EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4108357/21 (V)

Held on 28, 29 & 30 July 2021

Employment Judge N M Hosie

Mr R Youens	**Claimant Represented by Mr P Deans, Solicitor**
Stork Technical Services (RBG) Limited	**Respondent Represented by Mr E Gilligan, Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim is dismissed.

REASONS

Introduction

1. Ryan Youens, claimed that he was unfairly dismissed by the respondent Company ("Stork"). The respondent admitted the dismissal but claimed that the reason was redundancy and that it was fair. The claimant's solicitor accepted that there was a genuine redundancy situation but maintained that

the claimant's selection was unfair. The issue in the case was whether the respondent had taken reasonable steps to redeploy the claimant and, in particular, whether it was unreasonable not to consider him for a Scaffolder Chargehand role on the Buzzard rig which became available whilst the claimant was on notice of redundancy.

The evidence

2. On behalf of the respondent I heard evidence from:-

- Victoria King, Senior HR Advisor
- Mark Nicholson, Recruitment Team Lead
- Haley Smith, HR Advisor
- Michael Connelly, Contract Delivery Manager

The claimant gave evidence on his own behalf.

3. A joint inventory of documentary productions was lodged by the parties ("P").

The facts

4. Having heard the evidence and considered the documentary productions, I was able to make the following relevant findings in fact. The claimant was employed by the respondent as a Scaffolder and Scaffolder Chargehand, working offshore on different offshore installations, from 10 February 2010 until his dismissal, by reason of redundancy, on 4 November 2020. A Scaffolder Chargehand is a lead Scaffolder who oversees a team of Scaffolders. The claimant was employed in an ad-hoc role. The nature of this role meant that he could be deployed by the respondent to carry out work on any of the various client installations served by the respondent, as and when such services were required, as opposed to being engaged under a regular rota offshore. The claimant's contract of employment was one of the documentary productions (P.32-38).

General recruitment pool

5. The respondent constantly reviews ongoing requirements for ad-hoc employees across various specialist disciplines, including Scaffolders. With reference to a "general recruitment pool", it carries out an ongoing process of scoring employees for the purposes of selection for assignments on client request and, where required, for selection for redundancy. The scoring of employees is carried out with the use of a scoring matrix, based principally on the existence or otherwise of certain work-related competencies. The recruitment pool and scoring matrix for Scaffolders, dated 17 April 2020, was one of the documentary productions (P.89-91). This included the claimant's scoring (P.89). Stork has minimum standards for each trade, mainly relating to qualifications and training and points are deducted if an employee has a "live disciplinary". The "1st score" is the one which is taken account of for allocating work; the "2nd score", which takes account of length of service, is only considered where there is a "tie-break".

2020

6. Due to the impact of the Covid-19 Pandemic, many of the respondent's client contracts were cancelled, or significantly delayed or reduced. As a result, the claimant was down-manned from the Scott platform on 30 March 2020, along with other Scaffolders employed by the respondent, and placed on furlough.

7. On 9 April, the respondent wrote to the claimant to confirm his, *"transfer to furlough status"*, which the claimant accepted (P.73-76).

8. Due to the ongoing down-turn, the respondent assessed the economic viability of retaining employees on furlough long-term and concluded, in all the circumstances, it required to reduce the number of employees within its workforce due to a redundancy situation. The respondent's Directors decided that everyone in the "General Recruitment Pool" who had been down-manned

and were not then assigned to a client project would be placed at risk of redundancy. Accordingly, 57 Scaffolders, including the claimant, were placed at risk of redundancy. The claimant was advised of this by Kristi Strachan, Recruiter, by telephone on 17 April 2020 and Ms Strachan confirmed the position by letter on the same date (P.77-79). Ms Strachan also enclosed with her letter the respondent's "Collective Consultation Presentation and Employee Assistance Programme" (P.80-88).

9. Thereafter, the respondent's recruitment team searched for suitable alternative roles to which the claimant and other employees at risk of redundancy could be assigned. The claimant continued to be furloughed for the duration of the consultation period.

10. After collective consultation there was individual consultation. On 15 May 2020, the claimant was invited to an individual "mid-consultation meeting" by Kay Scott, Logistics Advisor to be held on 19 May (P.92/93). A copy of the matrix with the claimant's score was attached to the e-mail (P.94).

11. By e-mail on 15 May 2020, the claimant advised that he was "*happy with the scoring*" (P.95).

12. The meeting was duly held by telephone on 19 May. The outcome of the meeting was communicated to the claimant in writing by Ms Scott in a letter dated 19 May (P.97/98). The claimant was invited to a further consultation meeting on 21 May but this was postponed due to the wider collective consultation continuing.

13. The claimant participated in the consultation meeting on 27 May. The outcome of the consultation process was that the claimant's employment was terminated due to redundancy. This was communicated to the claimant by letter dated 27 May from Sam Henderson, Project Manager (P.104/105). The following are excerpts from his letter:-

"*Unfortunately your role was put at risk of redundancy as there is currently a reduced requirement for Scaffolders due to the impact of Covid-19 which in turn has directly affected the demand for oil resulting in the oil price reducing to historically low levels.*

Following a complete review of confirmed and forecast future work from our clients, unfortunately we have no option but to reduce the numbers of personnel within our workforce. We have a number of redundancy consultations currently progressing. We are regularly speaking to our clients in an attempt to have work confirmed and rescheduled. As you may be aware the Forties Pripeline (sic) *Shutdown that was planned to commence in 2020 has now been postponed to 2021 due to the impact of Covid-19.*

As you are aware we consulted collectively with trade unions (UNITE, GMB & RMT) about these proposals, including our approach to selection, utilising the selection matrix. We have also been open with the Union representatives that the cost to hold employees on Furlough is not sustainable for the business and is therefore regrettably not considered to be an alternative to redundancy.

Following your previous consultation meeting on 19 May 2020 we discussed the selection matrix criteria and your score. At the meeting you also had the opportunity to raise any concerns in regards to your score and highlight any omitted certification. There was also an opportunity to discuss any thoughts or alternatives to redundancy or mitigations that could be implemented.

As you were down-manned and returned to re-allocation for re-assignment you are directly impacted due to us having significantly lower levels of confirmed assignments and unfortunately we expect this to continue throughout the year.

In all the circumstances it is with regret that I write to confirm that your employment with the company is being terminated due to redundancy. Notice of termination of employment shall be effective as of Sunday 31 May 2020.

As you have 10 years' service with the company you have a 10 weeks' notice period. The company requires you to be available for work during this time. This means that your final date of employment will be 8 August 2020 (Termination Date). During this time you will be expected to remain in your current role as a Scaffolder and work your notice period. Your Termination Date may be brought forward depending on work requirements, if so you would receive the balance of your notice as payment in lieu of notice (PILON)."

14. Accordingly, the claimant continued to be furloughed during the notice period. He did not appeal the decision to make his role redundant, although he was afforded the right to do so.

15. The claimant had been advised that should work become available during his notice period he would be notified and his furlough status would end. On 3 August 2020, Natasha Rogers, Operations Recruitment Officer, contacted the claimant by telephone to inform him that he was being removed from furlough to be assigned to a short-term trip to an offshore Installation. She confirmed this by letter on the same date (P.106/107).

16. As a consequence, the claimant's notice period was extended twice to the 31 August by letters dated 10 and 18 August 2020 (P.109 and P.111).

17. On 31 August 2020, Ms Rogers telephoned the claimant to advise him that as the respondent had "*no long-term requirements for your position as Scaffolder in the near future across Stork*" his notice period had ended and that his employment was terminated on the grounds of redundancy. She confirmed this by letter the same day (P.112/113).

18. Due to a peak in productivity levels, the claimant was notified on 7 September that his termination was being rescinded for a short trip to the Buzzard Field as a Scaffolder, mobilising on 16 September. There were various extensions of his notice period thereafter until 4 November 2020 (P.117-124).

Dismissal

19. On 4 November, Ailsa Fowler-Thompson, Senior Operations Recruitment Co-ordinator, contacted the claimant by telephone to advise that as no suitable alternative roles had been identified his notice period was now at an end as there "*were no long-term requirements for Scaffolders in the near future.*" Ms Fowler-Thompson confirmed this by letter on 4 November 2020

and advised that his "final date of employment" was 4 November 2020 (P.126).

Claimant's grievance

20. On 4 November, the claimant submitted a written grievance (P.128-129). The gist of his grievance was that the respondent had failed to redeploy him. The respondent replied to the claimant in writing on 30 November 2020 (P.132-134). The claimant responded later that day by e-mail as follows (P.132):-

"*Hi Haley*
Thank you for response to my Grievance.
Kind Regards
Ryan."

Respondent's submissions

21. The respondent's solicitor spoke to written "Outline Submissions" which are referred to for their terms.

22. In support of his submissions, he referred to the following cases:-

Polkey v. A E Dayton Services Ltd [1987] IRLR 503HL;
Langstone v. Cranfield University [1998] IRLR 172EAT;
British United Shoe Machinery Co. Ltd v. TGL Clarke [1977] IRLR 297;
Iceland Frozen Food Ltd v. Jones [1982] IRLR 439EAT;
Post Office v. Foley [2000] IRLR 827CA.

23. He invited the Tribunal to make certain findings in fact. He then went on to make the following submissions in response to the claimant's contention that, in short, the respondent had failed to take reasonable steps to redeploy him:-

"*The claimant contended that the claimant's colleagues, including Ryan Duncan, were being offered work on the Scott Platform and other rigs but, 'the claimant was never offered these jobs despite his length of service or experience'. The respondent allocated employees assignments based on their score under the objective scoring matrix. Those with a higher score were generally assigned work ahead of those with a lower score. Length of*

service is not a primary criterion under the matrix and is only a secondary consideration in a tie-break situation. The claimant held a score of 4 under the matrix. Mr Duncan had a score of 7 and accordingly by virtue of the fair application of the matrix scoring system was assigned work ahead of the claimant in September 2020.

The claimant also contended that 'the respondent recruited Steve McIntyre, to work as a Scaffolder Chargehand on the Buzzard Rig in September 2020. It was accepted by the respondent that Mr McIntyre was re-engaged by the respondent to carry out such a role in September 2020. Mr McIntyre had been made redundant by the respondent earlier in the consultation process and was re-engaged by the respondent at this point on the basis that they had no suitable unassigned employee within the general recruitment pool in circumstance where Mr McIntyre was suitable. The requirement intimated by the client, Worley, was for scaffolder chargehand to have 'PA status' and be 'platform familiar'. It was also stated 'I can't wait for 3 weeks until he gains it'. The evidence of Mr Nicholson and Mr Connelly was that this was the requirement of the client Worley albeit contained in the respondent's document. The records produced by the respondent indicate he had trained in Permit to Work (Centrica) and P-Vision (Chrysaor) but having never been on the Buzzard had not been PA trained on that asset. It was accepted by the claimant that he did not have PA status in relation to the Buzzard platform. It was the undisputed evidence of Mr Connelly, Contract Delivery Manager that in order to obtain PA status in relation to the Buzzard it was not sufficient to simply do computer based training and that time spent on the asset was necessary and that generally up to three trips to an asset would be required before involving time being spent being assessed with a minimum period of a further 4 days once asset experience had been obtained to complete the process of gaining PA status which was conferred by the OIM. This was consistent with evidence given by Mr Nicholson as to his understanding of what was required to attain PA status in relation to the Buzzard.

In any event, the claimant was offered and accepted a short-term assignment to the Buzzard Field as a Scaffolder covering a similar period.

The claimant asserted that two colleagues had obtained PA status in one trip (Steven Burn & Mark Jones) to the Buzzard. The evidence produced at pages 137 and 138 show that while they had been deployed as Scaffolding Chargehands they had not gone to the Buzzard exercising PA status.

The respondent submits that limited reference in evidence made to Dean Thornton should be disregarded on the basis of the respondent's objection that this matter had not been pled and the Tribunal should accordingly have no regards to it."

"Legal submissions"

24. The respondent's solicitor then went on to make "legal submissions". He submitted that: -

"In relation to a fair system of selection there was *no application of selection criteria in relation to putting the claimant at risk of redundancy in circumstances where the respondent had a surplus of unassigned employees in the general recruitment pool in April 2020 all ad-hoc employees within that general recruitment pool were placed at risk of redundancy. This involved 163 ad-hoc trades employees including some 57 Scaffolders. Employees on the Permanently retained contract were not placed at risk in accordance with their different contractual status.*

In accordance with their normal practice and the respondent's Offshore Matrix procedure those employees within the general recruitment pool were then to be assigned alternative work primarily based on the application of the objective scoring matrix, with higher scorers generally being offered assignments before lower scorers subject to availability, willingness to mobilise offshore and any specific client requirements. There is a particular challenge by the claimant to the approach adopted by the respondent on giving credit for training. This was dealt with in the context that the consultation process and the subsequent grievance. Essentially the claimant complains that the scoring was based on completed training and that he had offered to undertake additional training being the Alustar and Atpak training. The respondent's position on this was very straight forward. Such training was only made available when required by a client to which an employee is assigned on the basis that the cost is reimbursable to the respondents. The claimant had not been required to undertake this training. The respondent was entitled to score the claimant on the basis of the training actually undertaken."

25. The respondent's solicitor further submitted that, "*the consultation was adequate in all the circumstances*".

26. So far as alternative employment was concerned, the respondent's solicitor submitted that, "*this has to be seen in the particular context of the respondent's business and the operation of a general recruitment pool to which unassigned ad-hoc tradesmen were allocated. The scoring system was utilised in the allocation of assignments but was also subject to other reasonable and practical factors such as availability, willingness to be mobilised and particular client requirements. This was an employer operating*

in a challenging and fluid environment handling urgent and fast-moving client demands for ad-hoc labour."

27. The respondent's solicitor made reference to the *"strenuous efforts"* which the respondent had made to prolong the claimant's employment: his notice period had been extended on many occasions.

28. So far as the claimant's particular challenges in relation to Ryan Duncan being offered work on the Scott rig in August 2002 were concerned, the respondent's solicitor submitted that the reason for this was that the claimant had a higher score of 7 as opposed to the claimant's score of 4 and that was why he was assigned work ahead of the claimant, "*by virtue of the normal application of the scoring matrix to those employees within the general recruitment pool.*"

29. So far as the challenge relating to the appointment of Steve McIntyre to the Buzzard Platform on 9 September for an initial 3-week trip was concerned, the respondent's solicitor explained that the claimant had been made redundant by the respondent "*earlier in the consultation process*". In this regard, the respondent's solicitor referred to the guidance in ***British United Shoe Machinery*** in relation to considering alternative employment:

"*It is perhaps worth stressing that in determining whether the employer has discharged that obligation the standard to be applied is that of the reasonable employer, and that Industrial Tribunals ought to avoid demanding some unreal or Elysian standard.*"

30. Finally, with regard to the issue of alternative employment, the respondent's solicitor said this:-

"*Whilst it was acknowledged that Mr Youens had been a Scaffolder Chargehand on previous assignments, Mr Youens had never been a Scaffolder Chargehand on the Buzzard Platform and did not have the essential qualification and experience required by the respondent's client and this was not readily obtainable. In all the circumstances Mr Nicholson acted reasonably in re-engaging Mr McIntyre and in not allocating the assignment to the claimant.*"

31. Finally, the respondent's solicitor referred to "the band of reasonable responses" test with reference to ***Iceland Frozen Food Ltd*** and the ***Post Office*** cases.

Conclusion

32. In conclusion, the respondent's solicitor said this:-

"*On application of that test to the facts and circumstances it is submitted that the respondent was dealing with an exceptionally challenging, fluid and fast-moving situation having to manage a significant collective redundancy situation unexpectedly forced on it by the Covid-19 Pandemic and oil price drop. In managing that process the respondent carried out a broadly fair process and made serious and strenuous efforts to preserve and prolong the employment of the claimant and that of many of his colleagues while balancing this with reasonable client requirements. It unfortunately ran out of suitable alternative employment opportunities for the claimant and his employment was terminated. Such dismissal was within the band of reasonable responses.*

It is submitted, that in all the circumstances, the dismissal of the claimant was not unfair and that the claim should be dismissed."

Claimant's submissions

33. The claimant's solicitor spoke to written submissions which are referred to for its terms.

34. In support of his submissions he made reference to the following cases:-

Iceland Frozen Foods Ltd;
Polkey;
Mugford v. Midland Bank [1997] IRLR 208;
Williams v. Compair Maxam Ltd [1982] IRLR 83;
Lionel Leventhal v. North [2004] 10 WLUK723;
Vokes Ltd v. Bear [1973] IRLR 363
Quinton Hazell Ltd v. Earl [1976] IRLR 296;
Thomas v. Betts [1980] IRLR 255;
Huddersfield Parcels Ltd v. Sykes [1981] IRLR 115;
Avonmouth Construction Co. Ltd v. Shipway [1979] IRLR 14.

35. He accepted that there was a genuine redundancy situation and that the claimant was dismissed for that reason. The issue for the Tribunal, therefore, was whether, "*as at the date of dismissal, the decision to dismiss fell within the band of reasonable responses open to the employer, in terms of ordinary unfairness under section 98(4).*"

36. He explained that, "*the claimant's challenge in the current case concerns whether the respondent took reasonable steps to redeploy him and whether it was unreasonable not to consider him for the Scaffolder Chargehand role on the Buzzard rig, which became available whilst the claimant was on notice of redundancy.*"

37. He submitted, with reference to **Mugford**, that the duty to consider alternative employment is an ongoing one: "*the overall picture must be viewed by the Tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy.*"

38. He submitted: "*In the present case to consider the claimant for (and appoint him) to the role of Scaffolder Chargehand on the Buzzard rig falls squarely with what is reasonably possible to mitigate the impact of redundancies on the workforce. Instead the respondent recruited externally for this role.*"

39. The claimant's solicitor then went on to refer to the following *"factors"* which were identified in ***Lionel Leventhal*** which he submitted were relevant to the present case: "*(1) Whether or not there is a vacancy? (2) How different the two jobs are*". He further submitted, with reference to ***Vokes***, that an employer is obliged to look for alternative work and satisfy itself that it is not available before dismissing.

40. He then made the following submissions:-

"*In the present case, the claimant does not ask the Tribunal to go so far as to consider whether the respondent employer is under a duty to consider*

alternative employment in other parts of the organisation or within an associated company. In this case, there was a readily identifiable vacancy for which the claimant was suitable. The claimant worked as a Scaffolder Chargehand over a number of years on a number of different platforms. The vacancy was for a Scaffolder Chargehand……. It is my submission that to consider an experienced Chargehand who had worked across a number of platforms, for the position of Chargehand on the Buzzard falls well within what a reasonable employer could be expected to do.

In the case before you, the respondent knew of and had a readily available vacancy which arose whilst the claimant remained on notice of redundancy. They did not need to look far in order to find alternative employment for which the claimant was suitable. Evidently, the respondent was aware that they had a vacancy given that they recruited externally for it."

41. The claimant's solicitor submitted that the respondent should have had discussions with the claimant instead of recruiting externally:-

"*In the case of* ***Huddersfield Parcels*** *the EAT found that the Tribunal had been entitled to find that a redundancy dismissal was unfair because at the date of dismissal, the employer did not offer or even discuss with the claimant, the possibility of alternative employment. In the present case it is submitted that the respondent failed to offer, discuss or even consider the claimant for the position of Scaffolder Chargehand, and that any reasonable employer would have given genuine consideration to this post and would have discussed it with him instead of recruiting externally for this position and dismissing the claimant.*

The claimant recently worked as a Scaffolder Chargehand on the DF6, DF8, the Kittiwake, the Pickerall B, and the Armada. In doing so he worked for several different clients none of whom raised any concerns about his ability. Neither is there any suggestion from the respondent that it had any concerns over his capability to carry out the Chargehand role. In light of this, it is extremely difficult to understand why he was not considered for the Chargehand role on the Buzzard. We have heard evidence from the claimant that two colleagues (Mr Burns and Mr Jones) were deployed as Chargehands to the Buzzard after undergoing a limited amount of online Permit Authority Training which they carried out from home. It was latterly accepted by Mr Nicholson that the CBTS Training undertaken by them did include Permit Authority Training.

The respondent's explanation that the claimant could not be deployed as he did not hold the requisite Permit Authority Certification does not stand up to scrutiny."

42. The respondent maintained that Mr McIntyre had been re-engaged at specific client requests (P.30). However, it was submitted that, "*the evidence*

produced requesting Mr McIntyre was in fact an internal Stork communication (P.136). *Mr Nicholson accepted that it was entirely possible that the communication could have been made by Mr Watson, a Stork employee who desired Mr McIntyre for the project.*"

43. The communication was in the following terms: "*Specifically Scaff Ch to have his PA status. I can't wait for 3 wks until he gains it offshore (it's a long process) and to be platform familiar – hence Steven McIntyre.*"

44. It was submitted this communication "*is likely to have come from Mr Watson and as he stated throughout the Tribunal, he believed that Mr McIntyre was given the role based on his friendship with key people within Stork. It is submitted that it is an inevitable conclusion from this communication that the respondent would recruit Mr McIntyre for the role, rather than considering the claimant for it.*"

Permit Authority Training

45. The claimant's solicitor submitted that the respondent's evidence about this was "confused". "*There were references to 3 trips being needed to three weeks and to the training being done in four days. Mr Nicholson accepted that Mr Burns & Mr Jones carried out home based learning (CBTS) which included Permit Authority Training and were then deployed. The claimant was not challenged on his evidence that he had been deployed to a number of platforms with permit authority, having carried out home based learning only. Mr Nicholson's evidence regarding PA Training was also confused, and it is submitted that he did not take adequate steps to establish what was required to become PA qualified for the Buzzard. It is the claimant's belief that this is because it had already been decided that Mr McIntyre would be deployed to the Buzzard. This feeds into the issue of reasonableness, particularly given the ease with which the claimant successfully adapted to whichever rig he was deployed and the ease with which he could be trained,*

*remotely. In that regard, it may be instructive to the Tribunal to consider the case of **Avonmouth Construction**, in which the EAT found that the employer had a duty carefully consider whether they could transfer the employee to another vacancy within the undertaking, particularly given his length of service and given there were no concerns about his capability or conduct which made him an unsuitable candidate. In that case, the EAT found that the employer's lack of care in seeking to redeploy the employee rendered the dismissal unfair.*"

46. He further submitted the grounds for the claim were not speculative as the claimant had identified a specific vacancy for which he would have been suitable. He was not considered for the vacancy and instead the respondent recruited externally for the role.

47. He further submitted that it would not have been unreasonable to have given the claimant the limited training required to have redeployed him to the Buzzard, "*does not require any unreal or Elysian standard of the employer.*"

Respondent's redundancy policy

48. The claimant's solicitor also submitted that the respondent was in breach of its own redundancy policies and procedures. He referred in particular to section 13 and the measures required to avoid a redundancy situation including imposing an immediate ban on further recruitment other than where this is essential in considering redeployment and/or of training or surplus personnel and retraining or redeploying employees (P53).

49. The claimant's solicitor then went on in his submissions to say this:-

"*The redundancy policies know that the respondent will 'make every effort to redeploy personnel to different contracts within Stork in conjunction with co-operations in Recruitment. HR and Operations Management will work closely with the Recruitment team to identify suitable alternative positions within Stork. The policy notes that if Stork are not able to redeploy 'this may result*

in you being made redundant. Although this will not take place until all attempts have been made to reallocate you.' Moreover, it states that Stork ***will*** *continue to explore all avenues to avoid redundancies.*"

50. The claimant's solicitor submitted that, "*the respondent recruited Mr McIntyre to the position of Chargehand. No reasonable employer would have acted in this way given the claimant had the skills to carry out the Chargehand role and could easily have undergone the required remote training……*

It would have been reasonable in all the circumstances for the respondent to have consulted the claimant about the Scaffolder Chargehand position which was available and its failure to do so renders his dismissal unfair."

Discussion and decision

51. In every unfair dismissal case where dismissal is admitted, s.98(1) of the Employment Rights Act 1996 ("the 1996 Act") requires the employer to show the reason for the dismissal and that it is an admissible reason, in terms of s.98(2), or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. An admissible reason is a reason for which an employee may be fairly dismissed and among them is that the employee was redundant. That was the reason the respondent claimed was the reason for Mr Youens' dismissal. It was not disputed by the claimant's solicitor that the claimant was dismissed for that reason. It was not disputed that the statutory definition of redundancy in s.139(1)(b) of the 1996 Act had been satisfied.

52. The remaining question which I had to determine, under s.98(4) of the 1996 Act, therefore, was whether the respondent had acted reasonably in treating the reason for dismissing the claimant as a sufficient reason and that question had to be determined in accordance with equity and the substantial merits of the case. In doing so, I had regard to the authoritative starting point for Tribunals assessing the fairness of a redundancy dismissal, namely the guidance of Lord Bridge in ***Polkey***, to which I was referred by both parties:-

"*The employer will not normally act reasonably unless he warns or consults any employees affected or their representatives, adopts a fair basis in which*

to select for redundancy and takes such steps as may be reasonable to avoid or minimise the redundancy by redeployment within its own organisation."

53. I was also mindful of the guidelines which a reasonable employer might be expected to follow in making redundancy dismissals which were laid down by the EAT in ***Williams & Others***, to which I was also referred.

54. Also, the objective standards of the reasonable employer must be applied to all aspects of the question of whether an employee was fairly and reasonably dismissed (***Sainsburys Supermarkets Ltd v. Hitt*** [2003] IRLR 23).

Present case

55. The claimant's solicitor took no issue with the procedures the respondent followed, until they took the decision to dismiss the claimant when they did on 28 October 2020 (P.124).

56. This meant that the issue in the case was a relatively narrow one. In short, it was whether the respondent had taken reasonable steps "*to avoid redundancy by redeployment within its own organisation.*"

57. On or about 9 September 2020, when the client was on notice, the respondent recruited Steve McIntyre to work as a Scaffolder Chargehand on the Buzzard platform. Mr McIntyre had been an employee of the respondent and had worked on the Buzzard before but at the time he was no longer an employee, having been made redundant.

58. The claimant was given one week's work on the Buzzard as a Scaffolder, doing "maintenance" when Mr McIntyre was the Chargehand there. His notice was extended subsequently until 4 November when his employment was ended as there were "*still no long term requirements for your position of*

Scaffolder in the near future across Stork" (P.126). As at 4 November 2020, Mr McIntyre was still working on the Buzzard, doing his second trip.

59. The respondent maintained that Mr McIntyre had been engaged "*at specific client request*". However, as the claimant's solicitor submitted, the only evidence about this was an, "*internal Stork communication"* (P.136) from Neil Watson, Stork's Project Manager on the Buzzard. There was no evidence from the client.

60. I found this surprising. Clearly, this was a material issue in the case and while there may not have been any contemporaneous correspondence from the client about its requirements, evidence could have been obtained for the Hearing. The absence of such evidence made my task all the more difficult.

61. However, Mark Nicholson, the respondent's Recruitment Team Lead, gave his evidence in a measured, consistent and convincing manner and presented as credible and reliable. His evidence, which I accepted, was that the client made a "*mandatory request*" for a Scaffolder Chargehand who had Permit Authority ("PA") on the Buzzard. He also gave evidence that a minimum of three trips on the Buzzard would be required to obtain the necessary PA status. His evidence in this regard was confused as he also said that "3 weeks" would be required. However, I also heard evidence from Michael Connelly, the respondent's Contract Delivery Manager, who had responsibility for a number of platforms/rigs, including the Buzzard. He also presented as credible and reliable and his evidence was that three trips would be required. Albeit with some hesitation, I was satisfied that PA on the Buzzard and "platform familiarity" was essential, as it was required by the client, and I so find in fact.

62. The claimant was unable to satisfy that requirement and nor could any of the respondent's employees on the matrix. That was why the respondent had no alternative other than to make an external appointment. Steve McIntyre had

been a Chargehand on the Buzzard and he was able to satisfy the PA and "platform familiarity" requirements.

63. The history of the claimant's employment was also of some relevance. His notice period was extended on a number of occasions and it was clear that the respondent did not want to lose the claimant, if at all possible. Had there been any possibility, therefore, of the claimant being able to satisfy the client's requirements, redeploying him to the Buzzard would have been an easier option for the respondent, than having to make him redundant.

64. It was also clear from the, "*internal Stork communication*" (P.136) that the client required someone to take up the position as Scaffolder Chargehand on the Buzzard as a matter of some urgency. These were extremely challenging times for the respondent due to the effect of the Pandemic which had resulted in a significant downturn in work. Moreover, it was a *"fluid"* situation, as the respondent's solicitor said, with fast moving and unpredictable client demands for ad-hoc labour.

65. The claimant maintained that he could have completed the training and secured the necessary PA certification "on-line", at home, in a relatively short period of time. However, this was denied by Mr Nicholson. It was also strongly denied by Michael Connelly. His unchallenged evidence was that familiarity with the platform was essential and that was why three trips were required. He strongly denied that the "onshore/computer based training" suggested by the claimant could possibly suffice. Messrs Nicholson and Connelly both presented as credible and reliable.

66. Albeit with some hesitation, therefore, absent any evidence from the client, I arrived at the view that, in all the circumstances, the respondent's decision to appoint Mr McIntyre to the position of Scaffolder Chargehand on the Buzzard and not to redeploy the claimant there was within the band of reasonable responses open to a reasonable employer.

67. I arrived at this view mindful of the guidance of the EAT in ***Huddersfield Parcels*** and the fact there was no discussion with the claimant about him being redeployed to the Buzzard as Scaffolder Chargehand. However, the evidence from Mark Nicholson and Michael Connelly was clear and I was satisfied that the claimant was not able to satisfy the client's mandatory requirements.

68. Accordingly, the claimant's dismissal was within the band of reasonable responses open to the respondent. The claimant was not unfairly dismissed. His claim is dismissed.

Employment Judge **N Hosie**

Date of Judgement **8 October 2021**

Date sent to parties **11 October 2021**