Case No: 1309741/ 2020

EMPLOYMENT TRIBUNALS

Claimant: Mr Peter Thornhill

Respondent: Wyevale Nurseries Ltd

Heard at: Birmingham remotely by CVP **On:** 17 and 18 June 2021

Before: Employment Judge Battisby (sitting alone)

Representation
Claimant: In person
Respondent: Mr R Bradley, counsel

JUDGMENT

The claim for unfair dismissal fails and is dismissed.

REASONS

The claim, preliminary matters and the issues to be decided

1. The hearing was conducted over two days by video with all participants using the Cloud Video Platform. The claimant was unrepresented, but was well able to cope with the arrangements.

2. This was a claim for unfair dismissal. At the start of the hearing, I was aware that the respondent had applied for a witness order and a postponement of the hearing on the basis that one of its witnesses, Mr Chris King, had only recently indicated that he was unable to attend. The claimant had opposed the application for a postponement and EJ Woffenden had directed that the hearing should proceed. Upon exploring the matter further, the claimant confirmed that he did not seek to challenge Mr King's evidence and, in particular, his personal scoring of him on the redundancy selection criteria matrix, so there was no need for a postponement and everyone was agreed that the hearing could proceed in Mr King's absence, taking his witness statement into account.

3. Mr Bradley, on behalf of the respondent, also requested that the hearing should be solely confined to the question of liability on the basis that the claimant's mitigation evidence had only been provided on 10 June and there had been insufficient opportunity to comment on it and adduce any contrary evidence. It was agreed that his application would be considered

   at the point at which I give judgement on liability as there might not be enough time in any event to deal with remedy at that point.

4. We identified the issues to be decided in the first part of the hearing as follows: –

a. What was the reason or principal reason for dismissal? The respondent says the reason was redundancy.

b. 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. The tribunal will usually decide, in particular, whether: –

   i. the respondent adequately warned and consulted the claimant;

   ii. the respondent adopted a reasonable selection decision, including its approach to a selection pool and the marking the scoring;

   iii. the respondent took reasonable steps to find the claimant suitable alternative employment; and

   iv. the dismissal was within the range of reasonable responses of a reasonable employer

c. if the claimant succeeds with his claim, whether there was a chance the claimant would have been fairly dismissed, if a fair procedure had been followed (the 'Polkey issue').

5. Without going into the particulars, the essence of the claimant's case is that there was no genuine redundancy situation and that, even if there were, the selection criteria and the way in which they were scored was lacking in objectivity and, finally, that the respondent did not give due or any consideration to his suggestions made to avoid his redundancy.

Evidence and the facts found

6. For the respondent, I heard evidence from Emily Wright, formerly employed as its HR manager; Ray Jenkins, production director of the respondent's Transplants division; Carol Dickinson, head of Business Support; Andrew Johnson, managing director; and Heather Williamson, chairman. In addition, I received and read the witness statement of Mr Chris King, assistant production manager. I heard evidence from the claimant, who did not call any witnesses.

7. Overall, I found the witnesses of the respondent to be credible and open to accept where some mistakes may have been made in the process. I found the claimant to be intelligent, but unfortunately unable to accept where he was clearly wrong, such as in his insistence that Mr Wright's scoring played a part in the decision to make him redundant when it really could not have. Eventually, under questioning, he conceded it had not. His verbal testimony did not always ring true when compared with his contemporaneous communications. On many occasions where his evidence was at odds with the respondent's witnesses, he failed to challenge them in the hearing, despite my instructing him more than once that he should do so wherever he disagreed with their evidence. He tended to focus on a small number of such matters whilst avoiding some of the more major instances. Mr Bradley was entirely fair in his approach, particularly where he questioned his witnesses on matters that would normally be left to the claimant. I, too, covered some of what the claimant failed to ask the respondent's witnesses regarding his case without straying into the realms of cross examination, which would have been unfair on the respondent. Whilst I have made allowance for the fact he is a litigant in person and inexperienced, I have to weigh the evidence and, in those areas of differing recollection, where it is convincing, consistent and backed by contemporaneous documents, the lack of any challenge in addition almost makes it unassailable.

8. I received a bundle of documents running to 136 pages. Where I refer to documents in this judgement, the page numbers refer to this bundle, which I received in both electronic and hard copy form.

9. The respondent runs a horticultural and nursery business, growing and supplying stock to the trade. Its head office is based in Hereford. At Ledbury, about 18 miles away, it has what is known as a Transplants division. This deals with growing on hedging. At the relevant time the respondent had about 120 employees. At the head office there were 70 to 80 staff. At the Transplants site, because of the seasonal nature of the work, it employed around 30 to 40 people during the planting season dropping to 3 or 4 people

out of season. The business was set up in 1930 as a family business. Indeed, the current chairman, Heather Williamson, took over from her father on his death in 2011. Despite its growth over the years, it still operates as a family business with close working relationships and much informality. Particularly in the Transplants division, they have tended to focus more on the physical work than on the paperwork.

10. Prior to the redundancies which gave rise to this claim, the respondent employed one full-time member of staff in administration at the Transplants site office together with another full-time member of staff who worked for eight months at the Transplants office and four months at the Hereford office. The claimant was the full-time member of staff in administration, who only worked at the Transplants office. At the Hereford office there were four people employed in the administration section and one other person, who was employed in a mixture of administration and sales. Accordingly, there were seven persons in total involved in the respondent's administration working under Ms Dickinson. Towards the end of March 2020 most staff were placed on furlough due to the Covid – 19 pandemic. In June, given the uncertainty at the time, the trading position and the belief that the furlough scheme would end in October 2020, Mr Johnson and the management team started to look at making redundancies across the business in order to save costs. Ms Wright was tasked with preparing some guidance on the redundancy process that might be adopted and, at the end of June, there was a senior management team meeting held by video to confirm the total number of redundancies proposed and the number of staff at risk of being made redundant.
11. On 2 July Mr Johnson sent out an announcement to all staff advising them of this (34). He explained the reasons and the impact of the pandemic and said there were likely to be 15 roles made redundant. He confirmed there would be consultation with those who were potentially affected.

12. Ms Wright is an experienced HR manager, but had not previously led a redundancy exercise at the respondent. Incidentally, she is no longer an employee of the respondent. She drew on the resources of ACAS and the Herefordshire Chamber of Commerce, using their current consultancy service, Croner, in order to prepare some guidance for managers along with some redundancy selection criteria and a scoring matrix. These were all approved by the relevant managers and the departmental heads collaborated in providing some description against each of the selection criteria. Later it was decided, based on her advice, that the scoring of the selection criteria would be carried out by more than one manager, either 2 or 3, and the final total score averaged out between them to produce the actual score on which the decision would be based. The purpose behind this was to obtain a wider section of views from managers who knew the person and their work and to even out any possible unconscious bias, so it would have less effect. They would also seek voluntary redundancies, but in the end result, that had no real effect overall and none on the administration side.

13. Ms Dickinson was reviewing the administration department and how many employees were needed to run this side of the business in future. She obtained information from Mr Jenkins about the administrative tasks undertaken at the Transplants office and, from this process, she was able to see the requirement for administrative support in that office could be reduced to an eight-month contract for one employee only and so she finalised a job specification for that new role. This job specification (102) was approved by Mr Jenkins. At the same time, she completed a similar exercise for the administration at the head office and concluded that the work there could be combined into three new business support administration roles. The upshot was that there were seven employees in administration at risk of being made redundant with four new roles available as alternatives, three at the Hereford head office and one seasonal role for eight months at the Transplants office in Ledbury.

14. Letters were sent to those at risk of being made redundant and the claimant's letter dated 7 July (36) invited him to an individual consultation meeting with Mr Jenkins and Ms Wright on 15 July. The letter enclosed the proposed redundancy scoring matrix. It made clear that, at the meeting, they would discuss the reasons for the proposed redundancies and whether there were any steps that could be taken to avoid or limit the proposed redundancies. They would also discuss the proposed selection criteria on which the claimant was invited to comment. On 13 July, the claimant wrote to Mr Jenkins (37 – 38) and raised a number of questions about the redundancy process, timescales, selection criteria and whether there was any agenda for the consultation meeting. He stated clearly at both the beginning and the end of the letter his preference for communications

about the redundancy process to be in writing rather than by telephone to avoid any potential confusion.

15. Early on 14 July Ms Wright sent an email to the claimant (39) explaining again the purpose of the meeting and the process, and providing some of the answers to the questions he had raised. In particular, it confirmed that all administrative roles had been put at risk and that there was a requirement for 2 new roles involving 3 full-time business support positions at Hereford and 1 seasonal administrative position in the Transplants division. She confirmed the at-risk administrative staff would be scored against specific criteria and that he was welcome to apply for, and be scored for, both roles, one role or neither according to his choice. The scoring was to be done separately by Mr Jenkins and Ms Dickinson for the Transplants role and by Mr Ian Wright and Ms Dickinson for the head office role.

16. The first consultation meeting with the claimant took place on 15 July and Mr Jenkins started by reading a pre-prepared script (40). He explained that the pandemic had already impacted heavily on the respondent's spring/summer sales and massively reduced the container stock inventory. Sales in April were £320k compared with £1.1M the previous April; sales in May were £583K compared with £900 K – £1.1M. No potting had been undertaken for six weeks and all young plant orders for that period were cancelled. There was significantly less stock available for the next year. He explained the need to make around 15 roles redundant as a whole from both office and nursery staff. Sales in the following year were expected and budgeted to be lower resulting in a need to reduce costs. The claimant was told that his job was at risk and the new structure was explained to him whereby he would have the opportunity to apply for one of the three business support administrator roles at the head office or the seasonal administrative role for eight months at the Transplants office. It was clarified that the scoring for the Transplants role would now be done separately by Mr Jenkins, Ms Dickinson and Mr Ian Wright, whom they had decided to add. Mr Wright and Ms Dickinson were to score for the head office role. The claimant did not want to be scored by Mr Wright for the Transplants role as Mr Wright had no knowledge of him. It was agreed that Mr King would score him instead. There was a dispute on the evidence as to whether the suggestion that Mr King would score him came from the claimant or from the respondent. I accept the respondent's evidence that it was the claimant's suggestion, as that makes more sense in the circumstances. However, it does not really matter since both parties were in agreement at the time that it would be fairer to the claimant for Mr King to replace Mr Wright in the scoring process. The claimant did not object to Mr Jenkins nor Ms Dickinson being involved in the scoring. She had had a reasonable amount of experience of working with the claimant when, from time to time, he went to work at the Hereford office and, on a previous occasion, when she had been closely involved with him on a particular computer project. As far as Mr Jenkins is concerned, he was the person most closely involved with the claimant on a day-to-day basis. The claimant wanted to think about which roles to apply for and it was agreed that Ms Wright would call him to discuss this further.

17. The claimant's version of what took place at this meeting differs considerably from the evidence given by Ms Wright and Mr Jenkins. He accepts Mr Jenkins read out the script and explained the sales figures and reasons for the redundancies. He confirmed he understood the process.

18. Unfortunately, no notes of the meeting were taken by anybody. Ms Wright's explanation for this is that the claimant was aggressive and rude and kept interrupting her during the meeting, so it made it impossible to take proper notes. The claimant was anxious as to his position and was fighting for his job, so it is likely he did keep interrupting and came across to Ms Wright as aggressive and rude, but I do not believe that was his intention. On his version of the meeting, he says it started with Mr Jenkins making silly jokes and making fun of his haircut. This was denied by Ms Wright and Mr Jenkins. He says he challenged the pool and why he was being grouped with other lower ranked administrators when, to his knowledge, his counterpart at the head office was not put at risk. Again, this was denied by the respondents. He says he brought up the question of 'bumping' and said he could work in the dispatch section of the business or the label printing part, but that Ms Wright was not willing to consider this. She denied that the claimant raised the question of bumping in the meeting. The new roles were discussed and it was clear, without any pressure having been applied, that the claimant naturally considered the Transplants role as more suitable since the office was within walking

distance of his home. He had problems travelling to Hereford, as the family car was needed for the school run. He says he suggested they should alter the working hours to record with the school hours, or that he could work from home and, finally, that they might consider extending furlough to see how the pandemic situation developed. Ms Wright denied that any of this was raised at the meeting. The claimant did not challenge Ms Wright or Mr Jenkins in their evidence on any of these points. Finally, regarding the discussion over the scoring, the claimant says he argued not only that Mr Wright was not an appropriate scorer, but also Ms Dickinson as he had not worked with her very much.

19. As I noted above (para 14), the claimant had made clear to the respondents in his letter of 13th July to Mr Jenkins (37 – 38) that he preferred questions and answers relating to the process to be in writing. Therefore, in judging the accurateness of the claimant's recollection of the meeting on 15 July, I have paid attention to his email following the meeting dated 16 July (55 – 56). The email starts off in friendly terms and expresses sympathy for the situation in which the company found itself and he declared the meeting to have been useful, but that he had a few questions, the answers to which would help him decide about which role to apply for. He limited himself to just the aspect of the new role and did not take issue with, nor did he ask the respondents to reconsider, any of the matters over which he says he had raised issue at the meeting, namely the refusal to consider (bumping), the pool for selection or the management of the scoring of the criteria. The claimant says he did not raise these matters in his email because he did not want to upset them or annoy while he was trying to keep his job. Were that the case, there was no reason why he could not have politely raised the matters once again in his email in the same way that he sought to raise questions about the process in his email of 13 July (37 – 38), and I do not accept what he says on this. Accordingly, in view of the firm evidence of Ms Wright and Mr Jenkins, the contemporaneous documentary evidence and the lack of any challenge by the claimant to these parts of the evidence of Ms Wright and Mr Jenkins, I prefer their version of what took place. It is probable that the claimant was feeling emotional and overwrought by the situation, hence his interventions at the time, and this has hindered him in his recollection and, possibly also, arguments he has thought of since have merged into what he thinks he recalls of the meeting.

20. In response to the claimant's email of 16 July Ms Wright responded promptly asking if she could telephone him to go through the questions raised about the new roles rather than go back-and-forth with emails. To this he agreed and a telephone conversation did take place. In addition to answering the questions, I am satisfied Ms Wright also made clear to the claimant that, if he applied for the Transplants role, the salary would be 8/12 of his current salary and that, if he applied for the head office roles, his salary would be no less than his current one. Early on 17 July the claimant sent Ms Wright an email (54) confirming that, after discussing matters with his wife, he only wanted to be considered for the Transplants role due to the travel problems.

21. While these exchanges were taking place, the relevant individual managers responsible for scoring those at risk had been asked to carry out scoring on the basis that each would apply for either one of the roles at head office or the seasonal role in the Transplants office. They duly prepared their scores without discussing them with anybody else and sent them to Ms Wright who was responsible for collating and anonymising the scoring, compiling the totals and calculating the average score for each person.

22. When Ms Dickinson returned her scoring to Ms Wright her covering email of 15 July (52) concluded by saying that Ms Wright should let her know if she thought Ms Dickinson needed to 'tweak anything'. It was put to her by the claimant that this meant she was willing to 'fiddle' her scores to suit any pre-arranged determination by the respondent. She responded that she was only talking about tweaking the document in terms of its presentation or format and that she would not have changed her scores. I accept her evidence on this and am influenced by the fact the claimant never gave any evidence or put to the respondent's witnesses any reason why they should have been motivated to make him redundant rather than anyone else.

23. Ms Wright prepared a table showing the scores of each candidate for the roles (61). For the Transplants role, for which the claimant had applied, his average score of 136 was the lowest, the second best was 161 and the highest score was 177. On that basis, after informing Mr Jenkins, she caused a letter to be sent from him to the claimant dated 17 July 2020 (59 – 60) confirming that he had been provisionally selected for redundancy. This confirmed that the respondent would be making 14.5 employees compulsorily

redundant as a whole, including him. It emphasised that his selection for redundancy was not a final foregone conclusion and that no final decisions had been made. They were inviting him to a further meeting to explore whether there were any other alternative options available to avoid the redundancy, such as alternative employment. They confirmed the options that had been identified were the new business support role at head office on a full-time basis and the new seasonal administrative support role at Transplants. They confirmed that the claimant had received copies of the job specifications for each role for him to consider together with the selection matrix selection matrix. It confirmed his choice to be considered for the Transplants role only and that the scoring would be carried out by Mr Jenkins, Mr King and Ms Dickinson. The meeting was to be held on 22nd July with Mr Jenkins and Ms Wright and he was given the opportunity to arrange for a companion to attend with him.

24. The meeting took place as planned on 22nd July and the claimant did not bring a companion. I accept the evidence of Ms Wright and Mr Jenkins that the scoring averages were discussed and the claimant was told he had been unsuccessful in securing the Transplants role. As he had requested not to be considered for the head office role and, as there were no other viable roles the claimant could perform, he was told that he was being made redundant and given a redundancy termination letter dated 22 July (63 – 64). At this point there was an attempt to go through the scoring and explain it. The claimant got hold of Ms Dickinson's scores and raised questions about some of her marks. I find he got annoyed and upset and, before any further progress could be made, he decided to leave the meeting. The following day, having reflected, the claimant sent Ms Wright an email (65). He did not challenge the way in which the meeting had been conducted, but stated his request for copies of all the individual scoring sheets for himself. He also asked to see any records used by the scorers in reaching their conclusions. He made the point that the score given by Miss Ms Dickinson in relation to his disciplinary record was incorrect.

25. I record that none of the three persons conducting the scoring for any of the applicants actually accessed any work records. It was conceded by the respondent's witnesses that there were no records of relevance other than those relating to attendance and discipline. For instance, as the claimant knew, there were no written appraisals. All three managers had scored the applicants based on their experience and observations.

26. On 28 July, Ms Wright responded to the claimant in an email (66 – 67) and she enclosed the scoring criteria and calculations (68– 69). Unfortunately, her compilation included the scoring made by Mr Ian Wright in relation to any putative application by the claimant for the role at head office. Ms Wright explained, and I am completely satisfied, that this was sent to the claimant in error and that Mr Wright's score played no part in the selection process. With Mr Wright's score included the claimant's average was 131; without it, this average was 136. On either basis, the claimant was easily the lowest scored applicant for the role and, even if, which I do not accept, Mr Wright's score had been taken into account, it made absolutely no difference and I cannot see why the claimant has attempted to make so much of this error on Ms Wright's part.

27. Going back to the letter terminating the claimant's employment dated 22 July (63 – 64) it confirmed what he would be paid by way of redundancy pay, salary and holiday pay and that the date of termination of employment would be 24 August 2020. It stated that he would receive his form P45 after the last day of his employment, which contradicts what the claimant said in his evidence about the meeting on 22 July, namely that he was presented with the letter along with the P45, which would have been an impossibility at that stage.

28. The claimant decided to challenge his dismissal on the basis that it was unfair and wrote to Mr Johnson on 5 August (70 – 73) setting out his detailed grounds. A meeting was arranged for Mr Johnson to hear the claimant's appeal on 25 August and again the claimant was given the right to be accompanied.

29. The meeting duly took place between just the two of them with the claimant happy to proceed on that basis. The meeting was recorded and lasted for 42 minutes and 29 seconds according to the transcript of the recording (107 – 121). Mr Johnson listened to all the points made by the claimant. His arguments all related to the process being flawed and unfair and he never challenged the genuineness of the redundancy situation.

30. Mr Johnson rejected the appeal and set out his reasons in a letter to the claimant dated 31 August (76 – 78). He did uphold one point raised by the claimant, namely Ms Dickinson's scoring, and accepted he should have received full marks for his disciplinary record. This would have resulted in a revised score by her of 131 and the overall average score being increased from 136 to 137 (75). I also noted a deficiency in that his score for timekeeping of 6 by Mr Jenkins was not included in the overall total. This would have resulted in Mr Jenkins' score being increased from 125 to 131 with the overall average score then increasing to 139.5. Of course, this score was still well adrift of the scores of the other two applicants for the role and would have made no difference. As in the hearing, the claimant raised questions on the scoring as to the marks given for his technical skills, in particular touch typing, and his use of dual screens. Ms Dickinson had given him maximum marks for these criteria whereas Mr Jenkins and Mr King had given him lower marks. On touch typing, Mr Johnson explained that the scoring would have been based on their different experience of work done for them by the claimant and that inconsistencies would be ironed out in his favour by the multi-party scoring and their averaging out. On the question of the use of dual screens, there was no issue over his ability to use dual screens, but simply that the claimant had consistently objected to using dual screens, even though his colleagues did so. I accept the respondent's evidence that, in the end, Ms Dickinson had to order a dual screen for him against his wishes and that, at the time the decision to make him redundant was taken, it was on order but had not been supplied. As explained further in evidence by the respondent's witnesses, which I accept, the scores on this related more to his attitude towards the use of dual screens rather than his ability. Mr Johnson concluded that, overall, everything had been properly explained to the claimant as far as the process was concerned, that the criteria were objective and had been objectively and fairly marked and that, as he received by far the lowest score (even after adjustment), he was fairly selected for redundancy.

31. As the claimant had indicated in his e mail of 2 September (80-81) his dissatisfaction with the outcome, Ms Williamson decided to involve herself and review the case. She set out her findings in a letter to the claimant dated 15 September 2020 (82 – 86). She questioned the managers concerned. She accepted some minor points made by the claimant, but overall concluded there was no reason to change the decision.

32. The claimant decided to make a claim for unfair dismissal and contacted ACAS. The early conciliation period ran from 19 September to 19 October, on which date he presented his form ET1 commencing the claim. In box 8.2 of form ET1 he set out details of his claim as follows: 'claim is for unfair redundancy process. The procedure was flawed and deliberately subjective rather than objective'.

The law

33. Under section 139(1) Employment Rights Act 1996 ('ERA'), an employee who is dismissed shall be taken to be dismissed by reason of redundancy:
    'if the dismissal is wholly or mainly attributable to: – (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'.

34. Under section 98(2) ERA, dealing with unfair dismissal, redundancy is a potentially fair reason for dismissal, and it is for the employer to show the reason. Under section 98(4) and, where the respondent has shown a potentially fair reason for dismissal, the determination of the question whether the dismissal is fair or unfair:
    (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.

35. Neither party referred me to any case law. However, the issues as defined above, relate back to established case law in this area as to the fairness of a dismissal on the ground of redundancy.

Conclusions

36. Dealing with the issues identified at the commencement of this hearing, the first question is what was the reason or principal reason for dismissal. It was assumed and, indeed, agreed by the claimant that the reason for dismissal was redundancy and there was no hint that the genuineness of the redundancy situation was being challenged. Such a challenge never featured in any part of the redundancy process leading to the termination of the claimant's employment, and it was not mentioned in his form ET1. However, during the course of his evidence, the claimant did assert that, at the time he was made redundant, the respondent was aware that its sales were increasing and he believes that the undisclosed figures for June and July would have revealed that. There was no evidence available as to those ongoing sales figures. The reason for dismissal has to be determined as at the date its decision to dismiss was made. Based on the evidence received, there is no doubt that the respondent took the view that the impact of the pandemic on its sales and the significant reduction in its stock adversely affected the business and, obviously, would diminish profitability resulting in the need to make cost savings. There was also the continuing backdrop of the pandemic, and uncertainty over how long the furlough scheme would remain in place.

37. As a result, the respondents planned to make 15 persons redundant, a significant proportion of its workforce. This was communicated to the claimant and the rest of the staff and those at risk of being made redundant were given all relevant information. It is not for the tribunal to make a judgment as to the respondent's commercial decisions. One has to assume they would not have made such a large number of persons redundant and gone through the whole process, if they did not consider it necessary at the time. Accordingly, I am satisfied the respondent has shown the reason for dismissal was redundancy, namely that the requirements of the business for employees to carry out work of a particular kind had ceased or diminished and also were expected to cease or diminish.
38. Next, on the wording of section 98(4) ERA and the overall fairness of the decision to dismiss based on the reason of redundancy, this is where the remaining issues to be determined come into play.

39. Firstly, there is the question of whether the respondent adequately warned and consulted the claimant before the final decision to make him redundant was taken. It was only in late June 2020 that the respondent started to think about the need to make redundancies. Following management team meetings, there was a general staff announcement on 2 July explaining the need to make redundancies, the reasons and the approximate number of redundancies to be made. Once they had established that the whole of the administration team including the claimant was at risk of being made redundant, he was sent a letter on 7 July. By 13 July the claimant was fully engaged in the process and wrote a lengthy letter to Mr Jenkins on that date asking a number of questions. Some of those questions were answered prior to the meeting. At the meeting on 15 July more details were provided to the claimant regarding the reasons for the redundancies, the process to be followed, the proposed new structure and roles for which he would have the opportunity to apply. Following the meeting the claimant raised questions about the new role, following which he clearly communicated to the respondent his wish only to apply for the Transplants role and gave his reasons relating to travel. Pay was not a material factor in his decision. The claimant was questioned several times on why he limited himself to applying for only this role and I am entirely satisfied that the predominant reason was due to difficulties with the travel arrangements.

40. On 17 July the claimant was informed of his provisional selection for redundancy and called to a further meeting on 22 July. At that meeting there was an opportunity to discuss why he had been provisionally selected and go through the scorings, but the claimant cut the meeting short. Nevertheless, following the meeting, he sought details of the scoring and this was provided to him. This resulted in him making an appeal to Mr Johnson, who considered all the claimant's arguments. There was a further review by Ms Williamson who confirmed her findings on 15 September.

41. I am entirely satisfied that there was adequate warning of the redundancy situation and adequate consultation before the final decision to dismiss was taken.

42. The next point to consider is whether the respondent adopted a reasonable selection decision, including its approach to a selection pool and scoring. As far as the pool is concerned, all administrative roles at both sites were put at risk. The new structure for

the business administration was proposed resulting in three full-time identical roles being available at the Hereford office, and one seasonal role for eight months per year at the Transplants site. There was no evidence to support the claimant's allegation that his counterpart at the Hereford office was not in the pool. I am satisfied that the pool chosen for selection was reasonable in the circumstances.

43. As for the basis for the selection to be made, the respondent adopted a matrix with criteria and ratings sourced from a combination of ACAS and Croner through its membership of the Herefordshire Chamber of Commerce. Managers added some description or detail to the individual criteria to fit their future business needs. There is nothing controversial about the criteria and they are well-established ones commonly used in such redundancy situations. It is for the individual employer to determine what scores should be given against each criterion and the weighting to be applied and I can see nothing controversial or unreasonable about the matrix adopted in this case. Some of the criteria could be judged entirely objectively, such as attendance, if one had access to the relevant records. Others were inevitably going to be scored inconsistently as between managers based on their own experience of working with each candidate and observing them. That is why, in this case, the respondent took the view, fairly in my judgment, that the scoring should be undertaken by three managers in the case of the Transplants role with the total score being averaged between the 3 to give a final score for the purposes of making the decision. It is clear that this approach enables a wider range of views to be taken and for any significantly different marks, whether high or low, to be tempered by the averaging process.

44. When it came to the selection of the managers who would do the scoring, the respondent took into account the claimant's objection, rightly made, that Mr Wright was inappropriate and Mr King was substituted. Mr King was the claimant's favoured choice and he had no objection to him. Whilst I found that the claimant did not object to Ms Dickinson, it is nevertheless clear from the evidence that she was appropriate, being in charge of the business support team overall and having observed his work. As far as Mr Jenkins is concerned, he was clearly appropriate as the person most closely involved with the claimant on a day-to-day basis. I note that, once Mr Jenkins' score is adjusted to include his score for timekeeping, his score of 131 becomes identical to that of Ms Dickinson. Mr King gave a score of 156.5, clearly the best. However, even if Mr King's score had been replicated by all 3 to produce an average of 156.5, the claimant would still have come third, or last, out of the three applicants. He was so far short that, even if his scores had been further adjusted to the maximum score in relation to the particular matters to which he objected, namely touch typing and use of dual screens, he would not have exceeded the score of the person who came top and was selected for the role.

45. It is a fair criticism made by the claimant that none of the managers used any workplace records when compiling their scores. The initial indication made to the claimant and others was that such records would be utilised. However, that was a mistake made by the respondent in relying on standard templates without properly amending them to reflect their own circumstances. The claimant knew that the only relevant records were attendance records and disciplinary records. Therefore, it boils down to whether or not the scoring carried out by each individual manager was carried out fairly based on experience and observations and without bias or favouritism. The fact that Ms Dickinson's and Mr Jenkins scores were, in reality, identical as to their total without either of them colluding in the scoring is indicative that a fair approach was taken. The outlier was Mr King who scored the claimant much higher. That might be explained by the fact that he was the claimant's favoured person and, in his scoring, there may have been some unconscious bias in favour of the claimant.

46. Finally, although the claimant made much of it in his appeal and tribunal claim, it is very clear that the inclusion of the score of Mr Wright in the documentation sent to him after the meeting on 15 July, was an error on the part of Ms Wright and that Mr Wright's score was never included as part of the total nor taken into account when provisionally selecting the claimant for redundancy.

47. I have found it was open to the claimant to apply for any of the four roles on offer. I am not satisfied that the possibility of bumping was discussed but, in any event, that would also have had the potential to give rise to unfair dismissal claims from those who believed they had been unfairly bumped out of role. There was no evidence that any such role was, however, available to the claimant. 2 roles equating to 4 jobs were identified. That

was reasonable in the circumstances and there was nothing to prevent the claimant from applying for any of those roles. I am satisfied he freely chose to limit himself to the Transplants role and no pressure was applied. I am further satisfied he had sufficient information to enable him to make an application for the Hereford role had he wished to do so.

48. In his submissions, there was some suggestion that there was a hidden agenda and that the respondent acted in bad faith in the overall process. However, there was no possible motive for this shown and, as I have found on the facts, I dismiss such suggestions.

49. It follows from the above that dismissal was within the range of reasonable responses of a reasonable employer.

50. Accordingly, even though there were some criticisms of the process, I find it was, overall, reasonable and fair so the claim is dismissed.

Employment Judge Battisby
Date: 28 June 2021