agreed to fill the newly created full-time EA role. The claimant was under the impression Mr Bacon was looking into his claim that his role was secure until he chose otherwise.

22. Mr Bacon then sent an email to the claimant on 20/12/2018 to inform him Mr Rayner had been made redundant that day. Mr Bacon confirmed that a note he was sending out that day would say the EAs in both Aldershot and Chatham will remain unchanged (page 136). It is not clear 'from what' they would remain unchanged.

23. Mr Bacon does not appear, at the point to have dealt with the claimant's assertion in respect of the 2014 assurance he says he was given.

24. The claimant responded (page 136):

> 'Whilst I am disappointed [Mr Rayner] is leaving I greatly appreciate that the [respondent] has taken steps to stand by the reassurances that I'd been given shortly after the initial consultation took place in respect of my position as the EA.'

25. Again, it is not clear what 'initial consultation' the claimant is referring to. He may have been referring to what he said, was the 2014 assurance.

26. Later on 20/12/2018 Mr Bacon sent an email to all the relevant staff regarding the Home Counties and South East merger in March 2019 (page 136A). The final paragraph of the email read:

> 'There will be no change to the EAs in either Aldershot and Chatham Offices…'

27. This is clearly incorrect. The EA role, on the respondent's case in Chatham was increasing in terms of hours (from four days to five) and had

increased fundraising responsibilities, in addition to database/data compliance issues.

28. As the claimant understood things, he had not agreed to perform the EA role on a full-time basis and he was relying upon the assurance he said he had received in 2014 – that he could remain in his role, until he chose to retire. Nothing Mr Bacon had put in writing to him or to the other staff contradicted his view.

29. On 29/1/2019 there was a meeting with the EAs and in advance of that, Mr Bacon had a meeting with the claimant. The claimant said that at this meeting he told Mr Bacon that there was no need for his hours to increase as his workload had fallen over the previous year (he referenced Mr Rayner and it can be inferred that without a Regional Director in place and for the other reasons he referred to that at that point in time his workload was the same or even lower than it had been previously). Indeed, this must have been the case as it was agreed the claimant could remain on his current hours (four days per week) until the end of March 2019.

30. On the claimant's case, the full-time role must have been discussed as it is the claimant's evidence that he told Mr Bacon that he did not want to do his 50-mile round trip commute more than the three times per week he was currently doing. He said that if he could work from home two days per week, he might consider going full-time.

31. Mr Bacon's evidence was that this was discussed in the sense that as the new Regional Director would not be in post until after the end of March 2019, the claimant could remain in his current role until them. Mr Bacon said that he referred to the claimant having agreed to go 'full-time'.

32. At the EA meeting which followed, Mr Rutledge gave an update on the EA position generally. Mr Rutledge's evidence (paragraph 26) is that he informed the meeting that:

> '… (in a general sense) that the respondent had anticipated that they would have the option of moving to the new expanded job specification if they chose, which would allow further development of the role and indeed associated salaries, and I asked for their thoughts on this. Implicit in this was that the new more expansive job specification could only be undertaken by those on a full-time contract. The discussion was only general and generic, and I certain did not make specific mention of any particular individual circumstances during the course of this conversation, nor did I give the claimant any assurances in respect of his position.'

33. Pausing at this point, Mr Bacon thought the claimant has agreed to move to the expanded EA role from April 2019, with there to be a discussion over flexibility in terms of the commute.

34. The claimant had not had any feedback regarding the 2014 assurance which he relied upon that he could remain in his unchanged post until retirement. He knew there were going to be changes from April 2019, but he thought he was unaffected by them. Both parties were labouring under a misunderstanding.

35. On 6/3/2019 Mr Bacon sent another email to the claimant (page 137). He referred to the meeting on 29/1/2019 when he said:

> 'you will recall out conversation during the EAs visit to [head office] about working hours and you going full time once we re-organise with the amalgamated new SE Region.'

36. Mr Bacon went on to refer to issuing a revised contract, the three days per week in Chatham, with the balance of the hours being made up of working from home or elsewhere as required. He went onto say this may be subject to change once the new Regional Director in Aldershot 'got his feet under the table'. It was confirmed the claimant would be paid for a 35-hour week with effect from 1/4/2019. Mr Bacon was then off for the next fortnight and referred the claimant to HR in the meantime.

37. That email was sent at 17:34 and the claimant called HR just after 9:30 on the 7/3/2019. There is a file note which records the conversation and that the claimant was 'confused' by the email he had received. As HR had not been present at the meetings, she was unable to assist.

38. This resulted in a meeting between the claimant and Mr Bacon (with HR as note-taker) on 26/3/2019 (page 139-140). Mr Bacon set out his understanding. The main misapprehension Mr Bacon was under was that the claimant had agree to change to full-time hours during the conversation on 21/11/2018.

39. The claimant recalled the conversations, but said that at no time had he said he was willing to change to full-time hours. The claimant still believed that he could rely upon the 2014 assurance (this was referred to in HR's file note of the meeting on 7/3/2019). The claimant repeated that he did not believe there was a sound reason to change his role to full-time. The claimant also stated he had understood that at the meeting on 29/1/2019 Mr Rutledge had said that it was not mandatory for the EA role to become full-time.

40. From the claimant's point of view, he had not expressly told that he could not rely upon the 2014 assurance, he said he had had. Furthermore, Mr Rutledge had said there were the general and generic discussions about expanding the EA role, without anything more specific. The claimant's interpretation of the situation is It is therefore understandable.

41. Mr Bacon said by this point that the Trustees had agreed to the reorganisation and there was nothing he could now do regarding the decision which had been taken to expand the EA role based in Chatham. Mr Bacon then said that the claimant's current EA role was therefore at risk of redundancy, asked him to consider the full-time role and said the working pattern would be a matter for the new Regional Director and said there would be some travel to Aldershot. He asked the claimant to respond by 1/4/2019.

42. The claimant naturally was disappointed and he said he felt he was 'collateral damage'. His view was that his role had been put at risk of redundancy to oust Mr Rayner from his position.

43. The claimant wrote to Mr Bacon on 1/4/2019 and reported a conversation with the new Regional Director. Firstly, the claimant set out his understanding of the events. Secondly, he reported that he understood as the previous meeting Mr Bacon had agreed to him working from home for two days per week and he was prepared to accept this. Then when he spoke with the new Regional Director, he had been told that he was expected to work in Chatham four days per week and from home one day. Understandably, based upon the claimant's interpretation of events, he felt that the 'goal posts have been changed again'.

44. Although there is a complete lack of clarity over what was being proposed and accepted, Mr Bacon had been consistent and the Tribunal finds that the requirements of from where the claimant would work in the new full-time EA role was always going to be left for the new Regional Director to decide. The Regional Director would be new in post, the region was a new and merged region and the EA role had been expanded. The amount of time the full-time EA role was in the office, on the road or was able to work from home was to be left for the new Regional Manager to decide.

45. Mr Bacon replied on the same day (page 142). He confirmed he had spoken to Mr Rutledge regarding the working pattern. Mr Rutledge was prepared to continue to allow the claimant to work from home for one day per week and he would be required for the other four day to go to the office in Chatham or elsewhere on the respondent's business (e.g. Aldershot or external meetings). In view of the claimant's email, Mr Bacon confirmed the claimant's substantive EA role was now at risk of redundancy.

46. Mr Bacon wrote to the claimant n 3/4/2019 informing him the EA role was at risk of redundancy and that a consultation period was to start (page 143). The claimant was invited to a meeting on 9/4/2019. The claimant confirmed his attendance (page 145).

47. The meeting took place on 9/4/2019 and the claimant's companion was the new Regional Director (page 146). Mr Bacon explained that this was the first consultation meeting and he highlighted the full-time roles which were vacant, the EA role and that of Fundraising Manager. He went onto explain the rationale behind the reorganisation and how the respondent came to be in this position.

48. The claimant reiterating his view that he had been given an assurance that his role was 'safe' until he chose to leave or to resign. In response, Mr Bacon said that there was no written record of the conversation to which the claimant referred in 2014. The claimant said Mr Rayner had told him that Mr Rutledge had said to him that the claimant could remain in his role until he chose to retire. Irrespective of that, Mr Bacon said it was open to the respondent to make changes. Besides the two vacancies already discussed, Mr Bacon referred to a role at Head Office and one in the South West.

49. There was then a further discussion about the requirement to be in the office in Chatham. The claimant said he wanted to work three days in the office and two days at home. Mr Bacon responded that he could not make any promises, however, there was never any suggestion of only three days in the office, 'given that the role required the post holder to be out and about the Region'. Mr Bacon then said he was not able to give a working pattern beyond one day from home and duties could take him all over the area. The claimant then made the point that he did not see why the EA role in Chatham could not continue as part-time until the new Regional Manager had 'bedded in' and to then have a discussion about whether or not it should be a full-time role.

50. The second consultation meeting took place on 16/4/2019 (pages 153-157). The parties went over the same ground, with the claimant saying 'he did not believe he had ever agreed to working full-time and what he had in fact said was he didn't want to go full-time but nor did he want to give up working or lose his job'. The claimant's note records he reminded Mr Bacon (it is not clear when this statement was made unless the claimant is referring to the previous meeting) of his two suggestions:

> '(1) to continue as he worked currently until such time as anyone thinks that he's not getting the work required of him in the time available, when a discussion could then take place about making his post full-time; and
>
> (2) [the claimant's] offer to work full-time with 3 days in the Chatham office and 2 days working from home.'

51. A third meeting took place on 20/5/2019 (pages 161- 162). Mr Bacon confirmed the two options proposed by the claimant had been considered,

but that the new role was a full-time one and there had already been a concession to work from home one day per week. Having given consideration to the suggestions, the respondent was unable to accommodate either of them. By this stage, the claimant said any enthusiasm he had for the respondent was 'wiped'.

52. The claimant rejected the offer of a full-time EA role and as such, Mr Bacon set out the redundancy calculation and he confirmed the claimant would be placed on garden leave for his 11-week notice period. The claimant was offered a right of appeal.

53. The claimant did not exercise the right of appeal. He had three reasons for not doing so. Firstly, he felt that it would be a waste of time. Secondly, he felt that if he remained in employment he would have a 'target on his back'. Thirdly, the way he had been treated 'erased all desire' he had to continue to work for the respondent.

54. On 20/5/2019 Mr Bacon wrote to the claimant to confirm his post was redundant and he was to handover his responsibilities the following day. The claimant was given 11-weeks' notice of termination and he was placed on garden leave until his employment terminated on 6/8/2019.

55. The Tribunal was told the respondent's offices at Chatham were occupied on a grace and favour basis. It was an informal arrangement, no rent was paid and the respondent could only use the premises if the army continued to agree that it could do so.

56. The claimant did not accept this to be the case. He was of the view the removal of the respondent from Chatham was somehow engineered in order for the respondent to strengthen its defence to his claim.

57. The Tribunal finds this not to be the case. The new South East Regional Director wrote to the Ministry of Defence's representative at Chatham on 5/9/2019 setting out the respondent's position and confirmed the claimant had now departed (page 170). As by this point, the claimant was not going to be replaced, there were discussions about vacating the office. This was later confirmed and the respondent removed its belongings on 16/1/2020 (page 186).

The Law

58. Section 94 of the Employment Rights Act ("ERA") states that an employee has the right not to be unfairly dismissed by his employer.

59. Section 98 ERA states:

(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—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

…

(3) 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

[Tribunal's emphasis]

60. Section 98 (1)(b) ERA, dismissal for some other substantial reason is referred to by the initialisation SOSR.

61. Section 139 ERA states:

> *(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.*

62. The ERA requires the claimant to prove that he has been dismissed. The burden then shifts to the employer to prove the reason for the dismissal. If the respondent succeeds in showing a potentially fair reason for dismissal, there is a neutral burden for the purposes of determining whether or not the dismissal was fair.

63. If the respondent fails to show a potentially fair reason for a dismissal it is unfair. If a potentially fair reason is shown, the general test of fairness in section 98(4) must be applied. The helpful test is the range or band of reasonable responses, a test which originated in the misconduct case of British Home Stores v Burchell [1980] ICR 303, but which has been subsequently approved in a number of decisions of the Court of Appeal. An approach based on the 'Burchell test' can be useful in cases other than conduct cases, albeit that the focus must always be on the statutory wording.

64. The manner in which the employer handled the dismissal is important in considering whether the Respondent acted reasonably in all of the

circumstances in treating that reason as a sufficient reason for dismissing the claimant. A Tribunal will therefore be keen to find out that the process which led to the claimant's dismissal was affected in an appropriate way, i.e., within the range of reasonable responses applicable to an employer of the size of the respondent with such administrative resources available.

65. It is important that in carrying out this exercise the Tribunal must not substitute its own decision for that of the employer.

66. The case of Gwynedd Council v Shelley Barratt & other Respondents [2020] UKEAT UKEAT/0206/18/VP involved the dismissal of the claimants for redundancy following the closure of the school where they worked. They were unsuccessful in applying for positions at a new school that opened at the same location. The Tribunal held that the dismissals were unfair because of the failure to provide the claimants with a right of appeal, the absence of consultation and because of the manner in which they were required to 'apply for their own jobs'.

67. The Tribunal is not obliged to find that the reason for dismissal was that advanced by either side Kuzel v Roche Products Ltd 2008 ICR 799, CA:

> 'If the employer does not show to the satisfaction of the tribunal that the reason was what he asserted it was, it is open to the tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the tribunal must find that, if the reason was not asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so. As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side.'

68. 'Mislabelling' can occur in relation to business reorganisations that may or may not amount to redundancy. In Hannan v TNT-IPEC (UK) Ltd 1986 IRLR 165, EAT, the respondent contended the reason for dismissal was redundancy. The EAT upheld the Tribunal's decision that the reason for the dismissal was a reorganisation constituting SOSR, and not redundancy, even though the employer had not pleaded or canvassed SOSR. The EAT took the view, the difference was simply and genuinely one of labels: all the facts and issues had been fully canvassed at the tribunal hearing. Also in Jocic v London Borough of Hammersmith and Fulham and ors EAT 0194/07, the EAT held that the substitution was no more than the attachment of a different label (SOSR rather than redundancy) to precisely the same set of facts and had not caused any prejudice.

Conclusions

69. The Tribunal concludes there was no 2014 assurance made to the claimant in the way he interpreted it. He was never told that his job would be safe until he chose to retire. In any event, no employer can give such an open-ended assurance. It was not reasonable for the claimant rely upon it; his own case was that he had not directly been given the assurance by Mr Rutledge. His case was that the statement had been made via Mr Rayner. If such a wide-reaching statement were to have been made, the Tribunal finds it would have had to have been made directly from the CEO to the claimant. On the balance of probabilities, the Tribunal finds no such statement was made.

70. There was a misunderstanding between Mr Bacon and the claimant as to what had been agreed and they were at cross-purposes. This was exemplified by the claimant's confusion when he received the email about the new contract on 6/3/2019. The confusion was not helped by Mr Bacon then going on leave and not being able to speak directly to the claimant until 26/3/2019.

71. It was clear, Mr Bacon had thought the claimant had said something like, he did not really want to work full-time, but that he would do so rather than leave. The claimant thought what had been agreed, as per his understanding, was the role would eventually be made full-time, after he had left, but until that point, he could continue four days per week.

72. The respondent's view that the four day per week EA role was redundant was incorrect. The role was not redundant at that time. The requirement to carry out work of a particular kind had not ceased or diminished. Nor were it expected to cease or diminish. It was the respondent's case that it envisaged the requirements of the role would expand and increased.

73. By contrast, it was the claimant's case that the role had been reducing for some time. He told Mr Bacon at the meeting on 29/1/2019 that:

> 'I didn't believe that there was a need for my hours to be increased. My workload had been falling over the course of the previous year. Mainly due to the West Sussex committee virtually disappearing and the East Sussex committee reducing the number of events they ran. In addition, due to the problems he'd had with Hurstwood Park, Mark Rayner had been reluctant to get involved with the organisation of new events.'

74. The claimant's case, that the requirements of the role had reduced and were reducing is accepted. This was the reality of the situation. Between the issue of the reorganisation arising and the claimant's departure, he continued and was allowed to continue in the four day per week EA role. When the claimant left, he was not replaced. He was not even required to work his notice period and he was placed on garden leave. Due to the

fact the claimant was not replaced led to the closure of the respondent's office in Chatham. Overall, the role was then redundant.

75. The respondent is entitled to reorganised and to adjust roles and responsibilities. All roles evolve over time, whether that be as a result of technology changes, outside events (for example, the impact the Covid-19 pandemic has had on working from home) and organic changes. A role will clearly change from 2008 to 2019.

76. The Tribunal does not find the reorganisation to have been a sham and nor was it designed to remove the claimant from his role. The accepted evidence was that if the claimant had wanted the revised EA role, it would have been given to him.

77. Irrespective of the view the respondent took, that an expanded EA role was required in Chatham, the reality was that the role was in fact ceasing or diminishing. Once the claimant left, the role was deleted and he was not replaced.

78. The Tribunal was concerned whether or not the redundancy consultation was futile. By the time it commenced on 26/3/2019, Mr Bacon told the claimant:

> '… explained that the Trustees had been briefed and had accepted the [respondent's] Review recommendation that the EA SE post should be a full-time post; this was not something [Mr Bacon] could not change as it was not in his 'gift' to do so.'

79. That is not effective consultation. That was presenting the claimant with a *fait accompli*. That being said, again, the Tribunal has looked at what happened in reality, despite the position the respondent had taken. There were meetings on 26/3/2019, 9/4/2019 and 16/4/2019 and 20/5/2019. At all of the meetings, the situation was discussed and the claimant was able to put forward his views and suggestions. These were considered if ultimately rejected by the respondent. The Tribunal concludes by default, what took place did amount to a form of consultation about the future of the claimant's role. The Tribunal also finds that the matters discussed at the meetings did demonstrate the respondent wanted the claimant to remain within the organisation. With the departure of Mr Raynor and the appointment of a new South East Regional Director, based in Aldershot, it would make sense to have the continuity of the claimant remaining in his role. The respondent would have been aware of the claimant's age and there were discussions about him retiring; he was going to leave at some point in the next few years. There would therefore be the opportunity to reorganise the role then. The claimant had however, made his position clear that he wished to continue working for the time being. Furthermore

during this period of time, the respondent did discuss other vacancies with the claimant, which he could have applied for.

80. As seems to be a feature of this case, there was another misunderstanding between the claimant and Mr Bacon. The Tribunal finds that it was clear when the discussions were ongoing, the respondent was presenting the revised role as full-time (five days per week), three days in the office, one day at home and the fifth day 'out on the road' in some format or other (Aldershot or visiting other parts of the region). During the course of the hearing, the claimant said that he would have accepted that had it been offered. What he objected to was travelling to Chatham for four days per week. The Tribunal finds what the claimant wanted was offered to him. It may well be that by that time, the previous misunderstandings had soured the relationship from the claimant's point of view, such that he did not acknowledge that what he now said he would have accepted, was in fact offered to him.

81. Another aspect of this case which troubled the Tribunal was whether or not the claimant had requested any form of trial period for the new role, which was not then offered to him?

82. The Tribunal finds that due to the position he took upon receipt of the email of 6/3/2019, the subsequent events, including the claimant's view the 'goal posts' had been moved again and that he had lost all enthusiasm in working for the respondent; that had a trial period been offered the claimant would not have accepted it. This is also evidenced by the claimant's failure to appeal against the decision the respondent had taken.

83. The Tribunal finds the claimant was already unhappy with the respondent. He was disappointed that Mr Rayner had left. He was also disgruntled that, as he saw it, the respondent had reneged on the 2014 assurance he felt he had received that he could remain in post, without any substantive changes being made, until he chose to leave. There was the fundamental misunderstanding that Mr Bacon had the impression the claimant would prefer to work full-time rather than leave. Furthermore, the respondent had in fact offered to the claimant, what he now said he wanted: three days in Chatham, one day at home and one day 'out on the road'. Yet still the claimant did not accept that offer.

84. Having found both parties were labouring under misapprehensions, the Tribunal has to conclude that the respondent had clearly put its position to the claimant at the meeting on 26/3/2019. In response to the claimant's email of 1/4/2019 Mr Bacon confirmed the claimant could continue to work from home one day per week, and the remaining four days would be either in Chatham or elsewhere on the respondent's business.

85. The Tribunal finds there was dialogue between the parties and that Mr Bacon did keep lines of communication open, he responded to queries which the claimant raised and he engaged with the claimant during the meetings which he held.

86. The Tribunal finds that what the claimant wanted to do, was to remain in his unchanged role and was not prepared to compromise, despite what he said. In the circumstances, it did not make sense for the respondent to lose him from the organisation, with a new Regional Manager in place taking over a new region, who was not based in the east of the region.

87. On balance, the Tribunal finds that a longer period of consultation or ongoing discussions would not have made any difference to the outcome. The only outcome the claimant would have accepted, was no change to his role for as long as he continued to work for the respondent. The respondent was entitled to reorganised and to realign the EA role. It in effect consulted with the claimant and made proposals. The respondent can however also be criticised for a lack of transparency. Had Mr Bacon immediate confirmed his understanding of the discussion on 21/11/2018 in writing, the misunderstanding may have been avoided.

88. Having found the reason for dismissal was that the claimant's role was redundant and in then determining whether or not the dismissal was unfair, the Tribunal considers that overall, the respondent acted reasonably in treating that reason as sufficient reason for terminating the claimant's employment. The process and decision taken fell within a range of reasonable responses an employer of a similar size and with similar resources could take.

89. The respondent's failings, although not sufficient to amount to so unreasonable to render the dismissal unfair, are in part the reasons why it found itself defending this claim. A clear and coherent strategy and some consistency in what it was trying to achieve, may have avoided the misunderstandings which arose.

90. For those reasons, the Tribunal finds the dismissal was fair by reason of redundancy and the claimant's claim fails and is dismissed.

7th April 2021

Employment Judge Wright