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EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100004/2021 (V)

**Public Final Hearing held in Aberdeen by Cloud Based Video Platform
(CVP) on 16-19 August 2021**

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Employment Judge Mr. A. Tinnion

Mr. Mark Sanger

**Claimant
In person**

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Gyrodata Ltd.

**Respondent
Represented by
Mr. G. Dunlop,
Advocate**

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RESERVED JUDGMENT

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1. The Claimant's complaint of unfair dismissal under ss.94 and 98 of the Employment Rights Act 1996 against the Respondent is not well-founded and is dismissed.

REASONS

Claim

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1. By an ET1 presented on 1 January 2021, Mr. Sanger presented a complaint of unfair dismissal against his former employer, Gyrodata Limited (**Gyrodata**). He presented no other complaints.

Response

2. By an ET3 and Grounds of Resistance in a Paper Apart, Gyrodata contended (a) Mr. Sanger's unfair dismissal claim should be rejected as it was presented out of time (b) denied Mr. Sanger had been unfairly dismissed on the basis that (i) Mr. Sanger had been dismissed from his post as a Survey Specialist because of a genuine redundancy situation (ii) Gyrodata had adequately consulted both employee representatives and Mr. Sanger personally (iii) Gyrodata had applied a fair, reasonable redundancy selection procedure to a fair, reasonable redundancy selection pool consisting of Gyrodata's 36 Survey Specialists to fairly select Mr. Sanger and 7 other Survey Specialists for dismissal on grounds of redundancy.
3. At the outset of the final hearing, Gyrodata's legal representative confirmed that the Respondent accepted that Mr. Sanger's unfair dismissal complaint had, in fact, been presented in time. On that basis, the Tribunal accepted it had jurisdiction to consider the complaint.
4. At the outset of the final hearing, Mr. Sanger confirmed that he was not disputing that his dismissal was genuinely on grounds of redundancy. That being the case, the issue for the Tribunal to determine was whether in the circumstances Gyrodata acted reasonably in treating redundancy as a sufficient reason for dismissing Mr. Sanger, given its size and administrative resources.

Evidence

5. The final hearing in this matter was conducted on 16-19 August 2021. Mr. Sanger represented himself. The Respondent was represented by Mr. G. Dunlop, Advocate. Mr. Sanger attended to give evidence on his own behalf, and called no other witnesses. Gyrodata called three witnesses: Mr. Campbell MacFarlane (District Manager, Mr. Sanger's line manager); Mr. Graham Walker (District Manager); and Mr. Albert "Bert" Lindie (Regional Vice-President, chaired Mr. Sanger's appeal against dismissal). The Respondent's witnesses gave evidence first, then Mr. Sanger. The Tribunal is satisfied all four witnesses sought to assist by giving their honest, best recollection of events. The Tribunal was

referred to certain documents in a 264-page joint production – any references in square brackets herein are to the relevant pages of that production.

- 5 6. Before the Respondent's first witness gave evidence, and again during the course of their evidence, the Tribunal informed/reminded Mr. Sanger – a litigant in person, with no legal background – of the importance in cross-examination of him (i) challenging the Respondent's witnesses if they gave factual evidence which he disputed (ii) putting to a relevant witness facts he intends to rely upon if those facts were likely to be in dispute (iii) putting to a relevant witness his
10 account of the real reason why events transpired as they did if he did not accept their own account of their reasons for acting as they did at the time.

Findings of fact

- 15 7. The facts in this case are largely not in dispute. The Tribunal makes the following findings of fact on the balance of probabilities.

Respondent

- 20 8. On 27 April 1983, Gyrodata was incorporated in Scotland. Gyrodata is based in Aberdeen, the onshore 'home' of the UK oil and gas industry servicing the North Sea. Its business address is Campus Three, Balgownie Drive, Bridge of Don, Aberdeen.
- 25 9. Gyrodata provides specialized surveying services using technically qualified staff and specialized surveying equipment to businesses worldwide operating in the 'upstream' global energy industry (ie, businesses which identify, extract and/or produce raw materials). Gyrodata has upstream clients, and does surveying work, in Europe, Africa, the Americas, and the Caspian region, including Baku (the capital of Azerbaijan). In the recent past, Gyrodata also offered 'wireline' services to clients, ie services to maintain wellbores using wireline/cabling tools
30 which can be lowered into an existing productive wellbore. Gyrodata has a small number of additional offices and premises outside the UK but Aberdeen is its centre of operations.

10. Gyrodata is a subsidiary of Gyrodata Inc., a US parent company incorporated in Texas, which also provides gyroscopic tools for directional (ie, non-vertical) drilling, surveying, wellbore placement and 'characterisation' technology
5 (process probing/measuring material's structures/properties).

11. In June 2020, Gyrodata had 85 employees [99]. Gyrodata's most senior employee was then (and remains now) Mr. Bert Lindie, Regional Vice-President, an employee since the late 1980s, who had in the past performed Mr. Sanger's
10 role of Survey Specialist (albeit under a different job title).

12. In 2020, two District Managers reported to Mr. Lindie: Mr. Campbell MacFarlane, and Mr. Graham Walker. Although Mr. MacFarlane and Mr. Walker each have their own direct reports, in practice the two District Managers work in close
15 collaboration together to ensure client needs are met. Underneath the two District Managers, Gyrodata employs Account Mangers and numerous Survey Specialists at varying levels of seniority, ranging from Grade 1 (lowest) to Grade 13 (highest). Immediately prior to the 2020 redundancy exercise, Gyrodata employed 36 Survey Specialists including Mr. Sanger.

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13. Survey Specialists do not always perform a regular '9 to 5' office-based job (although they do office-based work in Aberdeen). They are utilized on average only a certain number of days a month, but when they do work, it is often abroad, and assignments can be notified to Survey Specialists at very short notice. The
25 countries Mr. Sanger supplied services to Gyroscope clients in included Azerbaijan, Denmark and The Congo, and doubtless other locations as well. These working arrangements were reflected in the salary arrangements.

Claimant

14. In 2009, Mr. Sanger became an employee of Gyrodata. Before joining, Mr. Sanger worked in the armed forces providing technical support on “fast” jets. 5 Between 2009-2020, Mr. Sanger worked his way up the company. He had at one point been an Accounts Manager (like Mr. MacFarlane). By the time of the 2020 redundancy exercise referred to below, Mr. Sanger was a Grade 10 Survey Specialist – a relatively senior position. Mr. Sanger’s key responsibilities were to perform gyro-surveying services through rig sites in Europe, Africa and 10 Caspian areas.

Covid-19 pandemic

15. In March 2020, the world economy experienced a sharp, significant downturn as a result of the Covid-19 pandemic and measures governments worldwide took to tackle the pandemic, including social distancing and lockdowns. Worldwide 15 demand for oil and gas – and the associated demand for services provided by businesses primarily serving the oil and gas industry – fell significantly.

16. Gyroscope’s business was significantly affected. As a result of the pandemic, 20 Gyrodata’s revenues and profits decreased by over 25%. Gyroscope perceived a reasonable need to cut costs.

17. Gyrodata initially attempted to reduce its costs base by cutting salaries across the board – a 12.5% salary cut for all staff, a larger 20% cut for its most senior 25 employees. On 30 March 2020, Mhairi Zedan (Gyrodata’s Regional HR Business Partner) sent an all-staff email confirming that all EAC staff were to receive a 12.5% reduction to their salary with effect from 1 April 2020: “*The reason to why the company is implementing this salary reduction is in result of the current impact we face with Covid-19 and the slump in oil price. If we do not 30 implement these salary reductions now the company will be forced to consider redundancies*” [75].

18. To help reduce its wages bill, Gyrodata took advantage of the UK Coronavirus Job Retention Scheme (**CJRS**) and put staff – including Survey Specialists - on temporary furlough. Those measures proved insufficient to achieve the level of cost-cutting required. Accordingly, Gyrodata decided to engage in a redundancy exercise to reduce its headcount/employee costs base.

Redundancy process

19. By a Form HR1 dated 22 June 2020 [97-101], Ms. Zedan notified the Insolvency Services of Gyrodata's intention to dismiss more than 20 employees at its Aberdeen establishment. Its intent then was to make a total of 23 staff redundant: 5 out of 14 manual staff, 1 out of 10 clerical staff, 6 out of 10 managerial staff, and 11 out of 42 technical staff (including 10 Survey Specialists). The HR1 stated the redundancy selection method would be a redundancy selection matrix.

20. The HR1 attributed the need for redundancies to lower demand for products and services. The RMT was the recognised union for Gyrodata's UK Pool Survey Specialists (Group 1). For employees not represented by a recognised union, Gyrodata identified the following employee elected representatives: Fintan Gormely (Group 2 - Engineer in Charge, EAC Team); Andrew Bisset and Andrew Will (Group 3 - Repair and Maintenance team, Wireline Team); and Mark Simpson (Group 4 – Support Group, Technical Support). The HR1 stated a copy had been given to all appropriate representatives.

Collective consultation meetings

21. On 25 June 2020, the first remote collective redundancy consultation meeting was held [102-107], which Mr. Lindie chaired. All Group representatives attended. The business case for redundancies was explained to be (i) the severity of the Covid-19 pandemic and downturn in the global oil industry, significantly affecting Gyrodata's 2020 revenues (ii) client cancellations of/delays to projects (iii) the current low oil price (iv) the unlikelihood of Gyrodata seeing any significant recovery until the third quarter of 2021. Ten Survey Specialists

out of a pool of 36 were to be selected for redundancy. Other subjects discussed included (1) whether there were plans to utilise the furlough scheme past 31 July 2020 (2) whether part-time work or reduced working hours had been considered as an alternative to redundancies (3) considering having office staff work from home on a permanent basis. It was agreed that Groups 1 and 2 would have meetings with management individually and Groups 3 and 4 would join for their meetings.

22. On 30 June 2020, a second remote collective/first Group 1 collective consultation meeting was held. Mr. Walker and Mr. MacFarlane jointly chaired the meeting. Attendees included Mhairi Zedan (HR), James Pratt, Ian Ellery, Michael Gordon and Gary Fowler. Mr. MacFarlane explained how the decision to make 10 Survey Specialists redundant had been made, which involved a comparison of average utilisation in the first 5 months of 2019 (14 days) versus average utilisation in the first 5 months of 2020 (9.5 days). Gyrodata's ideal average utilisation was 15 days per month. Splitting this over 26 surveyors equated to 13.2 days average utilisation, giving the business some leverage if some months were busier. Other topics discussed included (1) whether the average utilisation was in fact 20 days per month (2) how the total of 10 redundancies was settled on (3) the total job count in 2020 compared to 2019 (4) whether the business would reconsider redundancies if clients started to run projects again (5) the position of Norway staff (6) how redundancy payments would be calculated (7) whether staff working on projects and an employee offered a position in the Norway pool had been taken into account (8) the matrix which would be used (Mr. Walker stated they were still working on the matrix) (9) whether lower or higher grade Specialist Surveyors would bear the brunt of the redundancies (it was confirmed that all Grades were at risk and would be scored on the same matrix) (10) whether there would be independent review of the matrix scoring (it was confirmed that all matrix scores would be measurable and be based on facts, with scoring done by line managers who have the best understanding of their line reports' performance and abilities) (11) whether/how non-finalised appraisals would count (12) extension of the furlough scheme (13) swapping of staff on the furlough scheme (14) car allowances (15) whether information would be based on pre-

furlough (confirmed that no-one's matrix score would be penalised for being on furlough) (16) the weight to be given to length of service (17) whether there were other positions which affected staff could relocate to (Ms. Zedan stated investigations were made with senior management, all other regions were affected and having to "right-size", there were no other positions available elsewhere in the company).

23. On 9 July 2020, a third remote collective/second Group 1 collective consultation meeting was held. Mr. Walker and Mr. MacFarlane chaired the meeting. Attendees included Mhairi Zahedan (HR), James Pratt, Ian Ellery, Michael Gordon, Gary Fowler and David Clark. Mr. Walker and Mr. MacFarlane presented and explained the redundancy selection matrix. Topics discussed included (1) the dates on which grades would be considered (1 March 2020, before furlough) (2) why the 'GWD' test scoring was being used (3) for performance, whether there will be evidence (Mr. MacFarlane stated "all issues will have been discussed with the surveyor previously, we will look at disciplinary records, PFRs, verbal discussions confirmed in writing") (4) scoring – Mr. Walker stated that following points raised at the last meeting, scoring would not be based solely on Mr. Walker and Mr. MacFarlane's decisions, QHSE, OTS and other Operations staff's information would also be relied upon when it came to scoring (5) whether a copy of the matrix would be provided (yes) (6) whether Survey Specialists would be able to ask for clarification of their scores (Mr. MacFarlane – yes, there will be evidence as to why each score was given, and the scorers would speak to other departments involved in the Survey Specialist group to obtain a quantifiable record of performance (7) car allowances (8) utilisation rates (9) job shares (10) whether further salary cuts rather than redundancies should be considered (11) the redundancy timeline (12) the 'remote operation centre' (**ROC**) and whether positions might open up there.

24. Sometime between 9 July and 17 July 2020, Survey Specialists were sent the revised/updated redundancy selection matrix [126-128], summarised below (the predecessor matrix iteration was [123-124]):

No.	Criterion	Point allocation			
		<u>Grade 1-IV</u> 1 point	<u>Grade V-VII</u> 2 points	<u>Grade VIII-X</u> 3 points	<u>Grade XI-XIII</u> 4 points
1.	SS grade as of 1 March 2020	<u>Grade 1-IV</u> 1 point	<u>Grade V-VII</u> 2 points	<u>Grade VIII-X</u> 3 points	<u>Grade XI-XIII</u> 4 points
2.	GWD training school perform based on final assessment score	Not taken/failed 0 points	70-85% 1 point	>85-90% 2 points	>90% 3 points
3.	GDW Saba competency	<u>1 Service Provider</u> 1 point	<u>2 Service Provider</u> 2 points	<u>3 Service Provider</u> 3 points	<u>4 Service Provider</u> 4 points
4.	Performance issues previous 24 months	<u>None</u> 0 points	<u>1 Raised Issue</u> -3 points	<u>2 Raised Issues</u> -5 points	3+ Raised Issues -10 points
5.	Quality of work (job aspects, paperwork completeness (job file/reports incident follow-up, etc.))	<u>Below average</u> 1 point	<u>Average</u> 4 points	<u>Good</u> 8 points	<u>Excellent</u> 10 points
6.	Service quality contrib. (use of SQMS)	<u>Below average</u> 1 point	<u>Average</u> 3 points	<u>Good</u> 5 points	<u>Excellent</u> 8 points
7.	Reliability – responsiveness to mgmt requests, flexibility	<u>Below average</u> 1 point	<u>Average</u> 4 points	<u>Good</u> 8 points	<u>Excellent</u> 10 points
8.	Cooperation/work commitment – does employee cooperate, look for additional responsibilities	<u>Below average</u> 1 point	<u>Average</u> 3 points	<u>Good</u> 5 points	<u>Excellent</u> 8 points
9.	HSE commitment - QPulse workload, attendance toolbox talk, submit STOP cards, etc.	<u>Below average</u> 1 point	<u>Average</u> 3 points	<u>Good</u> 5 points	<u>Excellent</u> 8 points
10.	Location/passport specific aspects	<u>None</u> 0 points	<u>Small</u> -1 point	<u>Medium</u> -3 points	<u>Large</u> -5 points

25. On 17 July 2020, a fourth remote collective/third Group 1 collective consultation meeting was held. Mr. Walker and Mr. MacFarlane chaired the meeting. Attendees included Mhairi Zedan (HR), James Pratt, Ian Ellery, Michael Gordon, and David Clark. Mr. Walker and Mr. MacFarlane presented and explained the revised redundancy selection matrix. Other topics discussed included (1) the GWD selection criterion, which had been adjusted with the intention of making it fairer to all staff (2) job shares (3) further pay cuts if that would help reduce redundancies (4) quality/technical competency, in respect of which OTS would be liaised with (5) notice periods (6) disciplinaries, which would take into account issued PFR's and other reported performance issues, and would not be limited

to disciplinary action but all performance issues over the last 24 months (7) the pool, which would not be widened to include non-Survey Specialist staff.

26. On 23 July 2020, a fifth remote collective/fourth Group 1 collective consultation meeting was held to discuss (1) the redundancy process (2) the new Survey Specialist contract. The redundancy-related part of the meeting was brief, the Group 1 representatives confirming at the start of the meeting that they had no more questions on the redundancy selection matrix or the redundancy selection process.

10 Individual consultation meetings

27. As only 10 of the 36 Surveyors were to be made redundant (that number was subsequently reduced to 8), Gyrodata decided – reasonably in the Tribunal’s view - to engage in individual consultations only with those Survey Specialists whose redundancy scores had put them in the bottom 16. Specialist Surveyors whose scores were in the top 20 were notified in writing that they were not at risk of redundancy and there would be no individual consultation unless they wanted to discuss their matrix score – see sample letter at [129].

20 28. Mr. MacFarlane and Mr. Walker, in conjunction with internal Gyrodata departments, scored all 36 Survey Specialists. Mr. Sanger scored a total of 19 points [148], putting him in the bottom 8 scores.

No.	Criterion	Mark Sanger point allocation			
1.	SS grade as of 1 March 2020	Grade 1-IV	Grade V-VII	<u>Grade VIII-X</u> 3 points	Grade XI-XIII
2.	GWD training school perform based on final assessment score	Not taken/failed	70-85%	<u>≥85-90%</u> 2 points	>90%
3.	GDW Saba competency	1 Service Provider	2 Service Provider	3 Service Provider	<u>4 Service Provider</u> 4 points
4.	Performance issues previous 24 months	None	1 Raised Issue	2 Raised Issues	<u>3+ Raised Issues</u> -10 points
5.	Quality of work - job aspects, paperwork completeness (job file/	<u>Below average</u> 1 point	Average	Good	Excellent

	reports, incident follow-up, etc.				
6.	Service quality contrib. (use of SQMS)	Below average	<u>Average</u> 3 points	Good	Excellent
7.	Reliability – responsiveness to mgmt requests, flexibility	Below average	Average	<u>Good</u> 8 points	Excellent
8.	Cooperation/work commitment – does employee cooperate, look for additional responsibilities	Below average	<u>Average</u> 3 points	Good	Excellent
9.	HSE commitment - QPulse workload, attendance toolbox talk, submit STOP cards, etc.	Below average	Average	<u>Good</u> 5 points	Excellent
10.	Location/passport specific aspects	<u>None</u> 0 points			

29. By letter dated 6 August 2020, Ms Zedan invited Mr. Sanger to attend a first remote individual consultation meeting on 7 August 2020 with Mr. MacFarlane where he would be notified of his scoring and given the opportunity to ask questions. The letter informed Mr. Sanger of his right to be accompanied by a union representative or work colleague.

30. On 7 August 2020, Mr. Sanger attended his first remote individual consultation meeting with Mr. MacFarlane, which Ms. Zedan attended as HR representative [132-35]. Mr. Sanger confirmed he was happy to have the meeting now. Mr. MacFarlane explained the purpose of the meeting. Mr. MacFarlane then went through Mr. Sanger's scores. Mr. Sanger stated no complaints about his scores for SS Grade, GWD training score, or GDW Saba competency.

31. Mr. Sanger complained about scoring -10 points (3 or more issues in previous 24 months) for Performance. In response, Mr. MacFarlane referred to (i) a PFR on file for Noble Lloyd Noble [250] (ii) a PFR on file for Clair Ridge [250] (concerning an end of life battery) (iii) an 'SQMS' issue [245-256] where Mr. Sanger had not updated the system properly, resulting in a waste of a day's testing for the R&M repair team as Mr. Sanger had not made it clear that the problem was a serial port issue on the laptop.

32. Mr. Sanger complained about scoring 1 (below average) for (5) Quality of work. In response, Mr. MacFarlane referred to (i) SQMS (ii) late submission of expenses (iii) competency system requests with no backup attached for review (iv) regular long delays in returning requested information.

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33. Mr. Sanger complained about scoring 3 (average) for Service Quality Contribution. In response, Mr. MacFarlane referred to some use of the system documented but no assistance in further analysis.

10 34. Mr. Sanger complained about scoring 3 (average) for Reliability. In response, Mr. MacFarlane noted Mr. Sanger had been given the highest score and there had been an issue about a missed flight.

15 35. Mr. Sanger complained about scoring 3 (average) for Cooperation/Work Commitment. In response, Mr. MacFarlane referred to (i) Mr. Sanger not looking for additional responsibility (ii) there being nothing in QPulse (iii) Mr. Sanger's failure to sign a PFR for 10 weeks after it was issued.

20 36. Mr. Sanger complained about scoring 5 (good) for HSE commitment. In response, Mr. MacFarlane referred to Mr. Sanger having frequent use of systems but not having any onshore observations. When Mr. Sanger challenged this, Mr. MacFarlane said he would look into it with QHSE. At the end of the meeting, Mr. MacFarlane stated that they would go through Mr. Sanger's scores and consider the points.

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37. By email on 7 August 2020 at 15:55, Mr. Sanger requested a breakdown of his point allocation and the justification. By email on 13 August 2020 at 16:33, Mr. MacFarlane attached a breakdown of Mr. Sanger's scores with detailed written comments about each individual score [146-149].

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38. By letter dated 18 August 2020, Ms Zedan invited Mr. Sanger to attend a second remote individual consultation meeting where Mr. MacFarlane would respond to the comments Mr. Sanger had made about his scoring during the first

consultation meeting. The letter informed Mr. Sanger of his right to be accompanied by a union representative or work colleague.

5 39. On 21 August 2020, Mr. Sanger attended his second remote individual consultation meeting with Mr. MacFarlane (this time accompanied by RMT union representative Mr. Malloy), which Ms. Zedan attended as HR representative [151-156]. Mr. Sanger asked whether the ROC option was a possibility, but was informed that staff working at home were managing to cover the ROC workload. Mr. Sanger and Mr. MacFarlane engaged in a detailed discussion of some of the
10 matters raised in the explanatory notes added to Mr. Sanger's scoring sheet. Mr. Sanger raised a variety of further objections to the scores he challenged, and Mr. MacFarlane explained in detail why he believed Mr. Sanger had been scored correctly on those scores.

15 40. By letter dated 26 August 2020, Ms Zedan invited Mr. Sanger to attend a third remote individual consultation meeting to discuss the line manager's review of the documents Mr. Sanger had submitted and the questions he raised at the previous meeting. The letter informed Mr. Sanger of his right to be accompanied by a union representative or work colleague.

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41. Before the third meeting, Ms. Zedan sent Mr. Sanger a letter via email dated 31 August 2020 (incorrectly dated 2019) which provided the line manager's substantive response to (on the Tribunal's count) 38 topics which Mr. Sanger had raised in his prior correspondence/documentation [174-180].

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42. On 2 September 2020, Mr. Sanger attended his third remote individual consultation meeting (again accompanied by RMT representative Mr. Malloy), this time with Mr. Walker, and Ms. Zedan [186-188]. Mr. Walker warned Mr. Sanger that one outcome of the meeting might be dismissal by reason of
30 redundancy. Mr. Sanger confirmed he had received Ms. Zedan's 31 August 2020 letter, stated he thought a few of his points had not been answered, but that could be discussed later. At the meeting, Mr. Walker went through each of the selection criteria which Mr. Sanger challenged (Performance issues, Quality of

Work, HSE commitment, Service Quality Commitment, Cooperation/Work Commitment), and provided a substantive explanation of why Mr. Sanger's scores on each criterion would not change. Mr. Walker's justifications are too lengthy to quote in full, but one example is the response regarding Work Commitment:

"I took into consideration your document reviewer that you mentioned in the last meeting. However, that is not considered as the same as being an author of a document. This will be discussed further in the HSE section. Again, from the last meeting I considered your point about the DWOP ['paper' drilling exercise] in Denmark. I can confirm you did go in my place last minute, however when reviewing this it was also noted that I had to chase you for a copy of the notes from this meeting, and only received a very limited set of notes from the meeting a month after my first request. You also highlighted the EIC cover in Congo, when I look at the evidence there are some examples which are Good but then there are some that are Below Average, therefore an overall score of Average is fair."

43. Mr. Walker accepted some of the comments on Mr. Sanger's first redundancy selection matrix had been misleading, however a full review was done, the scores were justified, and someone from outside the Survey Specialist department was also involved in the review. Mr. Walker acknowledged Mr. Sanger's unhappiness about the scoring, but informed him that he had to serve notice of termination on grounds of redundancy. Mr. Walker then explained Mr. Sanger's right to appeal. Mr. Sanger's dismissal was confirmed in writing by letter dated 4 September 2020.

Appeal

44. By email on 10 September 2020, Mr. Sanger lodged an appeal against dismissal [193-195]. His appeal was on grounds of "unfairness", and mentioned only three specific criteria – Performance issues, Cooperation/Work Commitment, HSE.

Mr. Sanger also raised issues about how other Survey Specialist's scores had been changed.

5 45. By letter dated 11 September 2020, Ms. Zedan acknowledged receipt of Mr. Sanger's appeal, informed him that his appeal would be heard on 18 September 2020, which would be decided by Bert Lindie, and repeated Mr. Sanger's right to be accompanied at the appeal hearing.

10 46. On 18 September 2020, Mr. Sanger's appeal was heard remotely by Mr. Lindie – see note at [197-202]. Mr. Sanger's union representative Mr. Malloy (RMT) was in attendance. At the appeal hearing, Mr. Sanger presented his case in respect of each of his grounds of appeal. The note on its face suggests that Mr. Lindie genuinely engaged Mr. Sanger in respect of each of those grounds, although it is equally clear that there was plainly no 'meeting of minds' – Mr. Sanger's
15 expectations about what he considered fair marking were clearly different from those of Mr. Lindie (eg, the responsibilities of more senior engineers on site for work done by more junior colleagues).

20 47. By letter dated 5 October 2020 [203-206], Mr. Lindie notified Mr. Sanger that his appeal against dismissal had been unsuccessful. Mr. Lindie's letter addressed in detail each of Mr. Sanger's appeals against his scoring on the criteria of (i) Performance Issues (ii) Quality of Work (iii) Work Commitment and Cooperation (iv) HSE Commitment, and in relation to each of those scores provided a substantive explanation as to why he upheld Mr. Sanger's scores.

25 48. The Tribunal notes that Mr. Sanger's final score was 19 points. Three other more junior Survey Specialists each scored 21 points, and a tie-breaker based on GDW Saba competency was applied to determine which of the three should lose their post. Mr. Sanger said in evidence – and the Tribunal accepts – that if
30 Mr. Sanger had scored 21 points, putting him in the tie-breaker pool with his colleagues, it is virtually certain that Mr. Sanger would have come through the tie-breaker and not lost his job because of his substantially greater GDW Saba experience.

Law

49. Sec 139(1) of the Employment Rights Act 1996 states (in relevant part) that for
the purpose of that Act an employee who is dismissed shall be taken to be
5 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
10 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.

50. Provided a genuine redundancy situation exists (ie, it is not a mere sham to
15 provide pretextual cover for a dismissal), the Tribunal does not have jurisdiction
to determine whether an employer's decision to have redundancies either at all
or in the numbers decided upon rather than take an alternative course of action
was unfair or unreasonable, or decide an unfair dismissal claim on the basis that
the decisions the employer made on those matters were unfair or unreasonable.
20 In a genuine redundancy situation, the decision whether or not to make posts
redundant is a business decision for the employer. Moon v Homeworthy
Furniture (Northern) Ltd [1976] IRLR 298.

51. In determining whether a dismissal was fair, the Tribunal is obliged to
25 (a) determine that issue based on the facts known and beliefs held by the
employer at the time of dismissal (i.e., not judge the dismissal with the benefit of
hindsight, although the Tribunal can take into account matters which an employer
ought reasonably to have known) (b) assess the fairness of the dismissal as a
whole, not focus on only the substantive fairness or only the procedural fairness
30 of the dismissal.

52. A dismissal is unfair under s.98(4) of the Employment Rights Act 1996 if, and
only if, the dismissal was outwith the band of reasonable responses open to the

5 employer at the time. The Tribunal must not substitute its own judgment for that of the employer, and must not ask itself what it would have done in the same circumstances – the Tribunal is obliged to focus on what the employer did, based on what the employer knew and believed at the time, in determining whether the employer acted reasonably in dismissing the employee for its stated reason.

10 53. Williams v Compair Maxam [1982] UKEAT/372/81. Where employees are represented by an independent union recognised by their employer, reasonable employers will generally seek to act in accordance with the following principles:

15 54. First, the employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and if necessary find alternative employment in the undertaking or elsewhere.

20 55. Second, the employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employee as possible. The employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.

25 56. Third, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency, experience or length of service.

30 57. Fourth, the employer will seek to ensure that the selection is made fairly in accordance with these criteria, and will consider any representations the union may make as to selection.

58. Fifth, the employer will seek to see whether instead of dismissing the employee the employer could offer the employee alternative employment.

59. The factors above are not present in every case, and can be departed from for good reason.

Redundancy selection pool, criteria

60. In general, an employer who sets up a system of selection which can reasonably be described as fair and applies it without any overt sign of conduct which mars its fairness will have done all the law requires of it. British Aerospace v Green [1995] ICR 1006, 1010A-B.

61. The question of how the redundancy pool should be defined is primarily a matter for the employer to determine. It will generally be difficult for the employee to challenge it where the employer has genuinely applied its mind to the problem. Taymech Ltd v Ryan [1994] UKEAT/663/94/1511.

62. The obligation on the employer is to show that the method of selection was fair in general terms and was applied reasonably. The employer is not obliged to prove the accuracy of the information upon which the selection was based. Eaton Ltd v King [1995] IRLR 75 at 78, para. 11, dicta endorsed by Millett LJ in British Aerospace v Green [1995] ICR 1006.

63. In assessing the reasonableness of a decision to dismiss for redundancy, it is rarely appropriate for the Tribunal to embark upon a detailed scrutiny of the criteria used for scoring or the application of those criteria to the particular circumstances of a claimant and others in the pool. Semple Fraser LLP v Daly [2010] UKEATS/0045/09, para. 28.

64. Even if there is some justification for scrutinising the scoring (eg, evidence of an ulterior motive), and the Tribunal finds legitimate reason to criticise it, the Tribunal is still obliged to stand back and ask itself whether, overall, the employer could

be said to have reached a decision to dismiss which was (or was not) open to a reasonable employer in all the circumstances, including (i) whether the employer had given appropriate notice of the risk of redundancies (ii) whether the employer had set up a system for identifying the right selection pool (iii) whether the employer had fairly and reasonably consulted the employees about the need for redundancies and the redundancy selection criteria (iv) whether the employer had adopted reasonable redundancy selection criteria (v) whether scores had been moderated in light of employee representations. Semple Fraser LLP v Daly, para. 42.

65. A dismissal on redundancy grounds may be unfair if the employer fails to show that the redundancy selection criteria were fairly applied to the employee. Protective Services (Contracts) Ltd. v. Livingstone [1991] UKEAT 269/91, 18 October 1991.

Conclusions

66. Applying the law to the findings of fact above, the Tribunal concludes that Mr. Sanger's dismissal on grounds of redundancy in September 2020 was within the band of reasonable responses open to Gyrodata in all the circumstances at the time, hence was not unfair.

67. The Tribunal reached that conclusion on the following principal grounds:

68. First, the Tribunal is satisfied that Gyrodata faced a genuine redundancy situation in 2020, and Mr. Sanger's dismissal was wholly attributable to that fact. The Covid-19 pandemic caused worldwide demand for oil and gas to drop substantially, causing a substantial drop in (a) the worldwide price for oil and gas (the Tribunal takes judicial notice of the widely reported fact that April 2020 was the first time in history when oil recorded a negative price) (b) the demand for oil and gas-related services, including the gyroscopic surveying services Gyrodata offered its clients.

69. Notwithstanding Mr. Sanger's concession at the beginning of the hearing (noted at para. 4 above), the Tribunal does not accept Mr. Sanger's contention in his ET1 that Gyrodata was not in a genuine redundancy situation in 2020 merely because on 8 June 2020 Mr. Lindie signed Gyrodata's annual report and financial statements for the year ended 31 December 2019 (a document publicly available online at Companies House) which, on Mr. Sanger's account, said that Gyrodata was "*in good shape to get through the Covid-19 issues*". The Tribunal notes that what that annual report actually said was as follows: "*The principal risk facing the Company is the health of the oil and gas industry which drives demand for its products and services. The Company mitigates this risk by having a geographical spread of business and through the flexibility to react to sudden changes in the trading environment. The sudden decrease in the price of oil in March 2020 following the outbreak of the Coronavirus pandemic worldwide will potentially have an impact on the levels of trading in 2020. The directors are monitoring the impact of this and will look to manage the risk to both cash flow and profitability, albeit the Company and Group are well funded to get through any downturn.*" This more nuanced statement is consistent with a genuine need on Gyrodata's part in the summer of 2020 to cut costs through staff redundancies.

70. Second, following the onset of the Covid-19 pandemic, the Tribunal is satisfied that Gyrodata gave Mr. Sanger and other affected employees reasonable advance notice of its need for cost-savings and the potential need for redundancies. Mr. Sanger did not contend otherwise in his ET1 or closing submissions. The Tribunal notes that before making any redundancies, Gyrodata attempted to cut costs by effecting significant salary cuts across the board – a minimum 12.5% cut for all staff, a 20% cut for more senior staff. At the time these cuts were implemented - March 2020, several months before the redundancy exercise began - Ms. Zedan (HR) gave all staff notice by email of the risk of potential future redundancies ("*If we do not implement these salary reductions now the company will be forced to consider redundancies.*") [75].

71. Third, the Tribunal is satisfied that Gyrodata adequately consulted its staff about (i) the need to cut costs (ii) the potential need for redundancies (iii) the

redundancy process and selection criteria to be used, first via collective consultations with the Group 1 representatives for the Survey Specialists (for which see paras. 21-26 above), and second via individual consultations with Mr. Sanger personally (for which, see paras. 29-43 above). The Tribunal is

5 satisfied that Gyrodata's consultations with the Group 1 representatives and Mr. Sanger personally were genuine, substantive, and covered a large number of pertinent questions and issues, all of which Gyrodata took seriously and sought to provide a substantive response to (the consultations were not a mere 'rubber-stamping' exercise). The Tribunal is also satisfied that the collective

10 consultations were undertaken before Gyrodata had made any irreversible decision to make staff redundant, and is satisfied that if employees had made proposals which Gyrodata senior management thought were reasonable and workable, that those proposals would have been seriously considered and implemented if deemed appropriate. Put bluntly, it was not in Gyrodata's own

15 interests to make skilled, experienced Survey Specialists redundant if that could be avoided. Mr. MacFarlane, Mr. Walker and Mr. Lindie were all at pains to point out that there was never any question or doubt about Mr. Sanger's competence as a Survey Specialist, and there would have been no risk to his continued employment in 2020 had it not been for the Covid-19 pandemic.

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72. Fourth, the Tribunal is satisfied that Gyrodata's choice of redundancy selection pool for Mr. Sanger – a pool consisting of all 36 Survey Specialists which Gyrodata employed in 2020 immediately prior to the Covid-19 pandemic – was a fair, reasonable and indeed obvious pool from which to select 8 Survey

25 Specialists for redundancy. Mr. Sanger did not contend otherwise in his ET1 or closing submissions.

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73. Fifth, the Tribunal is satisfied that the 10 redundancy selection criteria identified at para. 24 above which Gyrodata used to determine which of the 36 Survey Specialists should be made redundant and the relative weighting given to each of those criteria were reasonable. The key point is that all 10 redundancy selection criteria bore a rational relation to Gyrodata's business need to retain its most trained, skilled, and – being blunt - least operationally problematic Survey

Specialists going forward. When more experienced Survey Specialist staff complained about the second criterion during the collective consultation process with the Group 1 representatives (GWD training school performance based on final assessment score), the GWD Saba competency criterion was added as a counter-balance to recognise the importance of practical experience, not just exam/test results.

74. The Tribunal does not accept the complaint in Mr. Sanger's ET1 that Gyrodata's redundancy selection criteria should have included his "*additional workloads*" outside his job description. The purpose of redundancy selection criteria (and the resulting matrix) is to provide a general set of selection criteria which can fairly be applied to all individuals falling within the redundancy selection pool. In the Tribunal's judgment the redundancy selection criteria Gyrodata adopted for the Survey Specialists reasonably did this.

75. Sixth, having considered the evidence in chief of Mr. MacFarlane and Mr. Walker, and the lengthy (and, for the avoidance of doubt, wholly appropriate) detailed cross-examination of those two managers by Mr. Sanger, the Tribunal is satisfied overall that Mr. MacFarlane and Mr. Walker fairly applied the redundancy selection criteria noted at para. 24 above to Mr. Sanger and gave scores which were within the band of reasonable scores open to them at the time: (i) Mr. Sanger's scores were given in good faith (there was no overt or covert bias on their part against Mr. Sanger and/or in favour of any other Survey Specialist) (ii) Mr. Sanger's scores were based on judgments which could be – and very largely were – substantiated by documents and information in Gyrodata's records/files and/or by other knowledgeable members of staff (iii) Mr. Sanger's scores were not the expression of Mr. MacFarlane and Mr. Walker's arbitrary opinions about Mr. Sanger. In cross-examination, both Mr. MacFarlane and Mr. Walker were comfortable providing detailed explanations of how Mr. Sanger's challenged scores had been arrived at, and maintained throughout their cross-examinations that they believed at the time – and still believe now – that Mr. Sanger's scores were correct and justified. Having heard Mr. MacFarlane's explanation, the Tribunal does not accept Mr. Sanger's

inference (stated in his ET1) that because Survey Specialist Euan Taylor was called on to a job not Mr. Sanger, that Gyrodata “*had made an [a]ssumption of outcome of the [c]onsultations*”. The Tribunal did not find credible Mr. Sanger’s suggestion that Mr. Walker might have marked him down in the redundancy scoring exercise because Mr. Sanger had raised a holiday/wage issue with his employer in 2019.

76. The Tribunal does accept one of the criticisms Mr. Sanger made of his scoring, which was that for at least one criterion (Performance), Mr. Sanger’s scoring had not been done strictly in accordance with an assurance given at the Group 1 collective consultation on 9 July 2020 that all issues would be ones which would have been discussed previously with the Specialist Surveyor and confirmed in writing. However, the impact of that on Mr. Sanger was substantially mitigated by the fact that Mr. Sanger did not dispute that the specific incident referred to and relied upon – documented at [245-246] - had in fact occurred. At the appeal hearing, Mr. Lindie stated – and the Tribunal accepts on the balance of probabilities - that all employees in the pool had been scored “*on the same basis*”, with the “*same process for all*”.

77. Seventh, the Tribunal is satisfied that Gyrodata discharged its burden of making reasonable efforts to find alternative employment for Mr. Sanger before dismissing him. The reality of the situation was that Gyrodata had no alternative positions available for Mr. Sanger elsewhere in the company (as noted at para. 19 above, it was making redundancies not just amongst the Survey Specialists but across the company) or the corporate group (Gyrodata, Inc. offered the same gyroscopic survey services, and was facing the same economic difficulties, as its UK subsidiary). Gyrodata did not act unreasonably in not accepting Mr. Sanger’s suggestion of creating a permanent post for him in the ROC because (i) Gyrodata was already adequately staffing the ROC via short-term rotations of its existing Survey Specialists (ii) having a dedicated operative in that post would increase costs (as Mr. Sanger accepted), at a time when Gyrodata was reasonably looking to reduce its costs base.

78. Eighth, having heard Mr. Lindie's evidence under cross-examination, the Tribunal is satisfied that the appeal process which Mr. Lindie chaired was fair and reasonable, and not a mere sham or one with a pre-determined outcome regardless of Mr. Sanger's submissions at the appeal hearing. The Tribunal was obviously not present at the appeal hearing, but at the hearing Mr. Lindie gave the impression of someone who was familiar with the underlying facts and judgments and was capable of forming his own independent judgment about the propriety of Mr. Sanger's scores. Mr. Lindie's letter dismissing Mr. Sanger's appeal provided a detailed substantive response explaining why each of his challenges to his redundancy scoring had not been accepted.

79. Ninth, the Tribunal is satisfied that, looked at in the round, Mr. Sanger's dismissal on grounds of redundancy was reasonable (hence not unfair) both procedurally and substantively. Semple Fraser LLP v Daly, para. 42

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Employment Judge	A Tinnion
Date of Judgement	15 September 2021
Date sent to parties	15 September 2021

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