EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107885/2021

Hearing Heard by Cloud Video Platform (CVP) on 21 to 23 June 2021

Employment Judge B Campbell

Mr Michael Curley	**Claimant** **In Person**
SR Technics UK Limited	**Respondent** **Represented by** **Robert Dunn,** **Counsel**

JUDGMENT

The Judgment of the Tribunal is that the claimant was not unfairly dismissed and his claim of unfair dismissal is refused.

REASONS

Introduction

1. This claim arose out of the claimant's employment with the respondent. The claimant's dates of service were agreed to be from 1 April 1997 to 26 October

2020. He was dismissed on the latter date. The respondent maintains that he was dismissed fairly by reason of redundancy. The claimant contests the fairness of his dismissal.

2. Evidence was heard from the claimant and, on behalf of the respondent, Mr David Fantauzzi, the respondent's former General Manager and Ms Sarah Penn, Head of HR for the UK.

3. Although there was a degree of dispute over a small number of details of the evidence, the witnesses were all found generally to be credible and reliable.

4. The parties had prepared a joint bundle of productions. References to documents within the bundle are made below by way of their page numbers in square brackets.

5. The parties each also helpfully provided notes of their closing submissions which they supplemented orally after the evidence was heard. Those were taken into account in reaching a decision in the claim.

Issues

The issues to be determined in the claim were as follows:

1. Was the reason for the claimant's dismissal on 26 October 2020 a potentially fair reason within the scope of section 98(1) and (2) of the Employment Rights Act 1996 ('ERA')?;

2. If so, did the respondent comply with section 98(4) ERA given its size and administrative resources, as well as equity and the substantial merits of the case?

3. If the answer to either 1 or 2 is no, and therefore the claimant's dismissal was unfair, what compensation should be granted?

Findings in fact

1. The following findings in fact were made as they are relevant to the issues.

Background

2. The claimant was employed by the respondent between 1 April 1997 and 26 October 2026.

3. The respondent is a company which provides services within the aviation industry. Those services include providing maintenance and repairs to commercial passenger aircraft operated by airlines at airports within the UK. Typically the respondent's employees would inspect, service and repair aspects of an aircraft after it landed, ensuring it was ready for its next flight. The work would be certified as having been completed.

4. In 2020 the respondent operated out of nine airports within the UK. At the beginning of that year the respondent had a headcount of around 90 employees. Between Glasgow and Edinburgh airports it employed 26 people as follows:

    a. Station Managers – one at each airport, responsible for the overall running of operations at that site and reporting to Mr Fantauzzi;

    b. Shift Leaders – responsible for engineers working in shifts. This included planning of shifts, running shifts from day to day and covering for the Station Manger when not on duty;

    c. B1 and B2 Licenced Engineers – licenced engineers who would work on the aircraft within a shift pattern, reporting to the Shift Leader. Both were at an equivalent level in terms of status, with B1 engineers tending to work on airframes and engines, and B2 engineers specialising more on avionics and electrical aspects;

    d. A Licenced Engineers – less qualified engineers who also worked within a shift pattern and reported to a Shift Leader. They would tend to perform daily checks and deal with matters within an aircraft cabin.

5. The claimant was employed as a Shift Leader based at Glasgow Airport. His role involved supervising engineers and he performed some of that type of work himself. He had an Aircraft Engineering 'B1' licence which authorised him to carry out and certify certain work on aircraft as having been properly completed. His licence was 'restricted', meaning that there were certain types of work which he was not authorised to sign off.

2018 to early 2020

6. Mr Fantauzzi joined the respondent as its General Manager in September 2018. His role was to oversee and manage the respondent's entire UK operations. At the time the respondent was making losses but by 2019 it was breaking even. It is part of a worldwide group, headquartered in Switzerland.

7. By late 2019 the respondent had a business plan which forecast a 10% increase on its profits for 2020 compared to the previous year. This involved investment and recruitment of staff in order to expand capacity. That plan appeared achievable until the Covid-19 pandemic took effect. The first indications of that were noticed by the respondent in January 2020 when flights between China and UK airports stopped. This was followed by the cancellation and reduction of more flights between UK and other airports. Reduced numbers of flights into and out of UK airports translated into less work for the respondent and therefore less revenue. However, it had invested significantly in growth and still had to pay its operating costs including employee wages regardless.

8. By February 2020 more airlines had been affected by the pandemic and work levels reduced significantly. Many more aircraft were grounded. The respondent was now predicting a loss of £1 million for that calendar year. It took cost saving measures such as ceasing to engage contractors and banning non-critical travel.

9. In late March 2020 the respondent placed almost all of its employees, including the claimant, on furlough under the UK Government's Coronavirus Job Retention Scheme ('CJRS'). In Scotland only the Glasgow Station

Manger was required to attend work. Initially the respondent supplemented furlough pay to make it up to full pay. From mid-April it paid only furlough pay to reduce the losses it was by then sustaining.

10. Between April and June 2020 there were no flights being operated by the respondent's customers. By the summer major US carriers such as United, Emirates, Air Transat and Delta, all the respondent's customers, would have been expected to be providing work, but had stopped flying to the UK. Easyjet, another customer, took all of its aircraft away from Glasgow and Edinburgh airports.

11. From mid-June Easyjet resumed flights, but only one per day on some days of the week. A small number of engineers were asked to return to cover the work associated with them. The claimant remained on furlough.

Collective redundancy exercise

12. The respondent recognises Unite the Union as a representative of many of its UK employees, including those in Scotland, in relation to collective bargaining.

13. On 2 July 2020 the respondent notified Unite that it proposed to undertake a collective redundancy exercise affecting employees across the UK.

14. At that time the respondent's correct understanding of the CJRS terms was that employer contributions would increase in August 2020 and the scheme would end in October 2020. It's business projections showed financial losses and it did not think its business was sustainable in its current form.

15. A communication was issued to Claire Simpson, an Officer with Unite on 2 July 2020, signed by Mr Fantauzzi [144]. It was in the form of a letter explaining that the respondent was planning to make redundancies. It followed a meeting earlier that day where the same message had been conveyed. It confirmed that consultation would run for at least 30 days. Unite would be involved for the bargaining units (i.e. airport bases) where they were

recognised, including Edinburgh and Glasgow. Individual consultation would take place at other airports where Unite were not recognised.

16. Along with the letter was sent a 'Business Case' document [145-147], drafted by Mr Fantauzzi and Ms Penn and providing more detail about the background and rationale for the decision, planned staffing levels at each airport up to April 2021, and possible solutions which might be considered to minimise the impact of the situation. A workforce of 51 full time roles was thought to be required by December 2020, rising to 67 by April 2021. The Scottish workforce was anticipated to reduce from 26 to 12 by December 2020 and then increase to 20 by April 2021. Mr Fantauzzi recognised that ideally he would need to find ways of retaining as many staff as possible within a provision for 51 full time roles by the end of the year so that he could move to 67 full time roles by four months later.

17. The business case also set out the proposed selection criteria to be used where a selection process would be followed. Those were (i) standard of work; (ii) skills, qualifications and experience; (iii) attendance record (excluding absence due to disability) and (iv) disciplinary record. These were later expanded as discussed below.

18. On 3 July 2020 Ms Penn emailed all Edinburgh and Glasgow based employees [148]. She invited them to a virtual collective consultation meeting by telephone on 6 July 2020. The purpose of the meeting was said to include discussion of ways of reducing or avoiding redundancies, allowing staff to make suggestions, consideration of any alternative employment and identifying specific needs of individuals during the process.

19. Also on 3 July 2020 the Scottish-based employees including the claimant individually were sent a letter to confirm their role was at risk of redundancy [149-150]. These were signed by Mr Fantauzzi and confirmed some of the matters discussed on that day's call.

20. A number of measures were discussed during the collective consultation process, such as imposing a 33% pay cut across the board, which was not adopted as it would have had to go on too long and would not have provided significant enough cost savings. A measure which was considered potentially more effective was to have people job sharing on a 50:50 basis temporarily, although even if the union and affected staff agreed to it, that would not remove the need for redundancies altogether.

21. In early July Mr Fantauzzi prepared a spreadsheet detailing the numbers and types of roles he considered would still be required at Glasgow and Edinburgh as at December 2020 and April 2021 [417-418]. This was based on a balance of anticipated skills required against overall employee cost. A Station Manager's salary would be around £63,000-67,000. A B1 or B2 licence holder's salary would be in the region of £60,000. An A Licence holder would be paid between £36,000 and £39,000. A combination of each of those individuals was required. The number of each was based on anticipated activity levels as business recovered and constrained by the overall employee cost.

22. The respondent consulted with Unite in relation to the numbers and types of each role it planned to retain at each location. Between seven and nine meetings took place during July 2020 to discuss the details of the redundancy programme at UK level. There were a further five meetings with Unite to discuss the position with the Scottish employees in particular. With the exception of the first meeting on 3 July 2020, they were conducted by skype and recorded, then transcribed to form a record of the process.

23. The respondent pooled affected employees based on their roles and skills in order to ensure it arrived at not only the correct number of employees to be retained, but the right balance based on perceived activity levels and employee cost also. This was requested by Unite, who referred to seeking 'closed' pools rather than all employees being scored and ranked as a single group. Doing so and then selecting employees from the top would not

guarantee the right balance of skills. There was an element of succession planning involved as well.

24. Unite accepted that Glasgow and Edinburgh would be pooled together, the number of roles between the two which would remain, the make-up of the redundancy pools, the redundancy selection criteria to be applied and the way scores would be weighted and awarded.

25. The respondent entered into a memorandum of understanding with Unite on 6 August 2020 in relation to the way the redundancy exercise would be implemented [466-477].

26. The memorandum set out that the redundancy criteria now numbered seven as agreed with Unite, based on (i) licence type, (ii) approval type, (iii) standard of work, (iv) additional skills, (v) attendance, (vi) disciplinary record and (vii) commitment to work [472].

27. The basis for applying scores within each category was also circulated [198-199].

28. 'Approval type' in this context referred to the fact that the holder of a given type of licence had to be specifically approved to work on certain types or classes of aircraft. The respondent wished to take into account whether a given employee was approved to work on a larger or smaller number of aircraft types, and how those related to the type of aircraft the respondent was most likely to be called to work on.

29. 'Standard of work' was scored according to each employee's most recent annual appraisal, which was for the year 2019.

30. 'Additional skills' were scored as the respondent considered it needed to ensure it retained as many skills as it could whilst reducing employee numbers. The maximum score in this category was less than others as it was not considered as fundamental as the core competencies and qualifications. Within this category training skills were recognised. Initially first aid

qualifications were also scored, but that was reversed across the whole UK-wide exercise after objections were raised to the effect that not all staff had been given the opportunity to attain them. Unite agreed to that approach.

31. The criterion of 'Attendance' was self-explanatory, although because it involved a review of the past year, the situation of employees who had been employed for less than a year had to be considered. They were given the same score as an employee with over 12 months' service if they had full attendance.

32. The respondent had recruited three new employees in Scotland in late 2019 or January 2020, namely an A Licence holder and two B1/B2 Licence holders. Mr Fantauzzi considered whether to terminate their employment outside of the pooling and scoring exercise given their short service, but believed that a commitment had been made to them by recruiting them, and offered them an equal chance in the process. Length of service was relevant (as per the criterion immediately below) but so was retaining people with the necessary skills.

33. Unite requested both the addition of the criterion of 'Commitment to the company' and the scoring approach to be taken for it. The respondent accepted their request in this regard. This tended to work in favour of employees who had worked with the respondent for longer.

34. It was agreed between the respondent and Unite that the practice bumping of one employee by another at risk would not be used, given the importance of ending up with the correct skills balance and employee cost profile.

35. The pools adopted were (i) Shift Leaders, (ii) B1 and B1/B2 (i.e. both) Licence holders, (iii) B2 Licence only holders and (iv) A Licence holders. These matched the way that the respondent had formulated its future workforce profile.

36. Mr Fantauzzi acknowledged that some of the Shift Leaders including the claimant held licences in their own right and would at times perform maintenance or repairs alongside the engineers on their shifts. Nevertheless

they were pooled separately from engineers as their management and supervision duties were seen as the main aspect of their role.

37. The claimant and his colleagues were invited to attend a group consultation meeting on 15 July 2020, by way of conference call. Mr Fantauzzi hosted the meeting and details were provided in advance as to what would be covered [265-266].

Scoring of the claimant and individual consultation

38. The claimant was placed in the Shift Leader pool. There were seven Shift Leaders in Scotland. The respondent's projected requirement was for two full time positions at December 2020 and four at April 2021. Mr Fantauzzi's view at the outset was that the ideal permutation would be to retain four Shift Leaders, each temporarily at 50% of the role until they could be given full time roles. He therefore wished ideally to retain four Shift Leaders on this basis.

39. Mr Fantauzzi himself undertook the scoring of each affected employee across the UK. He believed this would ensue consistency of scoring and there was no other individual suitably placed to conduct the exercise. The scores of each employee, broken down by criteria, were produced [409-416].

40. The claimant received his score in the exercise. He scored 57. This placed him in fifth highest position among the Shift Leaders, behind Leigh Walker (71 points), James Leech (70), Paul Hannah (64.2) and Natasha Mechin-Fritsch (64). Provisionally therefore he had not scored highly enough to be offered a Shift Leader position in the reduced structure.

41. The claimant was scored down by three points under 'Standard of work' because of a recorded instance of a quality lapse on his record. This was documented in what is known as a Maintenance Occurrence Report or 'MOR'. An MOR has to be prepared to cover any incident which could have a bearing on the operation of an aircraft. On the particular occasion referred to the

claimant had returned to base after working on an aircraft, but one of the tools used on the job was missing. That created a potential safety issue with the workings of the aircraft. Although the responsibility was principally with an engineer, there was a degree of responsibility with the claimant who had had noticed the matter and reported it promptly enough.

42. Mr Fantauzzi relied on the claimant's 'Performance Management Process' documentation (i.e. his annual appraisal) for 2019 [649-655].

43. The claimant was invited to an individual consultation meeting on 20 July 2020 by telephone. Mr Fantauzzi and Ms Penn attended. The meeting was recorded and transcribed [333-340].

44. The claimant had initially been awarded a score of nine under 'Standard of work'. After the claimant brought to Mr Fantauzzi's attention some additional positive customer feedback the score was increased to 12. The claimant raised the matter initially by email [343-345] and it was considered within a wider discussion about the claimant's scores on 27 July 2020 which was recorded and transcribed [672-696].

45. At the meeting on 27 July 2020 the claimant said to Mr Fantauzzi he had scored himself at the level of at least 60 points. After increasing the claimant's score to recognise additional further feedback, Mr Fantauzzi confirmed his score would be 60. This did not affect his position in the ranking of Shift Leaders.

46. The claimant was invited to a second individual consultation meeting [341]. He attended on 29 July 2020 by telephone and the call was transcribed [400-408]. Claire Simpson of Unite also took part. The claimant had a number of queries and these were respondent to. This included an explanation of how the respondent had pooled and scored Kevin and Natasha, who both worked 50% as a Shift Leader and 50% as a B1 Licence holder. The claimant wished Natasha to be moved from the Shift Leader pool to the B1 pool to leave a Shift Leader role for him. Ms Penn was of the view that this would go against the approach agreed with the union and be unfair. Ms Penn undertook to double

check some other individuals' scores to ensure they were correct according to the criterial and scoring system agreed on. The claimant agreed a further meeting was not necessary.

47. The claimant was notified by letter dated 31 July 2020 that his employment was being terminated [441-443]. He was given notice of termination, to end on 26 October 2020. By default he was not required to work but was to remain available in case he was required. He was paid at his full rate during his notice period rather than furlough pay. He was to be paid for any accrued and untaken holidays at the date of termination and would receive a statutory redundancy payment of £13,998.00. A breakdown of his redundancy and notice pay accompanied the letter.

48. The claimant along with two colleagues had raised a grievance in 2019 against a colleague Mark McEwan. The claimant understood that Mr McEwan had been warned about his conduct as a result of the grievance. He felt he required to raise a further concern about Mr McEwan with Stephen Randtoul, his Station Manager by email on 29 February 2020 [656]. He complained about the language used by Mr McEwan about the pilot of an EasyJet aircraft and the claimant considered that to be unprofessional conduct. He asked for the matter to be investigated. Ms Penn became aware of the complaint and the claimant believed Mr Fantauzzi did also. The claimant considered that his insistence on an investigation into the matter was an inconvenience to his manager and Ms Penn which they could have done without.

49. Mr Fantauzzi knew of the existence of a grievance the claimant had raised about a colleague in 2019, but it had no bearing on how the claimant was pooled, scored or otherwise treated in the redundancy selection process.

50. The claimant appealed against his dismissal to John Watson, the respondent's Global Logistics Manager by way of a detailed note dated 6 August 2020 [453-462].

51. Mr Watson has since left the respondent's service and did not give evidence to the Tribunal. The outcome of the appeal was that the claimant's redundancy

was upheld. This was confirmed after a minuted skype meeting on 19 August 2020 by letter dated 1 September 2020 [491-498].

52. In his evidence the claimant said he thought a fairer approach to redundancy selection would have involved giving priority to employees with two or more years of service and interviewing candidates for each of the roles to be retained.

53. He also believed that if his score in the Shift Leader pool meant he fell short of retaining one of those roles, he should have been put into the B1/B2 engineers pool as he spent a significant enough proportion of his time doing maintenance work, or even the A Licence pool but on his existing salary.

54. He stressed that he considered the respondent was too narrow-minded in making a distinction between a restricted and an unrestricted B1 Licence, since a holder of a restricted licence could nevertheless be authorised to work on a wider range of aircraft than another person with an unrestricted licence, even if the set of tasks they could certify would be smaller. He felt that the number of aircraft he was permitted to work on was not given sufficient weight and that the fact of his licence being restricted was given too much weight.

Steps taken after scoring to fill the required roles

55. The four highest scorers in the Shift Leader pool were offered 50% roles and accepted them.

56. The two highest scorers from the B1/B2 pool were offered full time roles and accepted them.

57. The respondent needed one full time B2 Licenced engineer by December 2020 and two by the following April. As a result of the only person in that pool, Mr Ballantine, successfully applying for voluntary redundancy, 50% of one role was filled by one of the employees in the A Licence pool named Nathan Willock who also held a B2 Licence and agreed to job share. This left a vacancy for an A Licenced employee which was taken by the next highest scoring person in that pool, Mr Karolewski.

58. Two other job-sharing B2 roles were filled by taking holders of unrestricted B1 licences from the B1/B2 pool, going to the candidates who had not already secured a permanent role from within that pool. Those were a Mr Legg and a Mr Hannah. The respondent considered that the closest qualification to a B2 Licence was an unrestricted B1 licence. Mr Fantauzzi wished to retain existing staff rather than have to advertise for new employees whilst making others redundant.

59. The fourth and final 50% B1 role was taken by a holder of an unrestricted B1 licence from the B1/B2 pool at risk, Mr McSheaffrey.

60. These steps were discussed with Unite before being implemented. They were consistent with decisions being taken at other locations in the UK at the time.

Attempts to identify alternative employment

61. Mr Fantauzzi contacted his equivalent in the Spanish, Maltese and Swiss companies within the same group. They were similarly affected and he was not told of any roles which were vacant. In particular he emailed Daniel Galea of SR Technics Malta Limited on 27 July 2020 to ask if he anticipated recruiting staff in the near future. Mr Galea replied to say that the answer would depend on business decisions still to be taken, and he would not expect any such decisions being taken before September that year [395-396]. Mr Fantauzzi's understanding was that no recruitment had been undertaken up until the end of March 2021.

62. The claimant applied for a B1/B2 Engineer role with the Maltese company around late August 2020. He received an acknowledgement email on 6 September 2020. He was offered an interview for the role, to take place on 16 December 2020 but he did not pursue it as by them he had found another role. That was with Babcock Marine (Clyde) Limited, commencing on 7 December 2020.

63. The claimant subscribed to an email job alert service with SR Technics Switzerland Limited. On 28 August 2020 he received details of eleven job vacancies. He considered he was suitable for seven of them. He believed they were based in Switzerland. He did not raise any of them with Mr Fantauzzi. He did not apply for any of them, mainly as he was more hopeful of securing the Malta based role at that time.

64. By email of 8 November 2020 the claimant asked Mr Fantauzzi whether he could be re-engaged but remain on furlough, with the government paying the majority of his wages [509]. This was considered, but Mr Fantauzzi did not believe it to be the right thing to do as he could not foresee with any likelihood a role opening up for the claimant [508]. The recovery of the respondent's business was not happening as quickly as was hoped.

65. By the end of the exercise a total of two voluntary redundancies were effected and four compulsory redundancies were carried out. Of the latter, one was the claimant, one was another restricted B1 Licence holder and two were A Licence holders. They were all given notice on or around the same day.

66. A further memorandum of understanding was entered into between the respondent and Unite on 6 August 2020 [466-477]. This updated the previous memorandum and recorded how the process had been managed, including some of the decisions which had been taken in the course of the process around voluntary redundancy and fitting people into roles outside of their initial pools.

TUPE transfer to EasyJet

67. Around the middle of September 2020 Mr Fantauzzi was made aware from the Swiss group headquarters that EasyJet planned to insource the function of maintenance on their aircraft in the UK, an activity the respondent had been performing. The news was made public in November 2020. At the end of November 2020 EasyJet gave notice to terminate its contact with the respondent for that service. The contract ended on 31 March 2021. Before

that there had been uncertainty over when the transfer would take place. The contract had been due to run until January 2022.

68. EasyJet now employs eight maintenance staff in Glasgow and 14 in Edinburgh. Its structure involves the use of more maintenance staff than when the function was outsourced to the respondent. Some of those staff are former employees of the respondent who transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') on 31 March 2021. Mr Fantauzzi conceded that there was a high likelihood that the claimant would have transferred to EasyJet had he been an employee of the respondent immediately before the transfer.

69. The claimant asked Mr Fantauzzi by email on 28 November 2020 if he could be re-hired by the respondent so as to transfer to EasyJet under TUPE. He requested to be engaged on a six-month contract and placed on furlough. Mr Fantauzzi was unsure whether that was appropriate and was conscious of whether it would set a precedent for others. He believed it may have been resisted by EasyJet. He declined the request.

Storm Aviation Limited

70. The respondent agreed to sell some of its assets to a competitor named Storm Aviation Limited. A memorandum of understanding was signed between the parties on 10 September 2020 and on the same day staff were notified [502].

71. On or around 1 December 2020 the respondent sold all of its tools and equipment, and its calibration centre to Storm. It did not sell any assets based in Scotland and Storm did not have any customers in Scotland. When the respondent terminated its remaining contracts with service recipients around this time Storm did not engage with any of those customers in its place. No Scottish based staff were transferred from the respondent to Storm.

Further events

72. The only one of the respondent's former customers flying in or out of Edinburgh or Glasgow Airports is EasyJet.

73. The claimant took steps to have the restrictions on his B1 Licence removed. This involved completing a series of training modules. He anticipated completing the last of those in the spring of 2021.

74. Mr Fantauzzi left the respondent's service on 31 March 2021. His role was made redundant. By that point the respondent had no presence in any UK airport.

75. At the time of the hearing Ms Penn was under notice of redundancy, to expire on 31 July 2021. All of the respondent's back office staff were similarly on notice of termination of their employment.

The claimant's losses and subsequent employment

76. The claimant began receiving Jobseeker's allowance on 7 November 2020 at £74.35 per week. This ceased on 7 December 2020 when he began his new role with Babcock.

77. He received £2,094.36 as gross salary from Babcock in December 2020 and £1,691.02 net. In January 2021 he received £2,597.00 gross and £1,756.76 net. By this time he had joined the company's occupational pension scheme and an employer's contribution of £116.86 was made. In February 2021 he earned £3,546.38 gross and £2,289.94 net, with his employer contributing £233.72 into his pension fund.

78. He is still employed by Babcock.

The claim of unfair dismissal under section 94 ERA

The reason for dimissal

79. It is necessary to consider whether the claimant was unfairly dismissed under section 94 and, in particular, section 98 ERA.

80. First it is necessary to establish the reason for dismissal and consider whether this is a permitted reason within section 98(1) and (2) ERA. The onus is on the dismissing employer to do so.

81. The respondent contends that the claimant was dismissed by reason of redundancy within section 98(2)(c) ERA, which would therefore be a fair reason. This is not challenged by the claimant in any meaningful way.

82. There was a volume of evidence in support of redundancy being the reason for the claimant's dismissal, both documentary and oral. It was clear that the respondent was facing a drastic downturn in its business and concluded that it would need to reduce costs and reduce or remove roles which were not essential so as to adjust to significantly reduced levels of work. There was evidently a reduction in work for employees to do from early 2020, and particularly March 2020 onwards, until the end of that year given that the source of the respondent's work was commercial aircraft arriving at and leaving UK airports.

83. The respondent was entitled to conclude that it needed fewer employees and/or that at least initially full-time working was not optimal. There was no evidence of any significance to suggest a different reason for the claimant's dismissal. The claimant accepted that Mr Fantauzzi would have a better overview of the respondent's business and that there had been a forecast reduction in aircraft maintenance work.

84. Whilst the claimant suggested that his raising of a grievance against a colleague in 2019 may have played a part in his dismissal, this was understood to be a point made in relation to how he fared in the selection exercise rather than whether he was dismissed on grounds of redundancy. As such it needs to be considered in relation to whether the respondent fulfilled the requirements of section 98(4) ERA rather than the reason for the dismissal itself.

85. In any event, as discussed below, it is found that his grievance was not the reason for his dismissal and did not influence the process in any way.

86. The requirements of section 139 ERA, which reads as follows, were therefore met:

139 Redundancy.

(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.

87. The requirement for employees to carry out work at the claimant's base, and indeed all UK airports where the respondent operated, diminished from early 2020 onwards.

The test of whether the claimant's dismissal was reasonable

88. Next the requirements of section 98(4) must be considered, namely whether, given its size and resources, the respondent acted reasonably in implementing the claimant's dismissal for the reason it held. This assessment should be made *'in accordance with equity and the substantial merits of the case'*. The onus is neutral in establishing whether this requirement has been met.

89. It is found that the respondent satisfied this statutory requirement in these claims. That conclusion is supported in general by the following:

a. The respondent undertook collective consultation with a recognised trade union, Unite, over a number of meetings throughout July 2020;

b. The union representatives were extensively involved in the process and were allowed input into decisions taken about pooling, selection criteria and scoring of redundancy candidates for selection purposes, as well as further more specific mitigation decisions such as filling vacant roles by considering employees from different pools;

c. The process was well documented, particularly by way of the memoranda of understanding between the respondent and Unite;

d. For the more detailed reasons given below, the pooling and scoring approach was reasonable;

e. There were individual consultation meetings with affected employees;

f. Those selected for redundancy were offered the right of appeal against their dismissal.

Pooling and scoring

90. The question of how to pool potential redundancy candidates is largely one for the employer in question and the scope for an employment tribunal to interfere in that is limited.

91. As In ***Capita Hartshead Ltd v Byard [2012] IRLR 814*** Silber J described the role of the tribunal as follows:

> *'It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted' (per Browne-Wilkinson J in* ***Williams v Compair Maxam Ltd [1982] IRLR 83*** *[18]);*
>
> *…*

'There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem' (per Mummery J in ***Taymech Ltd v Ryan [1994] EAT/663/94****, 15 November 1994, unreported);*

'The employment tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has 'genuinely applied' his mind to the issue of who should be in the pool for consideration for redundancy; and that

'Even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.'

92. Therefore it may be the case, and often is, that employees could be pooled in more than one way, each justifiable on its own merits. Provided the employer adopts one of those reasonable approaches, the fact that an affected employee would prefer a different pooling approach does not in itself render the employer's actions unreasonable or unfair. This is the essence of the passage from ***Kvaerner Oil and Gas Ltd v Parker and ors EAT 0444/02*** which Mr Dunn quoted in closing submissions, per Rimer J.

93. A similar approach must be taken to the employer's chosen process for assessing and ranking affected employees.

94. Selection criteria and the basis for scoring should be clear and unambiguous. They should be objective as far as reasonably possible, with reference to supporting evidence rather than subjective opinion.

95. The key criteria chosen by the respondent were adequate to meet those requirements. They were each evidence-based and either completely objective, or at least not capable of distorting the exercise where a degree of

judgment was used. The scoring system was clearly defined and approved by Unite. The criteria appear relevant given the needs of the respondent's business at the time and going forward. So, for example, they recognised the benefit in employees having breadth of experience and skills when the overall size of the staff would reduce. They recognised each employee's performance against the most recent available common benchmark, namely the last annual appraisal.

96. The scoring process was adopted across all bases where the respondent operated at that time. As such they were formulated without specific reference to the claimant. They could not have been devised with the purpose of putting him at a disadvantage. They were accepted and in some instances influenced by Unite. An example of that was the introduction of a criterion reflecting 'Commitment to work' at the union's request, which worked in the claimant's favour as a more longstanding employee.

97. There is no indication of bias in the scores which were attributed to the claimant, either in themselves or by comparison to any other person within his pool. He did not say that another Shift Leader had been scored more highly than himself for an unfair reason. He was disappointed that he had lost points as a result of the 'MOR' event, but Mr Fantauzzi was able to justify in evidence the approach he took to that. As part of the same consideration the claimant gained points by demonstrating to Mr Fantauzzi that he had earned positive feedback from customers. There was no credible indication of bias.

98. The claimant also considered that his 'Train the Trainer' competency and first aid qualifications should have counted more highly towards his final score. The respondent was entitled but not obliged to recognise them in that way. Mr Fantauzzi's explanation as to why the respondent chose not to was plausible and again the approach taken was consistent UK-wide. Such a decision is squarely within the discretion of the employer.

99. The law is clear that, provided the selection criteria adopted are objective and contain no obvious bias, and that they have been applied in a reasonable fashion, an employment tribunal should not excessively scrutinise them – ***British Aerospace plc v Green 1995 ICR 1006 CA.***

100. The claimant was also, if not more, aggrieved at some of the decisions the respondent made after the scoring exercise was completed. Those included that he was not put into the B1/B2 or A Licence pools, or simply offered one of those roles, or that one of the other Shift Leaders who scored higher than he did was not put into the B1/B2 pool instead.

101. The above principles apply to those decisions the respondent took. By and large, an employer is both entitled and best placed to recognise which balance of skills it requires and across which number of employees.

102. Therefore whilst from the claimant's perspective he felt that he was losing out, the respondent was entitled, for example, to fill a vacant B2 Licence role using an employee from the A Licence pool who also had a B2 Licence, irrespective of their relatively short service, or to offer a B2 role to an unrestricted B1 Licence holder who had lost out on a B1/B2 role within that pool.

103. At the end of the day, the claimant's perspective on his overall skillset may be objectively correct, but at the same time the respondent's alternative view of its priorities and requirements may still also be sustainable, as is the case here. That included preferring an unrestricted B1 licence over one which was restricted – the latter requiring time and process to convert into the former – and, for example, opting not to undertake a more granular assessment of which types of aircraft each licence holder was authorised to certify.

Allegations of bias in the process

104. The claimant alleged in his evidence that he was targeted during the redundancy selection process in such a way that he would become a redundancy candidate. He contends that the process was manipulated so that individuals with a restricted B1 Licence, such as him, would lose out. He also considers that his full skillset was overlooked, or not given sufficient weight.

105. There are a number of issues with the claimant's argument. First, all of the key components of the process were agreed with Unite. They were applied consistently throughout the UK. They were not specific to him or his location.

106. Secondly, there was no evidence of any significance to show that either his grievance had any bearing on any decision taken by the respondent in the redundancy process, or that his treatment in the process was less favourable for a different reason. On the face of it there would be no reason why an employee would be detrimentally treated for raising a grievance about a colleague's language. It did not evidently reflect badly on the respondent itself such that there would have been any greater motivation to be rid of the claimant. Mr Fantauzzi knew very little about the grievance in any event and he was the decision maker in the redundancy process. He assigned the scores to all employees in the process, and the claimant's manager, who dealt with the grievance, was not a participant in that.

107. Thirdly, the claimant did not raise this allegation during the consultation process itself. Whilst that in itself would not determine the issue, it suggests the point is more of an afterthought than an immediate response, and it denied the respondent the opportunity to reply.

Suitable alternative roles and other options

108. There were no suitable alternative vacancies to offer the claimant once the process resulted in his being provisionally selected.

109. Although there was no outright obligation, or indeed power, on the part of the respondent to explore alternative roles within its worldwide group of companies, it can in some cases be reasonable for an employer to take such steps.

110. The position with the other group companies, particularly in Switzerland, Spain and Malta was unsurprisingly similar to the UK, given that the effects of the pandemic were being felt worldwide. Those companies were also

generally making savings rather than expanding. It was reasonable for Mr Fantauzzi to enquire with his opposite number in Malta about vacancies. Given the nature of the response received, it was reasonable that he left matters there. In any event, the claimant independently pursued a role in Malta, only to bring the application process to an end after he secured a role closer to home.

111. It was not unreasonable for Mr Fantauzzi to re-engage the claimant after his dismissal either simply to take advantage of the extension to the CJRS, or as a means of effecting his transfer to EasyJet in the spring of 2021 by virtue of TUPE. Whilst both options would have assisted the claimant, Mr Fantauzzi was justified in considering them artificial exercises given that he had already applied his mind to how many roles of each type the business needed and adhered to that. The CJRS was not designed to prolong the existence of roles which were believed to be unsustainable.

112. Had the claimant been re-engaged in late November 2020 when he found out about the potential transfer to EasyJet he would have lost the benefit of his previous continuous service and with it the right not to be unfairly dismissed in connection with a TUPE transfer. He would have been in a comparable position to an external candidate applying to EasyJet for employment outside of the TUPE regime.

Conclusions

113. For the reasons above, it is found that the claimant was dismissed by reason of redundancy and that the respondent conducted itself reasonably in all of the circumstances, given its size and administrative resources, in dismissing

the claimant for that reason. He was not unfairly dismissed and his claim is refused.

114. As a result it is not necessary to review further the matter of the claimant's post-termination losses or calculate compensation.

Employment Judge: Brian Campbell
Date of Judgment: 04 August 2021
Entered in register: 09 August 2021
and copied to parties