EMPLOYMENT TRIBUNALS

Claimant:	Jane Royle
Respondent:	Edward Pryor & Son Limited
Heard at:	Leeds ET (via CVP)
On:	25 & 26 October 2021
Before:	Employment Judge M Rawlinson (sitting alone)

Representation

Claimant	In person, not represented
Respondent	Ms Churchhouse (solicitor)

RESERVED JUDGMENT

1. The claimant was not unfairly dismissed by the respondent.
2. The claimant's claim for unfair dismissal is not well founded and is dismissed.

REASONS

Introduction

1. The respondent is concerned in the design and manufacture of permanent marking apparatus and systems. The claimant was employed by the respondent as a Manual Marking Sales Manager from 29 February 1988 until 13 November 2020. Early conciliation started on 19 January 2021 and ended on 1 March 2021. The claim was presented on 25 March 2021.

2. The claim concerns the claimant's dismissal for redundancy. The claimant claims that her dismissal was unfair within section 98 of the Employment Rights Act 1996.

3. The claimant asserts that the decision to make her redundant was predetermined, and that the process (particularly whereby she was placed within a pool of one) was unfair. The respondent contests the claim and asserts that a genuine redundancy situation existed and that a fair process was followed.

4. The claimant represented herself and gave sworn evidence. Ms Churchhouse, counsel, appeared on behalf of the respondent company.

5. The respondent called live evidence from Mr Alan Rhodes, Finance Director at the material time, and also Mr Simon Dunn, Operations Director. Both sides adopted the contents of their witness statements as their evidence in chief. Each side was also subjected to cross-examination by the other. I heard and considered closing submissions from either side, including a written skeleton argument furnished on behalf of the respondent.

6. As well as hearing live evidence, I also considered numerous documents that had been produced by both parties. These were contained in an indexed and paginated hearing bundle comprising of some 393 pages. References within brackets within this document are references to pages of that bundle.

Issues for the Tribunal to Decide

7. At the start of hearing I went through and agreed with the parties the issues for me to decide. This had already been canvassed at a previous case management hearing. In simple terms, these were:

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

ii. If the reason was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant.

iii. The Tribunal will usually decide, in particular, whether:

a. The respondent adequately warned and consulted the claimant;
b. The respondent adopted a reasonable selection decision, including its approach to a selection pool;
c. The respondent took reasonable steps to find the claimant suitable alternative employment;
d. Dismissal was within the range of reasonable responses

8. In accordance with the claimant's ET 1 form, the claimant's principal complaints were that the dismissal was not a fair one, in the sense of being predetermined, and also that she should have been placed in a redundancy selection pool with two other employees - the Engraving Sales Manager and the Machinery Sales Manager. A previous complaint of unfair treatment being as a result of sexual orientation discrimination was not pursued by the claimant.

9. I agreed with the parties that I would deal with the issue of liability only, and the issue of remedy and any compensation payable, if it arose, would be dealt with at a later date.

Facts

13. The claimant was employed by the respondent from 1988 and for a period of around 32 years until her dismissal in November 2020. From 2008 to 2013 and from 2015 until her dismissal she was employed as a Manual Marking Sales Manager. She was paid £27,029 per annum gross by the time of her dismissal.

14. It was agreed between the parties that the respondent business itself was split between three distinct operations – Machinery, Engraving and Manual Marking.

15. Prior to claimant's dismissal there was a dedicated Sales Manager for each operation. As well as the claimant as Manual Marking Sales Manager, there was also a position of Machinery Sales Manager**. I heard specific evidence regarding the respective salary levels of each role which, for reasons of commercial sensitivity, I do not reproduce here. For present purposes it is sufficient to note that there was no dispute that there was considerable disparity as between the roles, with the two roles other than the claimant's role commanding higher salaries.**

16. Job specifications for each of the roles appear in the bundle (p 34 – 40). An organisation chart also appears in the bundle, demonstrating the intended structure within the company in terms of these three roles, as well as the responsibilities of each role and (to some extent) how they fitted together and alongside each other (p 255).

17. The degree of difference and similarity as between the claimant's role and those other roles, as well as the technical knowledge needed to perform each role and to advise upon and sell associated products, was in dispute between the parties.

18. The range of products associated with each operation and role also appears in the bundle (at pages 256 – 266 inclusive).

19. As in their standard state at least (as opposed to potentially being modified) most of the products sold by the claimant as part of her role appeared in a catalogue and were described as "*Standard Type and Punch*" products (STAP). These were described as a range of hand tools for stamping numbers, letters and symbols. The range of products associated with manual marking appear in the bundle (p 267 – 290).

20. In terms of the Engraving operation, the Sales Manager role included the sale of products such as bespoke engraved marking dies, for embossing, printing and indent marking. These items could be made to any bespoke or custom design, dependent upon the purpose for which they were required. Typical examples included custom-made dies that were made for cigarette printing i.e. producing the name of the brand on individual cigarettes themselves, or packaging embossing type, to allow the name the brand name to be embossed on exterior packaging using individual characters, figures or symbols of the customers own font and design on custom designed pieces of type.

21. In terms of the Machinery operation, the products available and sold included various metal marking machines of various different types, including dot, scribe, laser, robot and chemical marking. The company literature made clear (p 261) that as part of the Machinery operation, the respondent's "*Design to Order*" business unit specialised in bespoke or custom built marking machines.

22. In 2019/2020 the respondent business introduced a new scheduling system in the Manual Marking Department. In essence, the system sought to optimise production levels of products as against customer demand. The schedule considered factors such as customer account weighting, current and future stockholding, resources available and lead times. The intention was that once orders went on to the system, an accurate lead time and dispatch time was generated, and that this information was readily

accessible for all relevant employees in the business and could be used to provide customers with accurate completion dates.

23. In 2020, as a result of the COVID 19 pandemic the respondent's business was affected by way of a significant drop in orders. The accounts for year end March 2020 showed a loss for the first time in a decade including an operating loss of over £600,000.

24. As a result of that situation the respondent business introduced a number of cost saving measures. This included, amongst a variety of other measures, placing 102 out of 107 employees on furlough on 27 March 2020, and also seeking candidates for voluntary redundancy. The claimant was amongst those who was placed on furlough at that point and, on a number of occasions, thereafter, consented to the extension of her furlough period.

25. Whilst the Machinery Sales Manager and Engraving Sales Manager returned from furlough in June 2020 (albeit on a part-time basis) the claimant was not asked to return.

26. Despite the various cost saving measures introduced by the company in 2020, it was decided by the company that staff costs need to be reduced in order to ensure that the company remained viable. It was this that led to the compulsory redundancy process that ultimately led to the claimant's dismissal. In total, 22 employees were made redundant between July and November 2020 (including 10 voluntary redundancies). This included another Sales Manager by the name of Alistair Morris, who was made redundant on 30 September 2020, prior to the claimant being made redundant

27. Advice regarding potential redundancies was sought by the company from an external HR adviser. Once at risk roles and redundancy pools were identified, Alan Rhodes was allocated to conduct the consultation process in respect of the claimant's role. The claimant was placed in a redundancy pool of one.

28. On 29 September 2020 the claimant received correspondence concerning compulsory redundancies and cost reductions, as well as a specific "*Job at Risk Letter*" (p 128, 134 – 136). Within that letter the claimant was formally told that her post was potentially at risk due to redundancy. The reasons given included what were described as "*major cost-cutting considerations*" as a result of a substantial decline in sales and future orders due to the pandemic. The claimant was invited to a meeting on 1 October 2022 commence a formal consultation process regarding:

    "*any options that may be considered, or alternative solutions that may be offered, to avoid the redundancy*".

29. That meeting of 1 October 2020 duly took place, attended by Alan Rhodes and the claimant, who was also accompanied. The minutes of that meeting appear in the bundle (p 164 – 167).
30. During that meeting of 1 October 2020, the claimant suggested splitting her role into two: the Sales Admin role and the Sales Manager Role. She also suggested that her role as Manual Marking Sales Manager could be merged with the role of Engraving Sales Manager. The claimant was informed that the points she had raised would be reviewed and that she would receive a response in writing in the next few days and would be asked to attend a second interview in approximately a weeks' time

31. In the event, following some enquiries by the claimant, and after the respondent via Alan Rhodes indicated that the respondent was still reviewing and considering the claimant's comments, the claimant received a response by letter of 20 October 2020 (p 169 – 172).

32. The response indicated that the claimant's suggestion of a split admin/sales role was not workable due to the current economic situation not allowing the company to retain the cost of both roles. Further, the respondent also indicated within that letter that the Engraving Sales Manager role could not absorb the remaining duties of the claimant's role and, in any event, was a full-time stand-alone role and was not at risk. A detailed explanation was given as to why that role was not at risk (p 171) and the importance to the business of the Engraving operation. The letter concluded by inviting the claimant to a further consultation meeting on 22 October 2020.

33. The same day, 20 October 2020, the claimant emailed Alan Rhodes to reschedule that proposed meeting (p 173). Within that email the claimant also indicated that she felt that "*a skill pool of one is a fundamentally unfair part of any redundancy process*".

34. The second consultation meeting took place on 27 October 2020. The agreed minutes appear in the bundle (p 179 – 182). In the interim, the claimant was advised of an Internal Sales Engineer role within the company that had become available.

35. During the second meeting, the claimant raised various concerns and suggested that she should have been in a pool with the other sales managers i.e the Engraving Sales Manager and the Machinery Sales Manager. The claimant also suggested that she had been "*targeted*", that this was evidenced by the fact that there was a selection pool of only one, and also given that she was kept on furlough and not communicated with.

36. The claimant also reasserted her suggestion that the Engraving Sales Manager and Manual Marking Manager roles could be combined, as well as questioning why in particular the Engraving Sales Manager role was not at risk.

37. The day after the meeting the claimant confirmed by email that she did not wish to apply for the internal vacancy discussed during the meeting i.e. Internal Sales Engineer role.

38. The respondent responded to the claimant's suggestions as raised within that meeting of 27 October 2020 via a letter written by Alan Rhodes and dated 3 November 2020 (p 184 – 186). Within that letter, although the respondent continued their assertion that the various Sales Manager roles were distinct and separate, in light of the claimant suggestions, they raised the possibility of a potential pool between the holders of the Engraving Sales Manager and the claimant's role for a new position of Engraving Sales Manager. They enclosed a proposed skills matrix in respect of that potential selection (see page 192 of the bundle). At the conclusion of the letter, the consultation meeting scheduled at that time to take place on 9 November 2020.

39. A third consultation meeting duly took place on 9 November 2020 between the claimant and Alan Rhodes. The claimant was again accompanied and a note taker also attended. Minutes of that meeting appear in the bundle (pages 191 to 193 of the bundle).

40. At that meeting the claimant rejected the proposed skills matrix stating that ''*if the skills matrix proposed reflected both roles this would have been relevant. As it is, it merely confirms that you continue to see my role in a skill pool of one.''* The claimant also stated that *"So, taking this into account, and my treatment during furlough, it seems clear to me that my selection has been pre-determined, and my presence is no longer welcome in the business.""*" At this point the claimant indicated that she no longer wish to contest her redundancy internally and would also not be using the appeal process.

41. Following this, by letter of 11 November 2020 (see pages 194 – 195 of the bundle), the claimant was informed that her employment would be terminated by reason of redundancy. Whilst the claimant was informed of her right to appeal she did not exercise that right.

42. It follows that the claimant's dismissal by way of redundancy stood, and she subsequently lodged her claim with the Tribunal on the 25 March 2021.

Relevant Law

Unfair dismissal

43. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that he was dismissed by the respondent under section 95, but in this case the respondent admits that it dismissed the claimant (within section 95(1)(a) of the 1996 Act) this.

44. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.

45. Section 98(4) then deals with fairness generally and provides that the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

46. In determining whether the dismissal was fair, the Tribunal's task is to consider all of the relevant circumstances including any process followed by the respondent.

47. In coming to these decisions, the Tribunal must not substitute its own view for that of the respondent but is to consider the respondent's decision and whether it acted reasonably by the standards of a reasonable employer.

48. If the Tribunal finds that a dismissal was unfair, it is open to it to reduce any compensatory award to reflect that the employee may have still been dismissed had the employer acted fairly (known as a *Polkey* reduction following *Polkey v AE Dayton Services Limited* (1988 ICR 142). The Tribunal needs to consider both whether the employer could have dismissed fairly and whether it would have done so.

Redundancy

49. It is generally not open to an employee to claim that his dismissal is unfair because the employer acted unreasonably in choosing to make workers redundant, *Moon v Homeworthy Furniture (Northern) Ltd* [1976] IRLR 298, *James W Cook & Co (Wivenhoe) Ltd v Tipper* [1990] IRLR 6. Courts can question the genuineness of the decision, and they should be satisfied that it is made on the basis of reasonable information, reasonably acquired, *Orr v Vaughan* [1981] IRLR 63.

50. Redundancy is defined in *s139 ERA*. It provides:

"(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.
…

(6) In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason."

51. According to *Safeway Stores plc v Burrell* [1997] IRLR 200, [1997] ICR 523, 567 IRLB 8 and *Murray v Foyle Meats Ltd* [2000] 1 AC 51, [1999] 3 All ER 769, [1999] IRLR 562 there is a three-stage process in determining whether an employee has been dismissed for redundancy. The Employment Tribunal should ask, was the employee dismissed? If so, had the requirements for the employer's business for employees to carry out work of a particular kind ceased or diminished or were expected to do so? If so, was the dismissal of the employee caused wholly or mainly by that state of affairs?

52. In *Safeway Stores Plc v Burrell* [1997] ICR 523 EAT, Judge Peter Clark said that the question for a Tribunal is not whether there has been a diminution in the work requiring to be done; it is the different question of whether there has been a diminution in the number of employees required to do the work. Where "*one employee was now doing the work formerly done by two, the statutory test of redundancy had been satisfied*", even where the amount of work to be done was unchanged, *Carry All Motors Ltd v Pennington* [1980] ICR 806.

53. The manner in which a redundancy situation arises may be relevant to the fairness of a dismissal, but not to whether a redundancy situation exists in the first place. In *Berkeley Catering Ltd v Jackson UKEAT/0074/20/LA(V)*, the employer admitted arranging matters so that its Director took over the Claimant's duties in addition to his own duties. Those facts established a redundancy situation under section 139(1)(b). Bourne J said at para 20:

"… A redundancy situation under section 139(1)(b) either exists or it does not. It is open to an employer to organise its affairs so that its requirement for employees to carry out particular work diminishes. If that occurs, the motive of the employer is irrelevant to the question of whether the redundancy situation exists."

54. If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under s98(4) Employment Rights Act 1996. In doing so, the Employment Tribunal applies a neutral burden of proof.

55. The case of *Williams v Compair Maxam Ltd* [1982] IRLR 83, sets out the standards which guide tribunals in determining the fairness of a redundancy dismissal. The basic requirements of a fair redundancy dismissal are fair selection of pool, fair selection criteria, fair application of criteria and seeking alternative employment, and consultation, including consultation on these matters. In *Langston v Cranfield University* [1998] IRLR 172, the EAT held that so fundamental are the requirements of selection, consultation and seeking alternative employment in a redundancy case, they will be treated as being in issue in every redundancy unfair dismissal case.

56. Both the claimant, and Miss Churchhouse. on behalf of the respondent, provided me with oral submissions with respect to the above matters at the conclusion of the evidence, which I have considered and refer to where necessary in reaching my conclusions. At the conclusion of the evidence, Miss Churchhouse also produced a written skeleton argument supplementing her oral submissions, dealing explicitly with each of the questions/agreed list of issues the Tribunal had to consider. I have also fully considered that document and the authorities cited therein in reaching my conclusions.

Conclusions and further Findings of Fact

57. I make my conclusions and findings of fact on the basis of the material before me, taking into account contemporaneous documents where they exist and also the conduct of those concerned at the time. I have resolved such conflicts of evidence as arose on the balance of probabilities. I have taken into account my assessment of the credibility of witnesses and the consistency of their evidence with the surrounding facts.

58. Whilst I have considered all the points raised by either party I do not need to, and indeed I do not, refer to every point made by either side, or seek to resolve every issue between the parties. I am only required to decide upon and to resolve those issues which allow me to reach a conclusion in respect of the issues at hand. In this case, that is whether the claimant was unfairly dismissed.

Was the claimant dismissed?

59. There is no dispute by either party that respondent dismissed the claimant. On the evidence I have heard and seen, I find as a fact that the respondent did dismiss the claimant.

What was the reason for the dismissal? Was dismissal by reason of redundancy as asserted by the respondent?

60. The onus was on the respondent (by reason of section 98(1) ERA 1996) to show the reason for the claimant's dismissal. The respondent consistently claimed that there was a genuine redundancy situation.

61. On the evidence that I have heard and read, I am satisfied and I find as fact that there was a genuine redundancy situation. I also find that the respondent genuinely decided that there was the possibility of significant savings that could be made to the company by making the claimant redundant.

62. I also accept the evidence given by Alan Rhodes to the effect that it became clear to the respondent that they needed to take costs out of the business to ensure the future viability of the company. The reasons for this included the fact that in the financial year ending 31 March 2020 the respondent's suffered a significant operating financial loss of around £600,000, the first time the business had suffered any loss in over a decade.

63. I also accept the evidence of both Mr Rhodes and Simon Dunn to the effect that around this time the company was hit hard by the COVID-19 pandemic, which resulted in a significant drop in orders. I find it is of some significance,

and I accept the evidence that I heard, that the company had embarked upon a wide variety of cost saving measures even before seeking to make compulsory redundancies (e.g. see paragraph 55 of the witness statement of Alan Rhodes).

64. The claimant had previously confirmed at an earlier hearing that she was not bringing a claim of sexual orientation discrimination (page 29 of the bundle, the matter being dealt with at a previous Case Management Hearing on 9 June 2021). There was no suggestion pursued by the claimant herself at the hearing of any other oblique or ulterior motive for her dismissal.

65. The claimant has not identified an alternative reason to counter the respondent's case that the claimant was dismissed for the reason of redundancy. On the evidence that I have heard ,the respondent's case that claimant was dismissed for reason of redundancy is made out.

Was it a potentially fair reason?

66. There can be no dispute that redundancy is potentially a fair reason for dismissal.

Did the respondent act reasonably in all the circumstances? In particular:

Did the respondent adequately warn and consult the claimant?

67. Having carefully considered all of the evidence and the submissions in this case, I have concluded that the respondent did act in a procedurally fair manner in terms of this aspect of case.

68. The question as to whether or not an employer adequately warned and consulted with an employee is always a question of fact degree for the Tribunal to decide in each individual case. I must take account of the particular circumstances and evidence which is presented. A lack of consultation in any particular respect will not automatically lead to a conclusion of unfair dismissal and I must, and indeed I do, take account of the overall picture.

69. The claimant was initially told that she was at risk of redundancy on 28 September 2020 by letter (page 135 bundle). This plainly constituted a warning that her job was at risk. In my view that letter not only warned the claimant that her role was at risk, but also gave a fulsome explanation as to why i.e. due to a substantial decline in sales and future orders due to the pandemic. The letter also made clear that the subsequent consultation procedure would occur and that this procedure would consider any options or alternative solutions that may be offered to avoid the redundancy. The letter concluded by outlining what current vacancies were available within the company.

70. Thereafter, there was indeed a consultation meeting on 1 October 2020 during which, on any view, the claimant was given a full opportunity to put forward alternatives to redundancy and other associated suggestions.

71. Following this, I accept the evidence given by Mr Rhodes that the company genuinely and fully considered the claimant's proposals raised at that meeting. The written response sent to the claimant by the company dated 16 October 2020 is clear evidence of that (page 169 of the bundle).

72. An analysis of that letter, when compared to the minutes of the meeting between the parties held on 1 October 2020 (pages 150 – 154 of the bundle) demonstrates that the respondent both considered and thereafter systematically responded in a detailed manner to all the points that had been raised by the claimant. The fact that the respondents disagreed with points made by the claimant, and also the fact that they did not agree with the suggestions made by her to avoid redundancy, does not render the consultation process itself unfair. There is ample evidence in my view that the respondent company fully and properly considered all matters that the reasonable employer ought to have done at that stage. I do not accept the claimant's contention that a number of her concerns as raised in the first meeting were "*brushed over*" in the respondent's first letter of response.

73. I make similar findings with respect to the second consultation meeting which took place on 27 October 2020 (see pages 179 – 182 inclusive of the bundle) and the respondent's written response dated 3 November 2020 (see pages 184 – 186 of the bundle). By the time of the third consultation meeting on 9 November 2020 it is evident that the claimant had decided to accept her redundancy and did not seek to meaningfully further challenge it or make any further suggestions to avoid such a situation.

74. In the circumstances I conclude that the respondent adequately and fairly warned the claimant that she was at risk of redundancy. I also conclude that the respondent engaged in a genuine, lengthy and detailed consultation period. A good example of this is that during the consultation process, a skills matrix was drawn up to reflect the requirements of the proposed combined role (bundle page 187) – this was explicitly in response to a suggestion made by the claimant and despite the company's firm assertion that subject combined role was wholly unworkable.

75. To the extent that the claimant criticised aspects of the warning and consultation process (e.g. an apparent failure to follow the Redundancy Procedure reproduced at page 41 of the hearing bundle) I find that these were not significant and do not materially detract from the fairness of the procedure.

Did the respondent adopt a reasonable selection decision, including its approach to a selection pool?

76. On the evidence I have heard I conclude that it did, including its approach to the selection pool. I remind myself that placing an employee in a pool of one (one of the claimant's principal complaints) is not in itself enough to establish unfairness. there are no fixed rules about how the pool should be defined and an employer has a wide measure of flexibility.

77. In terms of selection, whilst the claimant plainly feels genuinely aggrieved, especially given what I find to be a long period of exemplary service before her redundancy, I do not accept the contention that she was either targeted for redundancy or that her redundancy was predetermined. As a starting point, my earlier findings regarding a detailed, genuine and lengthy consultation period are inconsistent with such a suggestion.

78. I do not accept the claimant's characterisation of her treatment during furlough, or that this was somehow evidence of any predetermination or unfavourable treatment (see paragraph 8.2 of the claimant's witness statement). The claimant consented in writing a number of occasions for her furlough to be extended. I do not accept that the claimant was deliberately not given the same opportunity in respect of other people in the sales department to return to work.

79. Instead, I prefer and I accept the evidence of Simon Dunn with respect to this issue. It is worthy of note that only one member of the sales team was not furloughed. In total, 102 out of 107 employees were furloughed. I accept that the respondent considered the needs of the business in determining which employees they could justifiably bring back, factoring in the relative profitability of each department, and the need to build up stock. I also accept Mr Dunn's evidence that in the circumstances the company did not consider that there was a business need to bring the claimant back from furlough due to the significant drop in orders, the introduction of the scheduling system and the company's discovery that aspects of her role could be carried out by other employees.

80. I also accept the evidence of the respondent company that considerable thought was given to what the various redundancy pools should be, and that all four directors of the company had input into this. They considered, amongst other things, the fact that for at least five years prior to redundancy, the Manual Marking (STAP) department was loss-making. I also accept the

evidence as given by Alan Rhodes that the claimant's role was reduced substantially by the introduction of a new scheduling system.

81. On the evidence I have heard, I also conclude that the three Sales Manager roles were separate and distinct, with a different skill set and knowledge for each role. I am fortified in that view by the significant disparity in salary between the three roles. I accept the company's contention that the technical level of skill required to sell the STAP (Standard Type and Punch) products (in comparison to either the engraving or machine products) varied vastly. The Machinery Sales Manager and Engraving Sales Manager roles involved technical bespoke engineering solutions and required a skill set more based towards technical engineering.

82. I prefer the evidence of Simon Dunn to the effect that, due to the technical knowledge required, the claimant would not be able to carry out the role of Machinery Sales Manager. I further accept his evidence to the effect that the claimant would also not have been able to carry out the role of Engraving Sales Manager without significant further training, as well as needing to develop a much broader base knowledge of that role over time. I find that just because there were aspects of the claimant's role that the other two roles were able to do, this did not necessarily work the other way round i.e. it did not mean that the claimant could do theirs.

83. I find that the claimant's role of Manual Marking Sales Manager (STAP) was therefore unique and, as a result, was reasonably considered as a redundancy selection pool of one. She was the only Manual Marking Sales Manager. It follows that selection criteria and a scoring process was unnecessary in a pool of one. Whilst I accept the claimant's contention that on occasions there was a bespoke rather than off-the-shelf element to the products she sold, I find that this was the exception rather than the rule. I also find that the company acted within a range of reasonable responses when for good commercial reasons they decided that that the Machinery Sales Manager and Engraving Sales Manager were full-time roles and roles that needed to be retained.

84. In summary, I conclude that the respondent genuinely applied its mind to the formulation of the pool and that its initial selection of the claimant, and thereafter its decision to place the claimant in a pool of one, was not outside the range of reasonable responses. I reject the claimant's contention that the respondent defined or engineered the pool in a particular way in order to ensure the dismissal of a particular individual i.e. the claimant.

Did the respondent take reasonable steps to find the claimant suitable alternative employment?

85. I accept the evidence led by the respondent that the claimant was informed of a number of vacancies in the respondent company during the consultation period.

86. For the reasons I have already articulated, including the uniqueness of the claimant's role, the divergence in salary, experience and skills, and a lack of interchangeability with the other two Sales Manager roles, I conclude that those other two roles of Engraving Sales Manager or Machinery Sales Manager were not suitable alternative employment such that they should have been offered to the claimant.

87. Whilst the point was not forcefully pursued by the claimant, it was also not appropriate to "bump" either of the holders of those roles out of the position to accommodate the claimant. That is especially so given the differences between the roles that I have already outlined, as well as the differences in salary, experience and qualifications in respect of each individual role.

88. It is also worthy of note that the claimant refused to engage in the combined skills matrix scoring for the revised Engraving Sales Manager role, developed after the second consultation and before the third meeting, and incorporating limited elements of her role (90%/10%).

89. I accept Simon Dunn's evidence that the revised matrix properly reflected the company's future intentions as to the continuing development and increase prominence of the Engraving side of the business, as well as reflecting the fact that many of the claimant's previous responsibilities had been absorbed by others or had been overtaken by developments e.g. the scheduling software. I also accept his evidence that the claimant's refusal was a tacit acknowledgement by the her that, unfortunately, she knew that the incumbent had far more experience and higher skillset in the Engraving side of the business and would inevitably succeed in any comparative scoring exercise.

Was dismissal, in this case redundancy, within a range of reasonable responses?

13. The reasons I have already outlined above, I conclude that it was.

Conclusion on Unfair Dismissal

14. I find that the claimant was not unfairly dismissed by the respondent within the meaning of section 98 of the Employment Rights Act 1996.

Employment Judge Rawlinson

Date: 16 November 2021