



# EMPLOYMENT TRIBUNALS

**Claimant:** Michael Forrest

**Respondent:** Raytheon Systems Ltd

**Heard at:** Wales Employment Tribunal

**On:** 30<sup>th</sup>-31<sup>st</sup> May 2022

**Before:** Employment Judge Mason

## Representation

Claimant: Michael Forrest

Respondent: David Hay, Counsel

**JUDGMENT** having been sent to the parties on 31<sup>st</sup> May 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## INTRODUCTION

1. In a claim form dated 4<sup>th</sup> December 2021, Mr Michael Forrest, the Claimant brought a claim against the Respondent, Raytheon Systems Limited for unfair dismissal, by reason of redundancy.
2. He contends that his redundancy dismissal was unfair under s.98(4) of the Employment Rights Act 1996 (ERA 1996). He argues that a redundancy situation

did not exist; the selection criteria for redundancy were not fairly applied; and the criteria used to select employees for alternative employment were insufficiently objective, fair or reasonable.

3. The Claimant seeks £94,092 in compensation.
4. In its response form received on 23<sup>rd</sup> February 2022, the Respondent resisted the complaint. Their Grounds of Resistance, dated 18<sup>th</sup> February 2022 contend that their restructuring of the UK business, known as Project Genesis, identified the need to streamline areas of the company. This necessitated 429 jobs across the Respondent company being identified as at risk of redundancy. The Claimant's role was one such job.
5. The Respondent argues that the selection process for redundancy was based on sound business reasons. Further, that redundancy was procedurally fair. It is argued that there was a transparent and rigorous consultation process; and that the Claimant was offered the opportunity to apply for alternative roles with the company. Further, that the application process was made against objective criteria.

## ISSUES

6. Although the issues of *Polkey* and contribution would only arise if the Claimant's complaint succeeded, I agreed with both parties that I would consider them at this stage. I invited them to deal with both issues in evidence and submissions.
7. Following a discussion with the parties, the issues to be determined by the Tribunal were agreed as follows:
  - a. does a redundancy situation exist based on fact?
  - b. was the redundancy procedurally unfair?
  - c. if redundancy was procedurally unfair, what adjustment, if any, should be made to any compensation to reflect the possibility that the claimant would still have been dismissed had a fair and reasonable procedure been followed?

## EVIDENCE

8. Both parties appeared via CVP. The Respondent was represented by Mr Hay of counsel.
9. There was an agreed bundle of documents, and an agreed bundle of witness statements. The witness bundle comprised statements from six witnesses on behalf of the Respondent and a witness statement from the Claimant.
10. I heard evidence from all six Respondent witnesses and from the Claimant.
11. I also heard closing submissions from both parties.

## RELEVANT LEGAL FRAMEWORK

12. Section 98(2)(c) of the ERA 1996 provides that redundancy is one of the fair reasons for dismissal. However, an employee has a right to complain to an Employment Tribunal that their redundancy was unreasonable under s.98(4) of the ERA 1996.
13. Redundancy is defined in s.139 of the ERA 1996. For a dismissal to be by redundancy, a redundancy situation must exist. This can include where an employer decides to reorganise their business because they are overstaffed.
14. A decision that less employees are required to perform the same functions is a redundancy situation (*Kingwell and ors v Elizabeth Bradley Designs Ltd* EAT 0661/02). Conversely, a mere repatterning or redistribution of the same work among different employees whose numbers nonetheless remain the same will not amount to redundancy (*Barot v London Borough of Brent* EAT 0539/11).
15. In determining whether a dismissal is reasonable, the Tribunal must assess whether *‘the dismissal lay within the range of conduct which a reasonable employer could have adopted’* (*Williams and ors v Compair Maxam Ltd* 1982 ICR 156, EAT). The factors that a reasonable employer might be expected to consider include:
  - whether the selection criteria were objectively chosen and fairly applied

- whether employees were warned and consulted about the redundancy
- whether, if there was a union, the union's view was sought, and
- whether any alternative work was available.

## **FINDINGS OF FACT**

16. The relevant facts are as follows. Where there is a dispute over those facts, I set out my findings and reasoning.
17. Raytheon Systems Limited is a technology company focused on Defence, Aerospace and Cyber Intelligence.
18. The Claimant, worked as a Delivery Programme Manager for the Shadow Long Term Support Contract. Shadow being an aircraft. This was one a several arms within the Space and Airborne business (SAS), itself within the Cyber Space and Training (CST) business area of the Respondent company after 2020.

### Project Genesis

19. At some point around April 2020, the Respondent sought to restructure its business . This was known as Project Genesis. It involved a top to bottom review of the organisational structure of the company. Its aim was to make the company more effective and efficient, by creating new roles and combining existing ones. Essentially, it was a process of streamlining and rationalising of the workforce.
20. All parts of the Respondent company were reviewed and departmental heads were asked to apply Project Genesis guidelines to assess whether their department required rationalising. Some departments agreed they did need to be made more effective, and some did not. The Claimant's department, SAS were affected by the restructuring.
21. As a result of the application of the Project Genesis guidelines and following a review, a new draft structure for SAS was drawn up by Paul Francis, Head of SAS, and Andrew Woods, Head of Programme Delivery for CST. Ms Marcinkowski was

also involved in the process, given her experience in client contracts and their delivery.

22. Mr Woods proposed restructuring of the SAS business appears in a printout at page 52 of the agreed bundle. That document, titled “SAS Scenario Worksheet”, shows the Claimant’s role was one of 19 “deleted roles” which were then to be replaced by eight newly created roles. In addition five roles would continue in the new structure, known as “enduring roles”.

#### Consultation

23. Following the proposed restructuring under Project Genesis, those employees at risk of redundancy were sent letters setting out the decision and redundancy process. The Claimant received such a letter on 6<sup>th</sup> June 2021. It explained that there would follow a period of 45 days of collective consultation.
24. This consultation ran from 8<sup>th</sup> July until 23<sup>rd</sup> August 2021. It involved meetings between employees and the Respondent consultation team. This also included the election of employee representatives to the Respondent’s UK People Forum to attend meetings and ask questions on behalf of employees.
25. The 6<sup>th</sup> June letter also referred to an internal website with resources and information about the consultation; and an email address to which employees could send questions that they did not wish to ask of their representatives.
26. It does not appear that any trade union was involved in the consultation process.

#### The Offer Of Alternative Employment

27. All employees at risk of redundancy were provided with details of vacant roles within the company. The Claimant applied for three of the new created roles, within SAS although their titles are different to those on the Scenario Worksheet. The first was that of Governance Programme Manager graded at P5, a promotion from his previous role at P4.

28. He was interviewed on 9<sup>th</sup> August by Paul Newby and HR Business Partner, Jayne Crossan. He scored 40/60 on the competency criteria. The successful candidate scored 48.5. Claimant was informed he was unsuccessful for that post on 19<sup>th</sup> August.
29. The Claimant also applied for two others newly created roles within SAS: Product Line Lead; and Product Programme Manager, both graded at level P5 also. He was interviewed for both jobs in one interview, carried out by Paul Francis and Andrew Woods. He was unsuccessful in those applications. Due to delays, accepted by the Respondent as unsatisfactory, the Claimant was not informed of the decision until 24<sup>th</sup> August.
30. In his evidence to the Tribunal, the Claimant also referred to two other jobs outside of SAS that he applied for. He was not successful in either of those applications.
31. Following several email exchanges with Mr Francis and others, the Claimant made it clear that he would not accept a lower P3 role in the company. This was because he would lose both his company car and other benefits.
32. On 24<sup>th</sup> August, the Respondent sent a notice of redundancy to the Claimant. The ten week notice period was to run from 1<sup>st</sup> September to 12<sup>th</sup> November 2021.
33. Following a Zoom call between the Claimant, Paul Newby and Jane Crossan on 16<sup>th</sup> September 2021, the Claimant initiated the Respondent's grievance procedure in emails dated 17<sup>th</sup> and 22<sup>nd</sup> September .
34. His grievance concerned, among other things, the redundancy process, interviews for the new role and his treatment by the company over several years. The grievance procedure was overseen by deputy Head of Finance, Victoria Brown in association with Human Resources advisor, Grace Kintu.
35. Ms Brown interviewed the Claimant, Paul Francis, Paul Newby, Andrew Woods, Diane Marcinkowski and several other staff members. Her conclusions relative to this claim were that:

- a. there was no evidence that the SLTS contract had or required named individuals to remain within posts for the duration of the contract or that function structures were determined by individual contracts;
- b. that the interview process for selection of the new roles was fair; and
- c. the communication around the Claimant's notice period and attempts to find him alternative employment could have been clearer.

36. The Claimant's last day of employment was 1<sup>st</sup> October 2021. He was paid £9,186 gross in lieu of notice; and an £8160 redundancy payment.

## CONCLUSIONS

### Does a redundancy situation exist?

37. I find that a redundancy situation at the Respondent company did exist. In my view, the Respondent sought to restructure the company through Project Genesis. This concerned reducing staffing in an attempt to make the delivery of its products more efficient.
38. I do not consider Project Genesis and the consequent redundancies it generated to be a simple reshuffling of the workforce. In my view it was a reduction in its size reflecting a diminished business need.
39. I do not accept that the roles in SAS post Project Genesis were, in the Claimant's words "*just the same people doing the same job at a lower cost*". I find that Project Genesis resulted in a reduction of the work force. This is clear from the letter dated 6<sup>th</sup> July 2021 to the Claimant, explaining the reduction in staffing levels; and the SAS Scenario Worksheet illustrating 19 existing roles being replaced by eight new ones.
40. The Claimant invites me to consider an email from Ms Marcinkowski to Ernie Housley, dated 9<sup>th</sup> September 2021. Mr Housley was a customer of the Respondent

and the email from Ms Marcinkowski sets out the new structure of the relevant team members post Genesis.

41. The Claimant argues that the email makes clear that the responsibilities in the new roles as explained to Mr Housley are in effect the same as those pre-Genesis. Ms Marcinkowski gave evidence that her explanation to the customer was simply an overview. It did not explain all the responsibilities under the new role, just those relevant to the customer. She said that the new roles incorporated some of the functions of the pre-Genesis roles, but not all.
42. I accept that evidence. I find Ms Marcinkowski to be a credible and reliable witness. I do not find that a sensible inference can be drawn that a redundancy situation did not exist from those few sentences in an email to a customer. It is not a reasonable conclusion from that email that the roles post-Genesis were the same as those pre-Genesis.
43. Nor do I accept that the Shadow team were targeted. The Claimant relies upon a letter from the Chief Operations Officer, Roland Howell, dated 8<sup>th</sup> July (p.202 bundle) to employee representatives, which includes a breakdown by function of the 429 employees at risk of redundancy
44. The Claimant argues that the 21 Project Management roles identified as at risk of redundancy amounts to the whole team, and therefore his Shadow team were targeted. However, he was unable to say how other teams and departments in that table were affected. I do not accept that letter supports the Claimant's assertion of his Shadow team were targeted.
45. Mr Newby accepts that the project management team in SAS were the most affected by Genesis. However, in my view this is not the same thing as the team being "targeted" by the Respondent. I do not find there is any evidence to support that contention.
46. It is right as Mr Francis the Head of SAS accepted in his evidence, that salaries would go down and this is set out on the SAS Scenario Worksheet (at p.52 of the bundle). The new roles were graded at lower pay scales than those previously. For example,

there were no higher grade G13 or G12 roles in the new structure; the highest being G11. There were more lower grade roles at G9 and G8 also. It is right to say that since that document was produced, roles are now graded as “P” and “M” rather than “G”.

47. Mr Francis, Mr Wood, Mr Newby and Ms Marcinkowski all gave evidence that the new roles were qualitatively different in their responsibilities and the number of people involved in delivering them. Mr Wood explained that almost all the roles in both the Claimant’s department and in other areas of the business were different. He said that the new structure enabled the Respondent to deliver and partition responsibilities more effectively.
48. He said that the new structure was better value for the customer and that the new roles “had been graded accordingly”. I find that this is consistent with the period of review of the Project Genesis guidelines undertaken by departments, some of which sought change and restructuring , while others did not.
49. In my view it would not make sense for the Respondent to undertake a substantive review seeking input from several different managers at different levels and then simply rename existing roles without making any further changes.
50. I agree with the Respondent’s submission that if that had been the case, the Claimant would not have had the opportunity to apply for posts above his current role.
51. I note also Mr Woods’s evidence to the Tribunal that some departments did not seek a restructure and those jobs were not changed. Further, that there were five “enduring roles” within SAS that remained. Finally, Mr Newby explained that during the consultation process one role within SAS initially considered for deletion was reconsidered and preserved at consultation.
52. The Claimant has provided no tangible evidence to persuade me that the roles pre and post Project Genesis were simply downgraded versions of the same job.
53. I accept the evidence of Mr Francis, Mr Woods, Mr Newby and Ms Marcinkowski that the decision to make redundancies was genuine. I find them all to be reliable

and credible witnesses. As Mr Woods and Mr Newby explained, the new roles followed a significant period of reflection by several departmental managers. The reduction was necessary to make the business more sustainable for the long term.

54. The Claimant takes issue also with Respondent's decision to make the structural changes in the first place. He argues that the SLTS contract set out the roles and number of staff concerned in each aspect of the contract's delivery. It demonstrates, he argues that the roles were simply renamed and downgraded rather than there being any meaningful restructuring which required redundancies. I have not seen the contract or any other paperwork to support that claim.
55. He relied also on a conversation with Ms Marcinkowski, now Product Line Lead for Special Mission Aircraft on 14<sup>th</sup> September 2021. In that conversation the Claimant asserts that Ms Marcinkowski had told him that the new P3 role he was being offered was the same role he was already doing.
56. Dealing with the contract first, both Mr Francis in his witness statement and Mr Woods and Ms Marcinkowski in their evidence to the Tribunal stated that there was nothing in that contract to prevent the Respondent from making changes to staff numbers. Further, that clients had been informed of the changes and no problems had been raised by them about the new structure.
57. Regarding the conversation with the Claimant on 14th September 2021, Ms Marcinkowski did not accept she had said to the Claimant that the new P3 role was the same job the Claimant was already doing. She said she had explained that some of the aspects of the P3 job were those the Claimant had enjoyed doing in his current job. She pointed out that the new P3 role had some of same scope of the Claimant's previous job but that didn't mean the P3 role was the same. It didn't carry the financial responsibility for example, which was one of the reasons it was graded at P3 and not P4. I prefer her evidence to that of the Claimant on this issue.
58. Further, in the absence of any document to support the Claimant's assertion, I do not find that the SLTS contract is evidence of the Respondent simply downgrading existing roles.

59. For the reasons I have given, I am satisfied that a redundancy situation did exist.

Was the redundancy procedurally unfair?

60. I do not find that the redundancy was procedurally unfair. In applying the suggested guidelines from the case of *Compair Maxam* I find that the selection criteria were objectively chosen and fairly applied. The pool chosen for redundancy was all but five of the 24 roles in SAS, of which the Claimant was one.

61. I have dealt with the Claimant assertion that his team were targeted, which I reject. That aside, the selection process for the pool was not challenged by the Claimant. I have seen the criteria and the Respondent's interview guide as well as the evaluation forms. I consider the selection to be sufficiently objective and that the pool selected fell within a range of reasonable responses available to the Respondent in the circumstances.

62. I bear in mind also that employers have considerable flexibility when defining the pool from which they select employees for dismissal by redundancy. Here, the Project Genesis guidelines were applied across the Respondent company as a whole.

63. I find the consultation process was clear and detailed. Letters were sent to each employee at risk of redundancy. The consultation ran for 45 days. It involved meetings between employees and the Respondent consultation team. This is also included election of employee representatives to the Respondent's UK People Forum to attend meetings and ask questions on behalf of employees.

64. The 6<sup>th</sup> June letter also refers to an internal website with resources and information about the consultation; and an email address to send questions. It is true that there does not appear to be any trade union involved, but I balance that against the other measures that were in place.

65. I do note that the letter sent from Chief Operations Officer, Roland Howell, dated 8<sup>th</sup> July included an email address for Mr Steve Ireland, described as a "union recognised

employee” but I have no further evidence about the involvement of trade unions in the redundancy process.

66. I find that the Respondent did take steps to ameliorate the effects of redundancy, including giving detailed consideration to whether suitable alternative employment was available. The Claimant was interviewed for three roles at a level above his current position. They were Standards and Governance Programme Manager; SAS Product Line Lead; and Product Programme Manager. He was given the opportunity to demonstrate his suitability for those posts.
67. I have seen the job requirements, selection criteria and evaluation form feedback sheets for the jobs the Claimant applied for. I find that the Respondent conducted the selection process in good faith and gave proper consideration to the Claimant’s application and interview performance against other candidates.
68. I do not accept the Claimant’s assertion that the roles were predetermined. The Tribunal has not been provided with any evidence to support that assertion. Although the Claimant asserts in his closing submissions that the roles were predetermined, that was not put to any witnesses in any substantive form.
69. The Claimant was also given the opportunity to take part in the grievance procedure undertaken by Ms Brown. In my view, this is further evidence of Respondent’s procedural fairness. The Claimant stated to the Tribunal that he accepted the content of Ms Brown’s witness statement and did not challenge her conclusions that the interview process had been fair.
70. In considering matters in the round, I do not find that the redundancy was procedurally unfair.
71. For those reasons, I find that the Respondent’s dismissal of Claimant was not unfair. The judgment of the Tribunal is that the Claimant’s claim for unlawful dismissal is not well founded and is dismissed.

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Employment Judge Mason

Date 31<sup>st</sup> May 2022

JUDGMENT & REASONS SENT TO THE PARTIES ON 18 July 2022

FOR EMPLOYMENT TRIBUNALS Mr N Roche