



EMPLOYMENT TRIBUNALS

Claimant: Ms G Sullivan

Respondent: IBM (United Kingdom) Ltd

Heard at: Exeter by video **On:** 27, 28, 29 June 2022

Before: Employment Judge Smail
Members Mr R Spry-Shute
Mr D Clements

Representation

Claimant: Mr R Johns, Counsel

Respondent: Mr G Graham, Counsel

JUDGMENT

1. The Claimant was procedurally unfairly dismissed.
2. The claim under the Part-time workers Regulations is dismissed.
3. The parties must email written submissions for the attention of Employment Judge Smail within 21 days as to whether on the findings in this Judgment there is scope for a remedy hearing and on what basis.

REASONS

1. By a claim form presented on 15 December 2020 the claimant claims: -
 - (1) Less favourable treatment as a part-time worker in being selected for redundancy contrary to regulation 5(1) of the Part-time Workers Prevention of Less Favourable Treatment Regulations 2000;
 - (2) General unfair dismissal in the form of unfair selection for redundancy, contrary to Section 98 of the Employment Rights Act 1996.

2. The claimant was employed by the respondent between 6 February 1984 and 6 November 2020, some 36 and a half years. That, of course, is a very substantial service indeed. It is an unfortunate feature of this redundancy exercise that many of the employees concerned were long-serving. Selection for redundancy is not the same as being dismissed for misconduct or anything like it. We acknowledge the claimant's long service.
3. Latterly she was employed as a sales advisor in the cognitive applications and security section. At the time of her dismissal, she was working 35 hours per week; 37 hours is full-time work. In 2018 she worked 30 hours per week; that went up in 2019. Her work was month-end orientated, meaning that she would with some regularity work more than 4 days towards the end of the month. Otherwise, her work was Monday – Thursday. In practice she enjoyed considerable discretion as to when she performed her work.

The Issues

4. A draft list of issues was presented to and adopted by Employment Judge O'Rourke at the preliminary hearing on 25 August 2021. The issues were summarised by the Judge as follows:

(1) Unfair dismissal

- 1.1 It is not in dispute that the claimant was dismissed.
- 1.2 What was the reason for dismissal? The respondent asserts that it was a reason related to redundancy which is a potentially fair reason for dismissal under Section 98(2) of the Employment Rights Act 1996. In the alternative it would seek to rely on some other substantial reason as detailed in the list of issues.

In the event the respondent has not put forward 'some other substantial reason'. It has relied, front and central, on redundancy.

- 1.3 Did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? In general terms the Tribunal will usually decide in particular whether:
 - 1.3.1 the respondent adequately warned and consulted the claimant. The claimant considers that the consultation was a fait accompli.
 - 1.3.2 the respondent adopted a reasonable selection decision including its approach to a selection pool. Essentially the claimant challenges the fairness of the selection process.
 - 1.3.3 the respondent took reasonable steps to find the claimant suitable alternative employment. Again, this issue is in dispute.
- 1.4 Was the decision to dismiss a fair sanction, that is, was it within the range of reasonable responses open to a reasonable employer when faced with these facts?

1.5 If the respondent did not use a fair procedure would the claimant have been fairly dismissed in any event and/or to what extent and when? Insofar as this issue arises, we have parked it for later consideration.

(2) Detriment - part-time workers prevention of less favourable treatment Regulations 2000 Regulation 5

2.1 Did the respondent do the following things?

2.1.1 Score the claimant lower as compared to each of her full-time comparators as named in the agreed list of issues?

2.1.2 Did they fail to increase her scores to take account of the reduced time she spent working with shareholders?

2.2 By doing so, did it subject the claimant to detriment. The claimant will contend that such acts or failures contributed to the decision to dismiss her?

2.3 If so, was it done on the ground that she was a part-time worker?

The respondent contended at the preliminary hearing that the claimant was not a part-time worker working 35 hours per week compared to 37 for her comparators. That, however, is not how the respondent has argued the case before us. It acknowledges she did work 2 hours less than the full-time workers on 37 hours, but it submits that her part-time status, technical or otherwise, played no role whatsoever in the decision.

2.4 The respondent does not purport to rely on any objectively justified treatment because its primary and only case is that her part-time status played no role whatsoever.

The Law

Unfair Dismissal

5. Dealing, first, with section 98 of the Employment Rights Act 1996. By section 98(1) it is for the employer to show the reason (or if more than one the principal reason) for the dismissal and a reason relating to redundancy of employee is a potentially fair reason.
6. By Section 98(4) where the employer has fulfilled the requirements of (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.

7. We have reminded ourselves that at all stages of the enquiry that the Tribunal is not to substitute its own view for what should have happened but judge the employer as against the standards of a reasonable employer bearing in mind there may be a band of reasonable responses. We have reminded ourselves of the guidance given, for example, in Iceland Frozen Foods v Jones 1982 IRLR 439 when dealing with the band of reasonable responses.
8. In that case the EAT reminds us that the starting point should always be the words of what is now Section 98(4) themselves that in applying the Section an Employment Tribunal must consider the reasonableness of the employer's conduct not simply whether they, the Employment Tribunal, consider the dismissal to be fair. In judging the reasonableness of the employer's conduct an Employment Tribunal must not substitute its decision as to what was the right course for that of the employer. In many, though not all cases, there is a band of reasonable responses to the employee's potential redundancy situation, within which one employer might reasonably take one view whilst another quite reasonably take another. The function of the Employment Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair. If the dismissal is outside the band, it is unfair. In the context of a redundancy selection case, we are reminded of the criteria we are to take into account as set out in the case of Williams v Compair Maxam Ltd [1982] IRLR 83. We are to look at whether there has been fair consultation, whether there were fair criteria and whether there were attempts made to find suitable alternative employment.
9. As to the part-time workers discrimination claim we have before us the Part-time Workers (Prevention of less favourable treatment) Regulations 2000. By Regulation 5(1) a part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker (a) as regards the terms of his contract (b) by being subjected to any other detriment or by any act or deliberate failure to act of his employer.
10. The claimant alleges she was selected for redundancy because of her part-time status. The burden of proof in such cases is expressly dealt with by regulation 8(6): where a worker presents a complaint under this Regulation it is for the employer to identify the ground for the less favourable treatment or detriment. In this case the burden is squarely on the employer, on the balance of probability, to explain the reason for the claimant's selection for redundancy.

Findings of Fact on the Issues

The Redundancy Exercise

11. We accept the evidence from the respondents that it lost market share in Europe for three years in a row in the sector, impacting on the need for workers in this case. The respondent decided to transfer some of its functions to offshore shared service centres involving a reduction in head count. The proposal in this redundancy pool was to make six redundancies

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from the Cloud and Cognitive team based in Portsmouth. Those six would be selected from those who scored lowest on a scoring assessment. The six lowest ranked employees would be made redundant.

12. Three broad criteria were selected: current skills, performance and adaptability and flexibility. Scoring was weighted within each criterion as follows: in *current skills* there were four possible scores 7,21,32 and 40; the fact that the scores were limited in this way has been described as a binary process of scoring. The lowest score of 7 was meant to reflect minimally skilled members of the team; minimal/limited knowledge skills demonstrated for the current role; achieve less than 30 to 40 training hours in 2018 and 2019. Training hours related to online training that each employee was expected to do as part of continuing professional education.
13. The second score of 21 was for an average skilled member of the team; average skills demonstrated for the role; has obtained a few IBM competency badges in specific areas; achieved between 30 and 39 to 40 training hours in 2018 and 2019.
14. For a highly skilled member of the team 32 was the score; relevant skills to be demonstrated, relevant IBM badges required to recognise breadth and depth of their role; 40 training hours in 2018 and 2019.
15. For a very highly skilled member of the team 40 points were to be awarded. This is for an expert in the field recognised as subject matter expert and/or community focal point; mentor develops others; excellent demonstration of relevant and hot skills and repeatedly applies these skills. As to IBM and badges and learning, for example, super learner 2018 and 2019 or higher.
16. As for *performance*, there are 5 points to be awarded for someone with intermittent performance; inconsistent level of contribution; not recognised as someone whose performance can be relied upon to be at the expected standards for their role. Average performance, 15 points - sometimes meets expected level of contribution and is generally effective in execution of the role within area of responsibility; achieves and delivers results in line with expectations for their role. Team player following directions set by team/management/function/wider organisation to achieve goals and objectives; for example, is complicit with goals and objectives. Good performance (22 points): regularly meets expected level of contribution and is consistently effective in the execution of their role within the area of responsibility. Consistently achieves and delivers results in line with expectations for their role; recognised as a strong team player supporting team/management /function/wider organisation to achieve goals and objectives, e.g. adds value and challenges objectives and goals. Strong client feedback on their performance. Outstanding performance, 30 points; consistent high level of contribution impact and effectiveness within area of responsibility; exceeds results in excess of expectations for their role. Recognised as an outstanding team player, supporting team/management/function/wider organisation to achieve goals and objectives; for example, repeatedly adds value and challenges objectives and goals; outstanding client feedback about their performance.
17. *Adaptability and flexibility*: 5 points for someone demonstrating low adaptability and flexibility within the confines of the working pattern agreed

for the individual; resistant to adapt to change in circumstances and business demands; limited evidence of undertaking additional tasks; little or no willingness to operate flexibly with regards to critical clients or business needs; does not demonstrate a 'can do' attitude and focusses on the needs of the business. Medium adaptability and flexibility: within the confines of the working pattern agreed for the individual 15 points available. Sometimes demonstrates willingness to adapt to business demands; sometimes demonstrates willingness to take on additional tasks and duties which are over and above their core role function; on occasion will offer support; is flexible with regards to critical client or business need; sometimes demonstrates a 'can do' attitude and focuses on the needs of the business. 22 points available for high adaptability and flexibility within the confines of the working pattern agreed for the individual. Frequently demonstrates willingness to adapt to business demands; frequently demonstrates a willingness to take on additional tasks and duties which are over and above their core role function; will regularly offer support, is flexible with regards to critical client or business need; frequently demonstrates a 'can do' attitude and appropriately focuses on the needs of the business. 30 points available to someone who demonstrates exceptional adaptability and flexibility within the confines of the working pattern agreed for the individual; repeatedly demonstrates a willingness to adapt to business demand; repeatedly demonstrates a willingness to take on additional tasks and duties which are over and above their core role function; repeatedly offers support, is flexible with regards to critical client or business need; repeatedly demonstrates a 'can do' attitude and places a high priority on the needs of the business.

18. Those are the criteria with their weighted markings. The process was that the relevant line manager would consult colleagues who knew the work of the members of staff, and having consulted those people, arrive at a relevant score. The colleagues were typically managers with whom each or the relevant individual had worked. Those colleagues in this process were called stakeholders. The claimant's line manager was Ms Harminder Sandhu who has given evidence to us today. She consulted six stakeholders and recorded the information given to her by the stakeholders and for each of them recorded the score that the individual stakeholder gave the claimant. Ms Sandhu would have before her the criteria I have just read out and share them on a shared screen with the consultee stakeholder and get the information from the stakeholder and record the score given to her. The range of stakeholders she consulted were relevant and we accept from her that she did not lead as to what the score should be. The score came from the consulted stakeholder and she made clear to the stakeholder that the score they gave was important and would be relied upon by her. The comments that were provided by each stakeholder were then transposed by her into an Excel workbook and those comments generated evidence under the criteria. Other sources of evidence included the appraisals which are called 'check points' and other 'ace' examples of work, and any other example of work which could generate evidence under the criteria. Where the scores were different across the consultees and stakeholders, Ms Sandhu would average them out.
19. It seemed to us from Ms Sandhu's evidence that she performed these duties in a bona fide way, seeking from the stakeholders to arrive at a fair score for their understanding of the claimant's work. Essential to this process was the

appreciation or otherwise the assessment of the stakeholder's view of the claimant's work.

20. Ms Sandhu had ten members of her team to assess in this way. Two other managers staff were in this pool. AE had three members of staff, he assessed them. KG had four members of staff. There were seventeen between the three of them. We understand one opted for voluntary redundancy leaving sixteen as candidates for redundancy and in this case the three managers were added to the pool. The three managers were marked against the criteria by another manager consulting relevant stakeholders, but their scores were added into the matrix of scoring, which ended up as relating to nineteen people.
21. It is a very unusual feature of this redundancy selection exercise that scores for the three managers would be included in the pool for the people they were assessing. Ms Sandhu tells us, and we accept, that when she first scored she did not know that her own scores would go into the same pool. She discerned it quite early on after the scoring, however.
22. In our collective industrial experience, we have not come across anything like this happening elsewhere. We heard evidence from Mr Hall who oversaw this selection exercise that there were, and we accept that there were, two sets of 'normalisation' meetings. There was a 'normalisation' meeting in respect of the three managers and there was a 'normalisation' meeting across the sixteen that had been assessed by Ms Sandhu, AE and KG and there was some common management and HR representation across the 'normalisation' meetings. The 'normalisation' meetings acted as moderation meetings, where evidence and scores were matched, and managers would have to talk through their assessments. The need for evidence for the scoring, in Mr Hall's submission, served to ensure that the normalisation process gave rise to no opportunity, conscious or unconscious, for the scoring managers to score down the members of staff reporting to them so as to make sure there would be some low scoring candidates so as not to prejudice the managers in the scoring process.

Procedural unfairness

23. We assess Ms Sandhu performed her duty in good faith. Justice not only has to be done but it has to be seen to be done. It was wholly unnecessary for the respondent to put the managers in the same pool as the non-managers. Having done that, it creates an opportunity, and certainly the impression of an opportunity for the managers to underscore where there is a debate as to which category of score the relevant individual worker's performance or flexibility or current skills should be marked with. The opportunity arose either with the original marking and/or subsequent moderation. There is the impression that there was an opportunity for those members of staff to be undermarked. Any member of staff who is being marked by a manager who then learns that that same manager is in the same pool would have reason to be suspicious and not trusting of the marks that they got. It would have been easy for the managers to be in a separate pool, or indeed be exempt from the possibility of being made redundant, and indeed in the fullness of

time the three managers scored very highly such that they did not get close to being at risk of redundancy.

24. The Tribunal stepped back from this and considered it. What was the respondent doing? This introduced a feature of perceived unfairness; a procedural irrationality which in our judgement does make this exercise procedurally unfair. It was wholly unnecessary for the respondent to set up this system as it could have either had a separate pool for managers or predicted in advance that these managers were not at risk of redundancy. The Tribunal has to remind itself of the band of reasonable responses but in this situation, we conclude that this decision to structure it in this way was so unreasonable that no reasonable employer would have done this. This selection was procedurally unfair.

But how far does the procedural unfairness get the Claimant?

25. How far, though, does that get the claimant? We are satisfied that Ms Sandhu assessed in good faith. She recorded the responses and the scoring from six stakeholders in the claimant's case. Some of these stakeholders worked with the claimant longer than others but all had worked for at least five months, a period we regard as sufficient to form a view of the claimant.

The stakeholders' comments about the Claimant

26. Interview 1 was with Mr Bart the WIOT sales leader. He scored current skills 21, performance 15, adaptability and flexibility 15 and gave this information: "Gill is static in her role she is reactive to tasks and see little evidence of her being proactive. She attends [a meeting] each week and offers no business insights, provides no analytics compared to previous operations analysts. As to performance: Gill needs to identify where the gaps are and highlight them. She needs to be proactive; for example, could help with checking and sharing if wind plans are up to date; have they been populated; is atlas reflecting the commits. As to adaptability and flexibility: in this role has no evidence at this stage, has taken her time to adapt into the role."
27. Interview 2 was with the NPS focal point leader Mr J Garnet. His scores were current skills 21, performance 22, adaptability and flexibility 22. The claimant accepts that she had extensive dealings over the course of time with Mr Garnet. As to current skills: Mr Garnet talked about the NPS transactional survey "Gill has brought operational skills to this process. However Gill sends regular reminders to the sellers and updates the software... . Good performance: cannot really comment further as Gill does the job. Adaptability and flexibility: Gill is happy to take on new tasks on NPS and offers her support" however no specific examples were given. Nonetheless Mr Garnet scored her at the average level in respect of skills.
28. Interview 3 was with Director of Public Cloud, Chris McBryan: current skills 21, performance 5, adaptability and flexibility 5. "As to current skills Gill is an average performer nothing outstanding to report. Gill's performance was intermittent, main interaction was at month end quarter revenue reporting. Gill tells a position, never addressed issues. There would be some surprises

in the workdays which could not be mitigated and had consequences for further upline reporting. Gill could have had better sight and highlighted risks earlier in the day rather than waiting. He was not confident in the numbers that were being presented". The claimant explained she was not the one who presented the numbers, but she can warn as to inaccurate numbers. As to adaptability and flexibility: Mr McBryan scored her low as there were no examples for taking on additional tasks while there was the opportunity, e.g. providing holiday cover for colleagues - rather than stand in a previous employee had to cover. No evidence of 'can do' attitude, no appetite to learn 'Laas' part of the business where help could be given whilst the volume was low on 'Saas' more help could have been given on 'Laas' instead of 'Saas'.

29. Interview 4 was with Mr Armstrong current skills 21, performance 22 adaptability and flexibility 22. "As to current skills: Gill provides what I need, when I need it I get pipeline report each week and actuals which is all I need. Performance: overall good performance, provides what is required low volume business unit. Adaptability and flexibility: no evidence at this point in time therefore cannot mark higher than 22."
30. Interview 5 was with the Public Cloud Sales Leader, Mark Cox. Current skills 21, performance 15, adaptability and flexibility 15. "As to current skills: Gill had a very narrow skill set for public cloud. She had no desire to broaden her skill set. Gill sticks to what she knows and is in her comfort zone. Example, she was interested in 'Saas' part of the business and expressed no interest in the 'Laas' side of the business. There were gaps in her knowledge and was not always hundred percent confident on the numbers that were being presented and the fact they needed to be double checked before reporting up the line. As to performance: Gill performed her task, there was little pressure; the volume of 'Saas' in public cloud was not large. Gill was an average performer, no examples of going above and beyond, no new ideas, not using any analytical data to show trends, offered no insight into public cloud. As to adaptability and flexibility: medium Gill demonstrated no willingness to take on new or additional tasks; did not volunteer to cover for colleagues. However, Gill would always work outside of her working patterns at month ends and quarter ends. Gill was offered the opportunity to lead operations for public cloud when the position became vacant in September 2019. This was a natural progression for Gill. When offered the role Gill needed to sleep on it and came back approximately four working days saying that she would like to take the role. This was seen by the leader as a total lack of interest and therefore asked me to find other candidates to be interviewed."
31. Interview 6 was with the Security Sales Leader Neil Cockrill. He scored current skills 21, performance 15, adaptability and flexibility 22. Current skills: "Gill does make mistakes and needs to check her work. She offers no insights. Gill collates and consumes data without offering any insight. Gill collects the numbers and she does not offer any solutions. Performance: Gill sometimes meets expected levels of contribution. Gill never answers her phone after 4.00pm; she always has her phone switched off. You will never get through to Gill first time. Adaptability and Flexibility: no comment as there is no evidence; however, Gill does work on Fridays if a month end or quarter end falls on a Friday.

32. Other sources of evidence looked at by Ms Sandhu included the appraisals called checkpoints and we have the outcome appraisals on a note of them by Ms Sandhu. There are three levels of appraisal result: exceeds, being the best, achievement and expects more. For 2018 we had business results achieved, client success achieved, responsibility to others achieves, innovation expects more, skills achieved. She had done 41½ hours of online training. In 2019 the results were achieved business results, client success achieved, responsibility to others achieved, innovation expects more, skills achieved. She had done 61.1 hours of online training and had got one badge. Ms Sandhu then transposed that evidence into the excel workbook and we got the scoring. The scorings and the appraisals tend to indicate average performance.
33. We have records of normalisation meetings for the scores, Counsel for the respondent, Mr Graham, has prepared a very helpful comparative table, which we exhibit as exhibit 1, where we get the comparative scores. It records the original score and the scoring after each 'normalisation' moderation meeting. The claimant's end score was 51 that put her regrettably at second from bottom. The parties know the identities of the candidates for redundancy. We have agreed an anonymisation for the purposes of this public record of the Judgment. The top score was 100, Mr AE one of the managers got 100. 4 candidates at 92 including KG a manager 92. 4 candidates at 84 including Harminder Sandhu, the claimant's manager. Then there was six in a tiebreak at 76. One candidate scored 65; another 62, the claimant 51, and the lowest scoring candidate 37.
34. We know whether they were full or part-time. It is right that three of those who were made redundant were technically part-time. One was .76 of a full-time contract; another 0.81; and the claimant 0.95. One part-time worker survived the tiebreak at score 76, she was 0.72 of a full-time contract; she was not made redundant.
35. What this shows is for the claimant to have reached a point at being in the tie break she would have needed 25 more points; and to avoid the tiebreak altogether she would have needed 33 more points. Those points would have had to come from the consultees, and a point made by Mr Graham was that even if all the scoring was taken from Mr Garnet, which was higher than others, the scoring would have come to 65 which would have meant on the comparative chart that the claimant was likely still have been selected for redundancy.

Conclusions

Part-time working

36. The essence of the claimant's case for us has essentially been twofold. First of all, statistical: Mr John submits of the six made redundant, three were part-time which is fifty percent of those made redundant. Those who were part-time were not fifty percent of the nineteen. Part-time workers were only four out of nineteen, therefore disproportionately the selection process has been weighted against those who are part-time. It is true what he says but if there is an explanation for why the scores were given and in particular why the

claimant's score was given, then the statistical point is coincidence and not substantive. We dismiss this argument. It is coincidence.

37. His second point is in effect an indirect discrimination argument, which is that the criteria, certainly for flexibility and adaptability, are less likely to be met as a matter of principle, or a matter of probability, by those who are part-time. Mr Hall on behalf of the respondent points out that flexibility and adaptability have to be marked 'in accordance with the working arrangements agreed with the employee'. There is an express reminder of that in the criterion.
38. We accept from Ms Sandhu that she regarded the fact that the claimant worked 35 out of the 37 hours as irrelevant; and it is fair to say that the claimant's contention that for the purposes of this case she is to be regarded as part-time in 2019, relies upon her working only two hours less than the full-time equivalent. We do see express reference in the feedback to her Friday position but, if anything, it is praise for working on Fridays. We have come to the conclusion that as regards the claimant's scoring the respondent shows that that scoring had nothing to do whatsoever with the fact that technically speaking the claimant in 2019 was a part-time worker.
39. Even if one took into account her 2018 position of working 30 hours there is no evidence that any of the marking or any of the evidence for the marking touched upon in a negative fashion that the claimant was a part-time worker. What has happened here is that the claimant saw the result of the selection process and she noted that three part-timers had been made redundant, that then generated a case that she was disadvantaged in the process, but she has not been able to point to any specific piece of evidence which shows that. Indeed, on the contrary, the burden being on the employer, they have shown that the basis for the selection for redundancy was the scorings given by the consultees; and they have demonstrated that the part-time status of the claimant's contact had nothing whatsoever to do with her scorings. With little difficulty, regrettably, we reject the claimant's claim of part-time working detriment.

Unfair dismissal

40. We have concluded above that the claimant wins her case of unfair dismissal in the sense that it was procedurally unfair for the reason that the managers were put in the same pool as those they were scoring; and that generated an impression of the possibility of manipulation and would do nothing for anyone subjected to the process to have confidence in it. There was a conflict of interest; there was a breach of natural justice. Even if the scoring managers did not know they were in the same pool at the beginning of the process they quickly learned of it during the 'normalisation' moderation process.
41. Mr John submits there were further features of unfairness. Mr John submits that the criteria were inherently subjective; that the whole process of relying upon the stakeholders to give feedback as against the criteria was essentially subjective to the point of being unfair. He submits there were objective measures upon which the candidates could have been assessed - such as how many hours training did they do. The claimant, we know, in the final year did 61. He says that is a reason for her being marked in a higher category.

We agree with him that is one factor but it was reasonable for Ms Sandhu to maintain, as she did, that you cannot solely rely upon the amount of training someone does when assessing performance in role. We reject Mr Johns contention that the criteria and the manner of the evaluation being reliant on stakeholders was so subjective as to be unreasonable. The criteria were relevant to the roles and the stakeholders were in position to evaluate the candidates performance in role.

42. We accept Mr Graham's submission that actually you have got to have some evaluation of competencies and performance against criteria by those who are in the best position to give it. The aim of this redundancy process was to keep a body of staff in the UK who were the highest achievers. Again, we know that the claimant has been doing this job for 36½ years, there is no question of misconduct, and no question of performance improvement plans. This is a relative performance selection exercise and in the scheme of things we do not say that these criteria with the method of assessment was such as necessarily to be unfair and subjective.
43. As to consultation there were four consultation meetings. It is right that at the first the claimant was given the information for the first time and could not respond to it but she was in position in subsequent consultation meetings to address the scoring and the evidence. It is true that she did not have the full feedback from her managers. She had the summary at page 223 of the bundle. She knew what her scoring was, current skills 21, performance 15, adaptability and flexibility 15 and 51 in total. She had a summary of the feedback in respect of each criterion. She did not have the named consultees although she knew who had been or who might be consulted - that was something she had discussed with Ms Sandhu. At one or more of these consultation meetings, she was in fact accompanied by Mr Garnet who had scored her 65. As we have said, that score still would not have been sufficient. We accept from Ms Sandhu that she invited the claimant in the consultation process to score herself and provide additional evidence. The claimant did score herself highly, but we accept from Ms Sandhu, she did not provide concrete evidence to support that scoring.
44. The claimant has said that her work in respect of researching a grievance was missed out of the scoring process. We see however from earlier drafts of the Excel spreadsheet, called the workbook, that it was in there as against the scoring that Ms Sandhu had put it in, but HR for reasons best known to themselves had advised that information should not be recorded in the workbook. There is no suggestion that the person who brought the grievance was named or that there was any identifying possibility, but Ms Sandhu was told to take it out. She did take reference to the grievance out, but she did not put the mark downwards. Accordingly, the Claimant's work on the grievance was taken into account.
45. The claimant was also advised that another way of challenging the result was to appeal during the notice period. If she appealed there would be full disclosure of everything including the comments of the stakeholders. She decided not to appeal because she had lost confidence.
46. In the same way she did not look for any alternative employment that was advertised on the IBM virtual information boards as to available jobs. Again,

the reason being she had lost confidence. No case is pursued on failure to find alternative employment. The case is about selection for redundancy in the first place.

47. Do we find any other aspect of unfairness which we would have said would be sufficient to make this dismissal unfair? We do mark our disapproval in our finding that it was so unreasonable that no reasonable employer would have done it to put into the same pool the managers marking those who were otherwise at risk of redundancy. That created a potential conflict of interest and offends sensibilities and principles of natural justice. That is the only reason we find that this dismissal was unfair; it was procedurally unfair for that reason.
48. It is unclear to us whether there is any scope for remedy. The claimant already has had the equivalent of an unfair dismissal basic award in the redundancy payment. There is unfortunately an overlap - if you have received a redundancy payment you do not get a basic award on top. We have issued directions for further consideration of this topic.

Employment Judge Smail
Date: 26 July 2022

Judgment & Reasons sent to the parties: 29 July 2022

FOR THE TRIBUNAL OFFICE

EXHIBIT 1

	Employee	Part Time	Score 1	Total 1	Score 2	Total 2	Score 3	Final Total	Tiebreaker
1.	Employee 1		40/30/30	100	40/30/30	100	40/30/30	100	
2.	Employee 2		40/30/22	92	40/30/22	92	40/30/22	92	
3.	Employee 3		32/30/30	92	32/30/30	92	32/30/22	84	
4.	Employee 4		40/30/22	92	40/30/22	92	40/30/22	92	
5.	Employee 5		32/30/30	92	32/30/30	92	32/30/30	92	
6.	Employee 6		40/22/22	84	40/22/22	84	40/22/22	84	
7.	Employee 7		40/22/22	84	32/30/22	84	32/30/22	84	
8.	Employee 8		32/30/22	84	32/30/22	84	32/30/22	84	
9.	Employee 9		32/22/30	84	32/22/30	84	32/22/30	84	
10.	Employee 10	Part Time	40/22/30	92	40/22/22	84	32/22/22	76	No
11.	Employee 11		40/22/22	84	40/22/22	84	32/22/22	76	No
12.	Employee 12*	Part Time	32/22/30	84	32/22/22	76	32/22/22	76	Yes
13.	Employee 13		32/22/22	76	32/22/22	76	32/22/22	76	No
14.	Employee 14		32/22/22	76	32/22/22	76	32/22/22	76	No
15.	Employee 15*		32/22/22	76	32/22/22	76	32/22/22	76	Yes
16.	Employee 16*	Part Time	32/22/22	76	21/15/22	58	21/22/22	65	
17.	Employee 17*		32/22/22	76	32/15/15	62	32/15/15	62	
18.	Claimant*	Part Time	21/15/15	51	21/15/15	51	21/15/15	51	
19.	Employee 19*		21/15/15	51	21/15/15	51	7/15/15	37	

Summary of Scoring against the Selection Ranking Criteria

* Employee made redundant