EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: Case no 4109865/2021 (V)

Held by means of Cloud Video Platform on 17, 18, 19, 20 and 21 January 2022

Employment Judge W A Meiklejohn

Mr John Keenan	**Claimant** **In person**
Construction Industry Training Board	**Respondent** **Represented by:** **Mr P Strelitz – Barrister**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant was not unfairly dismissed by the respondent and his claim of unfair dismissal does not succeed and is dismissed.

REASONS

1. This case came before me for a final hearing, dealing with both liability and remedy, held remotely by means of the Cloud Video Platform. The claimant appeared in person and Mr Strelitz represented the respondent.

Nature of claim

2. The claimant originally brought complaints of unfair dismissal and breach of contract. The breach of contract complaint related to alleged underpayment of notice pay. The parties had agreed settlement of the claim for notice pay and

it had been withdrawn. Accordingly it was only the complaint of unfair dismissal which I had to determine.

Procedural history

3. A Preliminary Hearing for the purpose of case management took place on 10 August 2021 (before Employment Judge Kemp). Various orders (68-74) were issued dealing with documents, the provision by the claimant of a schedule of loss and the use of witness statements. EJ Kemp also issued a Judgment dated 12 August 2021 (66) dismissing the breach of contract claim.

Evidence

4. For the respondent I heard evidence from Mrs S Manze, HR Business Partner, Mr I Hughes, Engagement Director (formerly Partnerships Director) and Mrs L Johnston, HR Business Partner. For the claimant I heard evidence from the claimant himself and Mr D Cuthbert, Senior Customer Engagement Manager (formerly Area Delivery Manager). The evidence in chief of each witness was contained in a written witness statement. These were taken as read in accordance with Rule 43 of the Employment Tribunal Rules of Procedure 2013.

5. I had a joint bundle of documents extending to 525 pages. I refer to this above and below by page number.

Findings in fact

6. The claimant's background is in education. He commenced employment with the respondent on 10 November 2014. He worked in the Partnerships Team, latterly as Partnerships Manager. He was issued with a statement of the main terms and conditions of his employment as Partnerships Manager (96-101) effective as from 1 April 2016.

7. The claimant's role covered the Scottish region and was at grade B (the second highest grade) within the respondent's grading structure (A-H). He was field based and classed as mobile. His line manager was Mr Hughes. Mr Hughes reported to Mr B Connolly, Products and Customer Services Director.

8. The respondent is a Non-Departmental Public Body and a registered charity. It currently operates under the sponsorship of the Department of Education. The function of the respondent is to deliver skills and training into the construction industry. It is principally funded by means of a levy paid by employers in the construction industry. It operates across England, Scotland and Wales.

Vision 2020

9. The respondent went through a change programme known as Vision 2020. Mrs Manze was involved in this exercise, which commenced prior to her joining the respondent in 2018. It entailed the relocation of the respondent's head office to Peterborough and a reorganisation of roles which resulted in some redundancies.

Redundancy policy

10. The respondent had a Redundancy Policy. There were three versions of this in the bundle –

    (a) Version 2 issued in November 2019 (102-123). This provided for enhanced redundancy payments. The enhancements comprised (i) disregarding the statutory upper pay limit when calculating a week's pay and instead using actual gross weekly pay and (ii) then applying a multiplier of 3.

    (b) Version 3 issued in August 2020 (124-130). This provided for the enhancement of disregarding the statutory upper pay limit but not the application of a multiplier.

    (c) Operational Policy issued on 12 November 2020 (131-145). This provided for enhancements of (i) disregarding the statutory upper pay limit and (ii) then applying a multiplier of 2 in the case of employees whose employment started before 1 November 2020.

Covid Change Programme

11. The respondent was significantly impacted by the coronavirus pandemic which led to a national lockdown in March 2020. It suffered a substantial reduction in income. It utilised the Coronavirus Job Retention Scheme and employees (including the claimant) were placed on furlough.

12. In August 2020 the respondent embarked on a change programme to reduce expenditure. One element of this involved bringing together the Apprenticeships and Partnerships Teams. A single Customer Engagement Team was to be created.

13. Prior to the implementation of the change programme, the respondent had a Partnerships Team in Scotland led by Mr Hughes. There were two Partnerships Managers – the claimant and Mr M Lennox. There was a separate Apprenticeships Team led by Ms M Donkin. The Regional Development Manager (RDM), Mr S McGillivray, reported to her.

14. Within the organisational chart for the new Customer Engagement Team (190) there was provision for one Engagement Director. Mr Hughes took up that position in January 2021. I understood that (a) this was not the result of his being preferred over Ms Donkin but rather that she had decided to leave the respondent's employment and (b) Mr Hughes' appointment was known about at the time of the events described below.

15. There was also provision for two grade B roles in the new Customer Engagement Team. The job title was Senior Customer Engagement Manager (SCEM). Within the Partnerships Team and the Apprenticeships Team there were three grade B managers – the claimant, Mr Lennox and Mr McGillivray. Accordingly, there was the prospect of one redundancy amongst these grade B managers.

Collective consultation

16. The respondent recognised two trade unions – Unite and GMB. Collective consultation in respect of the respondent's organisational change proposals

was undertaken with representatives from the unions and also management representatives. This commenced on or around 2 September 2020. From the minutes of the consultation meetings within the bundle it was evident that the consultation process was extensive and detailed. For example, there was reference in the minutes of the meeting held on 21 October 2020 (308-314) to 48 counter proposals.

17. The respondent also consulted with employee representatives on changes to their Redundancy Policy. There was resistance to the proposed removal of the multiplier, as reflected in version 3 of the policy (124-130).

18. The respondent issued a weekly briefing bulletin to staff. During the period of collective consultation on the proposed organisational changes and Redundancy Policy changes, these bulletins provided employees with an update on the consultation process. Updates were also provided by email.

19. The outcome of the collective consultation process was agreement that the redundancy payment enhancement would be as set out in the Operational Policy (see paragraph 10(c) above), ie a multiplier of 2 in the case of employees who started before 1 November 2020. Another outcome was that lunch allowance would no longer be paid.

Individual consultation

20. The claimant was advised that he was at risk of redundancy by letter dated 13 November 2020 (322-323) from Ms J King, People Director. In this letter the claimant was advised that if he had any queries or wanted to discuss any aspect of the process, he should speak to his line manager or HR Business Partner, or email the HR Team. He was also provided with contact details for the respondent's Employee Assistance Programme.

21. The claimant attended a consultation meeting with Mr Hughes on 19 November 2020. Mr Hughes had a script for this meeting (328-330). The claimant confirmed that he wanted to be considered for the new SCEM role. Although not expressly discussed at the meeting, the claimant correctly assumed that he would be pooled with Mr Lennox and Mr McGillivray.

22. The respondent provided training for managers involved in the consultation process. The claimant was aware of this because he himself was a consulting manager in respect of the new Engagement Advisor posts and had participated in the training.

Selection process

23. The respondent produced a Proposed Recruitment and Selection Process (176-180) which set out the way in which it intended to conduct the redundancy exercise. As a consequence of queries arising during individual consultation, the respondent created a separate document describing the selection/pooling approach for the Customer Engagement Teams (171-175). This provided that those eligible for the SCEM roles were those employed as Partnership Manager, RDM, Partnership Director and Head of Apprenticeships.

24. The scoring of candidates within the pool of selection was under a number of headings –

    (a) Performance – this was taken from the candidate's 2019 Performance Plan (PPP).

    (b) Disciplinary record.

    (c) Online test score – this was conducted and scored by an external provider (SHL). The tests were designed to assess situational judgment, inductive reasoning and deductive reasoning.

    (d) Technical test score – this was conducted in-house. Candidates were required to answer 3 questions designed to assess skills, knowledge and experience.

25. For the SCEM posts available in England, Scotland and Wales, the scoring of the technical tests was undertaken by a group of assessors. They were grade A managers, including Mr Hughes and Ms Donkin. The answers were anonymised and three candidates were assigned by HR to each of the assessors.

26. The respondent provided the assessors with instructions (213) containing a scoring matrix to use when marking the technical questions. The available scores were –

5 Far exceeds requirements

4 Exceeds requirements

3 Meets requirements

2 Below requirements

1 Significant gap

27. Because the claimant focussed on it in his evidence, I refer to the definitions within the assessors' instructions so far as relating to legislation, policy or best practice. So far as relevant these were –

For a score of 4 – *Demonstrates good understanding of legislation, policy or best practice*

For a score of 3 – *Limited reference to legislation, policy or best practice*

For a score of 2 – *No reference to legislation, policy or best practice*

Mr Cuthbert

28. Mr Cuthbert's grade C role of Area Development Manager (ADM) was also at risk of redundancy. Although employed in that role, he had since April 2019 been undertaking additional project work which he described as extending well beyond his ADM role. This was not regarded as "*acting up"* and he was not paid extra.

29. Mr Cuthbert attended his first consultation meeting with Ms Donkin on 20 November 2020. He asked Ms Donkin about continuing in what he referred to as his seconded role and was told that this was unlikely as it did not form part of the new structure. He was also told that he could not be pooled for a grade B job as he had not formally been uplifted to grade B. This reflected one feature

of the redundancy process – an employee could apply for a position at his/her own grade or one below, but not for a higher grade position.

30. Mr Cuthbert raised this with Mr G Williams, one of the management representatives, on 23 November 2020. He put forward a case to Mr Williams to be allowed to be pooled for the SCEM role. Part of his argument was that his own ADM role had been backfilled by an Apprenticeship Officer who had been pooled for a grade C post. Mr Williams in turn took this to Ms King.

31. On 26 November 2020 Mr Cuthbert had a Teams meeting with Ms Donkin, Mrs Manze and Mr Williams. He was initially told that he could not be considered for a grade B position. However, Mr Williams referred to a letter of the same date from Ms King (334-335) which included the following –

> "*It may also be appropriate in some areas to pool colleagues for a role that is a grade higher to their existing role, although this will not be the norm and only where role requirements dictate."*

32. The outcome was that Mr Cuthbert was to put in writing his reasons for seeking to be included in the grade B selection pool for the SCEM positions. Mr Cuthbert did this on 30 November 2020 (337-338). Shortly thereafter Ms Donkin emailed Mr Hughes and Mrs Manze (339) supporting Mr Cuthbert being pooled for the SCEM roles. She referred to the fact that Mr McGillivray was withdrawing from the selection process and was "*going to take his redundancy".*

33. Ms Donkin also touched on the fact that she herself was leaving, and expressed concern about the impact on the respondent's relationship with Skills Development Scotland (SDS). She said –

> "*Given our current relationship with SDS and the escalation of our service improvement plan, if we were to lose Sandy, Davie and me (I am last in the list as Sandy and Davie have the close and established relationships) in one go I'm fairly certain this will cause us real issues with SDS. It is*

essential we have someone in the senior management team in Scotland with detailed knowledge of our SDS contract to ensure business continuity and contract adherence."

34. Mrs Manze expressed agreement with Ms Donkin in her email to Ms Donkin and Mr Hughes of 1 December 2020 (339). Despite being included in this email exchange, it appears that Mr Hughes did not involve himself in the issue of Mr Cuthbert's inclusion in the selection pool. His evidence was in these terms –

"*I've no recollection of any conversation about Mr Cuthbert's eligibility to be pooled. It was not discussed with me, in terms of my approval or otherwise.*

35. Ms L Brady was a grade C manager. On 25 November 2020 she emailed Mr Hughes and HR Queries to ask if she as a grade C could apply for grade B roles (424). She received an almost immediate reply from HR Queries (424) advising that she could do so. She then emailed Mr Hughes (423) indicating that she would like to put in an *"EOI for PM roles"* (EOI meaning expression of interest). Mr Hughes' reply told her "*Hold fire Laura till I check this because don't think its correct…."*. It appeared from Ms Brady's reply to Mr Hughes (422) that she accepted she would not be eligible for a grade B role. Unlike Mr Cuthbert she had not been assigned additional project work extending beyond a grade C role.

Scoring and calibration meeting

36. The online tests and the technical tests took place in early December 2020. The candidates' answers to the technical questions were anonymised and a small batch of these answers was sent by HR to each of the managers doing the scoring. The scoring managers included Mr Hughes, Ms Donkin and Ms D Madden. While the claimant was unaware of who had scored which candidate at the time, it became apparent much later that Ms Donkin had scored the claimant and Mr Hughes had scored Mr Lennox.

37. The performance scores, based on the candidates' 2019 PPP grading, resulted in Mr Cuthbert being award one point more than the claimant and Mr Lennox. The claimant perceived unfairness in this because Mr Cuthbert's score reflected his performance in a grade C role. While this was understandable, I understood that the use of 2019 performance scores was a matter of collective agreement.

38. No scores were awarded for disciplinary record as none of Mr Lennox, Mr Cuthbert and the claimant had any disciplinary issues, so all would have scored the same. The online tests were scored externally. Mr Cuthbert performed best in these, followed by the claimant then Mr Lennox. In the technical tests, Mr Lennox scored highest, followed by the claimant then Mr Cuthbert.

39. The overall scores saw Mr Cuthbert and Mr Lennox attain 1.5 marks more than the claimant. It had been proposed by the respondent's Leadership Team and agreed through collective consultation that interviews would only be held for positions in "*at risk"* pooling situations where there was no more than a one point differential between the scores. This meant that Mr Lennox and Mr Cuthbert were the successful candidates, but this was subject to the calibration process.

40. Calibration meetings were held at which the managers appointed as assessors came together to review the anonymised responses and the scoring to ensure consistency. Ironically, there was an inconsistency in the evidence as to how they went about this at the calibration meeting held on 11 December 2020 to review the scoring of the candidates for the SCEM positions across England, Scotland and Wales.

41. Mrs Johnston's evidence was that the calibration meeting was attended by Mr Hughes, Ms Madden, Mr N James and Ms S Fenton. That was what Ms Madden said in her email to Mrs Johnston of 29 January 2021 (376). According to Mr Hughes, the calibration session was attended by all assessors. If that was correct, it begged the question of why Ms Donkin was not mentioned by Ms Madden.

42. Also according to Mr Hughes, the assessors had looked only at *"red flag"* cases. The main *"red flag"* was a larger than expected differential between scores. Where there appeared to be an anomaly, the case would be reviewed by a different assessor. In contrast, Ms Madden told Mrs Johnston that the assessors *"reviewed all anonymous responses for all applicants for SCEM and CEM roles".*

43. Given that Ms Madden's email was written 7 weeks after the calibration meeting whereas Mr Hughes was, at the hearing, recalling events more than 13 months earlier, I preferred her version of events. That said, I believed there was little, if any, real conflict here – to identify the *"red flag"* cases, the assessors would have had to look at all the scores.

Claimant learns outcome

44. The claimant was told that he had been unsuccessful in a short telephone conversation with Mr Hughes on 14 December 2020. In the course of this, Mr Hughes told the claimant that the other two candidates had scored more than one point higher. The claimant questioned this because he understood, following Mr McGillivray's withdrawal, that only he and Mr Lennox were in the selection pool. According to the claimant, Mr Hughes did not elaborate and promised to phone back later with further details, but did not do so.

45. Mr Hughes called the claimant on 5 January 2021. He told the claimant that Mr Cuthbert had secured one of the SCEM positions. The claimant questioned this because he knew that Mr Cuthbert was not a grade B manager. Mr Hughes suggested that the claimant should apply for the Head of Apprenticeships and Careers Products role ("Head of Apprenticeships"), indicating to the claimant that he had already mentioned this to Mr Connolly. The claimant told Mr Hughes that he intended to appeal the decision which eliminated him from the SCEM selection process.

Claimant appeals

46. On 5 January 2021 the claimant emailed Mrs Manze (350-351) in these terms –

"*With regards to the scoring of the technical test questions as part of my application for the Senior Engagement Manager role, I would like to appeal my technical test scoring on the following grounds:*

- *My answers to the questions relate to National Skills Academy for Construction, Joint Investment Strategy with Scottish Government and the SDS Skills Investment Plan. From these answers it is very easy for me to be identified and therefore blind scoring in this particular case would not be effective.*

- *The questions were ideal for me in terms of enabling me to provide really good and comprehensive answers and I felt I had managed to do this and at the time was very pleased with my performance. I can't understand how my answers could be so bad that I could not be considered suitable to go forward for an interview for a job that is the same grade and similar role to the job that I have been doing for the past five years. (I previously worked in education as a teacher amongst other things for approximately 17 years and have undertaken and scored numerous exams, so I've usually got a fair idea of how I have performed.)"*

47. Mrs Johnston was asked by Mrs Manze to deal with this. She said this about the claimant's appeal –

"*As the claimant submitted this appeal prior to being formally given notice of his redundancy, it was treated more as an appeal of the application of scoring/assessment for the alternative role rather than a formal redundancy appeal."*

48. Mrs Johnston emailed the claimant on 11 January 2021 (349) stating that she would review his grounds of appeal and, in relation to the second of these, she would obtain the online test and technical scores *"and review whether the technical scores have been marked fairly against the criteria".* She indicated that she hoped to provide an update by 14 January 2021. Mrs Johnston then spoke with Mrs Manze to gain an understanding of how the scoring and calibration session had been conducted.

49. On 14 January 2021 Mrs Johnston emailed the claimant (352). She acknowledged that while the respondent had tried to protect candidates' identity, they had no control over the content of the answers to the technical questions, which might have allowed some candidates to be identified. She was however confident that the assessors had acted professionally. She made reference to the calibration session. Mrs Johnston also provided the claimant with an anonymised breakdown of the scores (357). She explained that as the claimant had scored lowest and the differential was more than one point, he did not qualify to be interviewed.

50. Having received the appeal outcome, the claimant requested a *"quick chat"* with Mrs Johnston. They spoke on 20 January 2021. The claimant followed this up with an email to Mrs Johnston on 26 January 2021 (383) in which he –

    (a) argued that it was unfair for a candidate to be given a PPP score based on performance at a grade below the grade B position on which the claimant was assessed, and

    (b) having been told by Mrs Johnston that it was not possible to have his technical questions re-scored, sought clarification on what were the *"robust checks and balances"* conducted during the calibration meeting.

    The claimant also asked Mrs Johnston to "*please confirm that I am actually being made redundant because I have still not received any Notice of Redundancy".*

51. Mrs Johnston emailed Mr Hughes and Ms Madden on 26 January 2021 (376-377) asking about the calibration session. Only Ms Madden replied, copying in Mr Hughes, by email on 29 January 2021 (376) in the terms which are recorded at paragraphs 41-42 above.

52. Mrs Johnston replied to the claimant on 29 January 2021 (382-383). In summary, she told the claimant that –

- The use of PPP ratings had been agreed during the consultation process.

- The use of his lower grade PPP rating in the case of Mr Cuthbert was part of the agreed process and his score would not be changed.

- In relation to the calibration session, all of the scores were discussed and where there was disagreement, questions were re-scored before a final mark was agreed. Only in the case of one SCEM response had there been an individual review, with the score coming back the same.

53. The claimant responded on 1 February 2021 (381) asking Mrs Johnston to whom in the trade unions he should speak about the collective consultation process. Mrs Johnston directed him to Mr Williams and Mr A Bridge being the management representatives. She also told the claimant that she had *"closed the appeal as we have investigated all the points you have raised, therefore we won't be looking to reopen it unless there is any new evidence that is brought forward".*

54. The claimant responded by his email of 2 February 2021 (379-380). He focussed on (a) Mr Cuthbert's alleged ineligibility (as a grade C manager) for the SCEM selection pool and (b) the validity of the marking of the technical test questions and in particular the third question where, if he had scored 4 as he did for the other two questions, he would have achieved the highest overall score. The claimant said that Mr Hughes had told him during his final consultation meeting that his application was not discussed during the calibration meeting because he was more than one point below the other candidates.

55. It is convenient to record here the evidence of Mr Hughes about the claimant's score of 2 for the third technical test question. Mr Hughes described this as *"light".* He said that he would have scored the claimant's answer *"as a 3, moving into 4".* A score of 3 would have taken the claimant to within one point of the other candidates in the pool, and therefore eligible to be interviewed. A

score of 4 would have had the same result, and would have made the claimant the highest scoring candidate in the pool.

56. Mrs Johnston replied to the claimant on 2 February 2021 (379). She repeated that she would not be re-opening the appeal. She told the claimant that if he was still aggrieved he should raise a formal grievance. In relation to the claimant's reference to Mr Hughes, Mrs Johnston told the claimant that he would *"need to pick up directly"* with Mr Hughes, adding that he (Mr Hughes) was *"involved"* in the reply (from Ms Madden) to her request for information about how the calibration was facilitated. Mrs Johnston accepted during her evidence that this was misleading – the only sense in which Mr Hughes had been *"involved"* was as a recipient of Mrs Johnston's email of 26 January 2021 (376-377) and Ms Madden's email of 29 January 2021 (376). Mrs Johnston also made reference to Mr Cuthbert *"acting up in a senior role".*

57. This led to a further exchange of emails between the claimant and Mrs Johnston on 2 February 2021 (378). The claimant asked about Mr Cuthbert's "*acting up"* role. Mrs Johnston responded that he (Mr Cuthbert) *"was acting up in an RDM role, undertaking all aspects on the role for an extended period of time".* That was not accurate. I understood that within the respondent an employee would only be regarded as "*acting up"* if being remunerated accordingly, which Mr Cuthbert was not. Mr Cuthbert's role was as described by him (see paragraph 28 above). Mr McGillivray was the RDM and Mr Cuthbert was not doing his job.

58. Mrs Johnston advised the claimant (again) that his appeal was closed and signposted him to the grievance process. The claimant did not submit a grievance.

59. The claimant exchanged emails with Mr Bridge on 9-11 March 2020 (419-420) referencing the part played by the unions in the process which resulted in his redundancy dismissal. I understood the claimant's point to relate to Mr Cuthbert being permitted to join the SCEM selection pool and in particular Mrs Johnston's statement that treating his case as an exception was *"fully supported by the Union".*

60. Mr Bridge's reply to the claimant on 11 March 2021 (420) stated –

> "*Having had a chat with Gareth to check, I can confirm that neither of us was involved in discussions or meetings with the union and CITB management where these issues were discussed and supported. It's possible that individuals approached the union outside the union/management rep forums and obtained union support without our knowledge."*

61. I observe that this seems surprising given that it was Mr Williams who had supported Mr Cuthbert in his wish to be included in the SCEM selection pool. Indeed it was Mr Williams who, at the meeting on 26 November 2020, had directed Ms Donkin and Mrs Manze to Ms King's letter of the same date (334-335) referring to pooling colleagues for a role that was a grade higher.

Final consultation and dismissal

62. A final consultation meeting took place between Mr Hughes and the claimant on 7 January 2021. A consultation form was produced (344-347). I accepted the claimant's evidence that Mr Hughes did not go through this in detail but simply inserted two paragraphs from the claimant's appeal email of 5 January 2021 (see paragraph 46 above) and some wording about his appeal.

63. Following this meeting the claimant should have been given his formal notice of redundancy and a copy of the consultation form. He received neither. This explained his uncertainty as to whether he had actually been made redundant (see paragraph 50 above). The claimant querying this on 26 January 2021 led swiftly to an email from HR Queries on the same date (369) attaching a letter confirming his redundancy dismissal (370-372). This letter purported to backdate the claimant's dismissal to 7 January 2021. It also advised the claimant of his right to appeal against his dismissal by reason of redundancy.

64. On 22 March 2021 that Mr Hughes emailed the claimant (393) to apologise for not having sent him the documentation following the final consultation meeting. The claimant eventually received this on 29 March 2021.

Alternative employment

65. Following the initial consultation meeting between Mr Hughes and the claimant on 19 November 2020, Mr Hughes emailed the claimant on 23 November 2020 (431) advising that he (the claimant) could also be pooled for the role of Customer Engagement Manager (a grade C position). Thereafter, during their telephone conversation on 5 January 2021, Mr Hughes suggested that the claimant should apply for the position of Head of Apprenticeships. Mr Hughes said that he had already mentioned this to Mr Connolly, and would put in a recommendation. Mr Hughes duly did so on 5 January 2021 (343).

66. Mr Hughes' email to Mr Connolly was also sent to Mr J Chivers , who was the recruiting manager for the Head of Apprenticeships post. Mr Chivers replied to Mr Hughes on 5 January 2021 (343) asking if the claimant was aware that the post was Head Office based and that there would be an expectation around time spent there without travel/accommodation costs being covered. Mr Connolly replied to this (334) indicating that if the post could not be filled locally he would still be supportive of it being home based for a period.

67. The claimant submitted an EOI for the Head of Apprenticeships role. This led to a telephone call between the claimant and Mr Chivers on 22 January 2021. The claimant's evidence (which I found no reason to doubt) was that Mr Chivers said that there would be an expectation for the claimant to be at the Head Office in Peterborough for 2 to 3 days per week initially, increasing to *"almost every day"* when Covid restrictions were relaxed. The claimant emailed Mr Chivers on 25 January 2021 (363) to withdraw his EOI.

68. There was then an exchange of emails between the claimant and Mrs Manze on 27/28 January 2021 (373). The claimant asked if there was any chance of the Head of Apprenticeships being considered as home based/mobile working. He referred to the respondent's commitment to minimise redundancies (having

in mind a *"How and Where We Work"* PowerPoint presentation in September 2020 (151-155) which referred to agile working). Mrs Manze's reply advised the claimant that the respondent was *"unable to support the request for the role to be home/mobile based".*

69. The respondent produced an internal vacancy list (492-511). I was satisfied that the claimant was aware of this. I noted that virtually all of the available posts were based at the respondent's Head Office in Peterborough.

Schedule of loss

70. The claimant obtained alternative employment before his redundancy took effect on 31 March 2021. This started on 1 April 2021. After 3 months he moved to a better paid role, working under a 23 month fixed term contract. Initially the claimant earned £47000 per year gross, equating to £2822 net per month. In his better paid role he earned £49420 per year gross, equating to £2950 net per month. When his employment with the respondent ended the claimant was earning approximately £4960 gross per month (including car allowance) and £3410 net per month. The claimant was not seeking compensation for future loss beyond 31 May 2023 when his current fixed term contract was due to end, nor for pension loss.

71. The other elements of loss alleged by the claimant in his schedule of loss (407-409) were –

    (a) Loss of travel allowance of 12p per mile for all car journeys from home. He valued this at £1,320 in the period from 1 April 2021 to 31 May 2023 (the *"period of loss"*).

    (b) Loss of lunch allowance (£5 per day when eligible) which he valued at £450 for the period of loss.

    (c) Loss of statutory employment protection rights which he valued at £500.

    (d) Loss due to reduced redundancy payment (ie reduced level of enhancement) which he valued at £9,324.

(e) Injury to feelings which he valued at £9,000.

72. The claimant also contended that his loss of pay should be calculated with reference to what he would have earned if appointed to the Head of Apprenticeships position. He valued this at £7,100 in net pay terms over the period of loss. In total the claimant quantified his claim at £47,274.

73. The respondent had prepared a counter schedule of loss (411-413). In this they made the following points –

(a) The entitlement to a basic award was negated by the claimant having received a redundancy payment (in effect a reference to section 122(4)(b) of the Employment Rights Act 1996 ("ERA")).

(b) As the claimant had been home-based at the time of his dismissal he had no requirement to claim travel allowance.

(c) The claimant had not claimed lunch allowance in the 12 months prior to his dismissal (and I understood them also to argue that in any event the entitlement to lunch allowance was removed as part of the outcome of the negotiations during collective consultation).

(d) The amount (£13,753.73) by which the claimant's redundancy payment exceeded the basic award/statutory redundancy payment should be set against his claimed losses.

74. The respondent disputed the claimant's entitlement to an award for injury to feelings on the basis that this was not an available remedy for unfair dismissal. They argued that he was not entitled to claim loss of earnings by reference to the Head of Apprenticeships post because he had withdrawn his EOI. Their position was that, allowing for the enhanced redundancy payment, the claimant had suffered no loss.

Comments on the evidence

75. It is not the function of the Tribunal to record in its Judgment every piece of evidence presented to it, and I have not attempted to do so. I have focussed

on those parts of the evidence which I considered to have the closest bearing on the issues I had to decide.

76. All of the witnesses were credible. They gave their evidence to the best of their recollection. The process which led to the claimant's dismissal was comprehensively documented so that the timeline of events was not in dispute.

Submissions – respondent

77. Mr Strelitz submitted that it was not in dispute that the reason for the claimant's dismissal had been redundancy. The respondent's alternative position that it was dismissal for some other substantial reason was not abandoned but he would make no submissions on it.

78. Mr Strelitz stressed the context in which the respondent operated. It answered to both the government and the construction industry (and in particular the employers who provided funding by payment of the levy). It was entirely unsurprising that the respondent had been affected by the pandemic, necessitating the Covid Change Programme. Redundancies had clearly been required.

79. Mr Strelitz submitted that the claimant's case faced two difficulties –

    (a) It was predicated on theories which, although strongly believed by the claimant, did not withstand scrutiny.

    (b) It was a redundancy dismissal and the claimant was demanding a microscopic analysis which the Tribunal was not allowed to do.

80. Mr Strelitz referred to ***British Aerospace plc v Green and others 1995 IRLR 433*** and in particular (absent paragraph numbering) sections 2-4 and 13 of the judgment of Waite LJ. The following passages reflect the points Mr Strelitz was seeking to make –

    "….in general the 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 that the law requires of him."

"The use of a marking system of the kind that was adopted in this case has become a well-recognised aid to any fair process of redundancy selection. By itself, of course, it does not render any selection automatically fair; every system has to be examined for its own inherent fairness, judging the criteria employed and the methods of marking in conjunction with any factors relevant to its fair application, including the degree of consultation which accompanied it. One thing, however, is clear: if such a system is to function effectively, its workings are not to be scrutinised officiously….if a graded assessment system is to achieve its purpose it must not be subjected to an over-minute analysis. That applies both at the stage when the system is being actually applied, and also at any later stage when its operation is being called into question before an industrial tribunal."

81. Mr Strelitz then referred to ***John Brown Engineering Ltd v Brown 1997 IRLR 90***. The following passage best encapsulated the point Mr Strelitz was making –

"*….it is no part of the industrial tribunal's role, in the context of redundancy, to examine the marking process as a matter of criteria under a microscope; nor to determine whether, intrinsically, it was properly operated. At the end of the day, the only issue is whether or not the employers treated their employees in a fair and even-handed manner."*

82. Mr Strelitz stressed the level of *"to and fro"* in the collective consultation undertaken by the respondent with the employee representatives. He referred to the opening paragraphs of Ms King's email of 26 November 2020 (334) and stressed that this had been a *"living process"* which had sought to achieve a fair system. That was what the law required.

83. Moving on to whether the system had been administered fairly, Mr Strelitz addressed what he identified as the claimant's three areas of attack –

(a) Pooling.

(b) Marking.

(c) Route to challenge the outcome.

84. In respect of pooling, Mr Strelitz referred to ***Taymech Limited v Ryan EAT/663/94***. In the course of its judgment, the Employment Appeal Tribunal said this –

> "*The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem."*

85. Another employer might have done things differently but, Mr Strelitz argued, that was not the legal test. It was clear from her email of 26 November 2020 that Ms King, as People Director, had agonised to ensure that the respondent got it right. The pooling challenge was wrong in law.

86. In respect of marking, Mr Strelitz submitted that the claimant's suggestion of collusion or conspiracy could not withstand analysis. Of the marks given to the claimant by Ms Donkin when scoring his technical question answers, two of the three had been above average. If she had worked out that she was scoring the claimant and wanted Mr Cuthbert to be appointed, that simply did not add up. There had been the element of secrecy – Mr Hughes' evidence was that he did not know about the other candidates' scores.

87. In respect of route to challenge, Mr Strelitz reminded me that the assessors had been trained. The allocation of candidates to individual assessors had been at random, to ensure fairness to all. The calibration meeting had lasted all afternoon; it was not a cursory exercise. It would be a counsel of perfection to require complete rescoring, and completely unworkable. The respondent had done a fair check, and that sat within the band of reasonable responses.

88. Turning to the appeal process, Mr Strelitz said that Mrs Johnston had not been disinterested nor had she tried to *"fob off"* the claimant. Mr Strelitz submitted that Mrs Johnston had reached the point where –

    (a) she was telling the claimant that she had answered his questions and was not prepared to take the matter further without new evidence, and

    (b) she detected that the claimant did not trust or like her, or had had enough of her.

89. Mrs Johnston had signposted the claimant towards submitting a grievance. That had been the right thing to do, but the claimant had not submitted a grievance. The claimant had also not sought to reopen his appeal when he obtained Mr Bridge's input in March 2021.

90. In relation to seeking alternative employment for the claimant, Mr Strelitz submitted that the respondent had done all it could to assist the claimant. It had encouraged EOIs for positions on the vacancy list. For the Head of Apprenticeships position, it would not have been reasonable to expect the respondent to move the post to Scotland. That had been a decision for Mr Chivers.

91. Mr Strelitz then made submissions relating to the claimant's schedule of loss, the application of the case of ***Polkey v A E Dayton Services Ltd [1987] UKHL 8*** and the failure of the claimant to lodge a grievance, with reference to section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992. I do not propose to rehearse these here.

Submissions – claimant

92. The claimant criticised the analysis by Mr Strelitz as being too complicated. He argued that it was simple – it came down to what was reasonably fair. He submitted that his treatment by the respondent had not been reasonably fair.

93. The claimant argued that there had been no scrutiny of Mr Cuthbert's inclusion in the SCEM selection pool. He noted Mr Cuthbert's evidence that Ms Donkin had initially rejected his (Mr Cuthbert's) request to be included. When he saw Ms Donkin's email (339) supporting Mr Cuthbert's inclusion, the claimant had been confused. The claimant argued that Mr Hughes did not have to know anything for there to have been a conspiracy. Ms Donkin worked closely with Mrs Manze.

94. The claimant referred to three areas of concern –

    (a) His scoring – in particular the score of 2 for the third technical question.

    (b) The PPP grading, which was applied in a way that was unfair to him.

    (c) The inclusion of Mr Cuthbert in the SCEM selection pool.

95. The claimant argued that his score of 2 for the third technical question was an obvious underscoring. If the question had been scored properly, he would not have eliminated from the selection pool. He had sought a rescore but Mrs Johnston had refused. That he had been underscored was borne out by Mr Hughes' evidence that he would have awarded a score of 3 or possibly 4.

96. The claimant contended that Mr Cuthbert's PPP score being assessed on the basis of his performance at a grade one below that of the claimant and Mr Lennox was unfair. It meant that Mr Cuthbert's performance was tested at a lower level.

97. The claimant also contended that Mr Cuthbert should not have been in the selection pool. The rule was the candidate's own grade or one below. This had applied to everyone except Mr Cuthbert. In effect, a process had been created to allow Mr Cuthbert into the pool. This reflected bias on the part of Ms Donkin. She had, the claimant submitted, gone to extraordinary lengths (to bring Mr Cuthbert into the pool of selection).

98. The claimant was critical of the way in which his final consultation meeting had been conducted. Mr Hughes had not followed the script. He had not told the claimant he would be redundant as from 31 March 2021. He had not sent the claimant a copy of the notes of the meeting.

99. Answering a point made by Mr Strelitz that he had taken more than a month after his redundancy was confirmed to contact Mr Bridge, the claimant explained that he had spent most of his time on job applications in the weeks immediately following that confirmation. He had also been continuing to carry out his own job. Contacting Mr Bridge had not seemed so much of a priority.

100. When the claimant was told by Mr Bridge that he and Mr Williams had not been involved in the decision to allow Mr Cuthbert to be pooled for the SCEM post, he suspected that Mrs Johnston had fobbed him off. The responsibility to investigate rested with Mrs Johnston, not the claimant himself.

101. The claimant argued that he should have been allowed to pursue his interest in the Head of Apprenticeships post. He understood that even now, the person appointed to the post was working at the respondent's Head Office in Peterborough only one day per week.

102. The claimant remained of the opinion that there had been some form of corruption. He believed he had been deliberately underscored by Ms Donkin. He did not know the extent of the alleged corruption, but there did not have to be anything on a grand scale – a phone call would be enough. The claimant believed that Ms Donkin had convinced Mr Hughes that it was essential that Mr Cuthbert got one of the SCEM jobs. Mr Hughes had no experience of the SDS contract and had *"turned a blind eye".*

103. The claimant contrasted how Mr Cuthbert had been treated with Ms Brady. He accepted that Ms Brady had not put forward an "*exception"* argument as Mr Cuthbert had done. However, he contended that Mr Hughes could have made an argument for her in the same way as Ms Donkin had done for Mr Cuthbert.

Applicable law

104. Section 98 ERA provides, so far as relevant, as follows –

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (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.

(2) A reason falls within this subsection if it –

(a)….

(b)….

(c) is that the employee was redundant….

(3) ….

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

Discussion

105. It was not in dispute that the claimant had been dismissed by reason of redundancy. The respondent's Covid Change Programme was a necessary reaction to the loss of income it suffered. It involved a reorganisation which brought together the Partnerships and Apprenticeships Teams. Within Scotland, there were two grade B SCEM posts and, at the start of the process, three grade B managers. That foreshadowed the need for one redundancy.

106. As it was in effect accepted by the claimant that the respondent had shown that the reason for his dismissal was the potentially fair reason of redundancy, my focus was on the application of section 98(4) ERA – had the respondent acted reasonably or unreasonably in treating the claimant's redundancy as a sufficient reason for dismissing him?

107. I identified six areas which I considered it appropriate to look at in order to determine the section 98(4) question –

(a) Adequacy of consultation

(b) Pooling

(c) Scoring

(d) Manner of dismissal

(e) Appeal

(f) Alternative employment

Adequacy of consultation

108. I firstly considered collective consultation. I reminded myself of what the Employment Appeal Tribunal said in ***Williams and others v Compair Maxam Ltd 1982 IRLR 83*** –

"….in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles –

1. *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.*

2. *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 employees as possible. In particular, 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.*

3. *Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which as 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 at the job, experience, or length of service.*

4. *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 such selection.*

5. *The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.*

The lay members stress that not all these factors are present in every case since circumstances may prevent one or more of them being given effect to. But the lay members would expect these principles to be departed from only where some good reason is shown to justify such departure. The basic approach is that, in the unfortunate circumstances that necessarily attend redundancies, as much as is reasonably possible should be done to mitigate the impact on the work force and to satisfy them that the selection has been made fairly and not on the basis of personal whim."

109. In the present case I was satisfied that the respondent had engaged in a genuine collective consultation process. That was evidenced by the minutes of the consultation meetings and the internal communications, and by the number of counter-proposals which had been put forward. A Proposed Recruitment and Selection Process was produced (176-180). A bespoke version of this setting out the selection and pooling approach was prepared for the Customer Engagement Teams (171-175). I was satisfied that the process that the respondent established to deal with the redundancy exercise which involved the claimant was fair.

110. I next considered individual consultation. The claimant was notified by letter dated 13 November 2020 that he was at risk of redundancy. He attended a first consultation meeting with Mr Hughes on 19 November 2020. Mr Hughes' completion of the consultation meeting form (328-330) was somewhat monosyllabic, with little more than the insertion of the word "*done"* seven times. However the meeting did take place and I believed that the claimant had a reasonable understanding of the process as he himself was a consulting manager for the Engagement Advisor posts and had received training for that role.

111. A second individual consultation meeting between the claimant and Mr Hughes took place on 7 January 2020. I deal with this below when considering the manner of dismissal.

Pooling

112. The issue here was whether the respondent's decision to allow Mr Cuthbert to join the selection pool for the SCEM post was so unreasonable as to taint the claimant's dismissal with unfairness.

113. There was no doubt that the respondent moved the goalposts. Until Ms King's email of 26 November 2020 (334-335) the position was that an employee could put himself/herself forward for a post at his/her present grade or one grade below. Effectively, the rule was that an employee could not apply for a post at a grade higher than his/her existing grade. It was surprising that Ms Brady had been told otherwise on 25 November 2020 (see paragraph 35 above). However, what seemed to me more significant was that Mr Hughes had recognised that this was incorrect. That served to confirm the position prior to 26 November 2020.

114. Although Mr Cuthbert was not *"acting up"* in the sense of being paid to perform duties normally undertaken by someone of a higher grade, it was understandable that he would ask about a grade B role in the new structure. I did not understand the claimant to suggest that Ms Brady should not have done so and, logically, the same would apply to Mr Cuthbert.

115. I considered whether the respondent's decision, reflected in Ms King's email of 26 November 2020, to allow an exception to the rule was reasonable. I decided that it was. With reference to the case of ***Taymech***, eligibility for a particular pool of selection was a matter for the respondent. The respondent was able to modify the rule – move the goalposts – not at a whim but where, as here, there was a valid reason to do so. I was satisfied that the respondent had genuinely applied its mind to the issue, and that was what the law required. It followed that the decision to allow Mr Cuthbert to join the selection pool for the SCEM post did not taint the claimant's dismissal with unfairness.

Scoring

116. I looked firstly at the scoring system used by the respondent. I reminded myself of what Waite LJ said in ***British Aerospace*** – *"every system has to be*

examined for its own inherent fairness". The criteria against which candidates were scored are set out at paragraph 24 above. I did not understand the claimant to be criticising the choice of criteria. Similarly, I found nothing wrong with the chosen criteria.

117. I also found nothing wrong with the arrangements for marking the technical test questions. It was appropriate that –

    (a) The assessors were grade A managers, one grade above the posts to be filled.

    (b) Instructions including a scoring matrix were provided.

    (c) The candidates' answers were anonymised and allocated to individual assessors by HR.

    I took on board the point the claimant made when he appealed, that a candidate might be identifiable from his answers. However, I did not consider that this rendered the process unreasonable or unfair. It could not be said that no reasonable employer would have arranged things in this way. There was no inherent unfairness in this arrangement.

118. I looked next at the claimant's complaint about how the PPP scores had been used. He said it was unfair that Mr Cuthbert was scored against a lower standard (grade C) compared with himself and Mr Lennox (grade B). I found that there was nothing inherently unfair in basing every candidate's score on his/her 2019 PPP rating.

119. When the eligibility rule was modified, so that Mr Cuthbert could apply for a grade B post, the respondent could at the same time have modified the basis for the PPP score for a candidate seeking appointment to a higher grade. I found that the failure to do was not sufficient to taint an otherwise fair process with unfairness. I reminded myself of what the Employment Appeal Tribunal said in ***John Brown Engineering*** – I should not *"examine the marking process as a matter of criteria under a microscope".*

120. I then considered the claimant's argument that his score for the third technical test question was plainly wrong. I had considerable sympathy for the claimant here. A score of 2 – below requirements – seemed harsh. It was mandated by the assessors' instructions where there was "*no reference to legislation, policy or best practice"* and demonstrably the claimant's answer had contained such a reference. The score was described as "*light"* by Mr Hughes who would have awarded a score of 3 or possibly 4. The claimant had wanted his score to be revisited and this was refused.

121. However, the difficulty for the claimant here was that as a matter of law I could not find his dismissal unfair because I disagreed with a score awarded to him during the selection process. Apart from the obvious – that I was not qualified to judge whether the score was right or wrong – the correct approach was clearly articulated by Waite LJ in ***British Aerospace.*** The scoring should not be "*scrutinised officiously"* nor subjected to an "*over-minute analysis".*

122. The claimant's assertion that Ms Donkin had deliberately given him a low score, and that the process had in some way been tainted by corruption, was not in my view sustainable –

    (a) It did not explain why Ms Donkin had given the claimant an above average score for his other two technical questions.

    (b) There was no evidence that Ms Donkin had somehow manipulated the process so that she was the one to mark the claimant's answers.

    (c) There was no evidence that Ms Donkin had known that she was marking the claimant's answers.

Manner of dismissal

123. The claimant was unhappy about a series of things after the selection process –

    (a) He had been told that he had been unsuccessful in a brief telephone conversation with Mr Hughes on 14 December 2020.

(b) Mr Hughes had said he would call the claimant back but did not do so.

(c) Mr Hughes did not contact him over the Christmas and New Year holiday period.

(d) Mr Hughes did not go through the second consultation form at the meeting on 7 January 2020 but simply inserted wording provided by the claimant.

(e) Mr Hughes did not provide the claimant with a copy of the consultation form.

(f) Mr Hughes did not confirm to the claimant that he was redundant.

(g) When the claimant did receive the letter confirming his redundancy dismissal, the date when notice started was backdated to 7 January 2021.

124. I did not see any particular significance in the fact that the telephone conversation between Mr Hughes and the claimant on 14 December 2020 was brief. I could appreciate that the claimant would have been taken aback as he believed that just he and Mr Lennox were in the running for the two SCEM posts. It was unfortunate that Mr Hughes had not taken the time to give the claimant a fuller explanation but on the other hand that would, arguably, only have served to heighten the claimant's sense of injustice. I did not consider that there had been any obligation on the part of Mr Hughes to contact the claimant over the Christmas and New Year holiday period.

125. It was apparent that the second consultation meeting could have been handled better. The consultation from should have been completed and a copy provided to the claimant. His redundancy dismissal should have been confirmed so that he understood that his 12 week notice period had started. Thereafter the dismissal letter should have been issued promptly so that there was no backdating of the notice start date.

126. However, while these were valid criticisms by the claimant of the way in which his dismissal was handled by the respondent, they were no more than a factor to be weighed in the assessment of whether the claimant's dismissal was fair or unfair. In my view, these matters were not sufficient to tip the scales in the claimant's favour so as to render his dismissal unfair.

Appeal

127. I have described the appeal process in some detail above. I was satisfied that it was conducted fairly and did not render the claimant's dismissal unfair.

128. Having said that, I could understand why the appeal process might be perceived by the claimant as unsatisfactory. The difficulty was that when Mrs Johnston dealt with the original two appeal points taken by the claimant, it led to a whole series of follow up points as set out in paragraphs 53-58 above. A further difficulty was that the appeal was treated as an appeal about the application of the scoring/assessment for the SCEM role rather than an appeal against redundancy dismissal.

129. In relation to the follow up points, I am reluctant to criticise the claimant but, with the wisdom of hindsight, he might have been better to wait until his redundancy dismissal had been confirmed and then muster all of his arguments into one appeal against the elements of the process which he considered unfair. It was understandable that the appeal had been treated as relating to the scoring/assessment rather than dismissal because, when the appeal was submitted on 5 January 2021, the claimant had not yet been given notice of dismissal.

130. The claimant was bemused to be directed to the grievance process because, at least at the time, he did not consider that he had a grievance against Mrs Johnston. However, I was satisfied that this was the right direction for the claimant to be steered. I could understand why the claimant, when he eventually received his dismissal letter, did not pursue an appeal against that dismissal. He was as at 26 January 2021 still going through an appeal process

and I did not believe that he would have appreciated the distinction between appealing against the scoring/assessment as opposed to the dismissal itself.

Alternative employment

131. I was satisfied that the respondent did enough, both in general terms and specifically, to see whether they could, instead of dismissing the claimant, offer him alternative employment. In general terms, they made the claimant (and other employees who might be at risk of redundancy) aware of internal vacancies. They published and updated an internal vacancy list.

132. In specific terms, they encouraged the claimant to apply for the grade A post of Head of Apprenticeships. The claimant was aware that employees could apply for a post at their own grade or one below, and had not applied for a grade C post. He had already been through the selection process for the grade B posts in his work area. It was apparent from the vacancy lists that there were relatively few "*Senior"* and "*Head of"* posts available.

133. It was evident that the claimant's conversation with Mr Chivers on 22 January 2021 served to dampen his enthusiasm, on the basis of the expectation around time spent at Head Office in Peterborough without travel/accommodation costs being covered. There might have been some scope for discussion here given Mr Connolly's support for the post being home based if it could not be filled locally. However, Mr Connolly was supportive of this *"for a period"* which suggested that the claimant would not have been able to undertake the post permanently home based. In the event, he chose to withdraw his EOI.

Decision

134. For the reasons set out above, the claimant's complaint of unfair dismissal fails and requires to be dismissed.

135. The claimant can take credit for the way he conducted himself during these proceedings. He was well prepared for cross examination of the respondent's witnesses. His questioning was robust at times but never discourteous. That

will be little comfort for not getting the result he hoped for but unfortunately, on the basis of the facts as I have found them to be, the law was not on his side.

Employment Judge: Sandy Meiklejohn
Date of Judgment: 01 February 2022
Entered in register: 08 February 2022
and copied to parties