



EMPLOYMENT TRIBUNALS

Claimant: Mr N Marshall

Respondent: International Airline Group Cargo Limited

Heard at: Reading (via CVP)

On: 17 and 18 October 2022

Before: Employment Judge Leith

Representation

Claimant: In person

Respondent: Miss Tutin (Counsel)

RESERVED JUDGMENT

1. The complaint of unfair dismissal is not well founded and is dismissed.

REASONS

Claims and issues

1. The claimant claims unfair dismissal.
2. The issues for the Tribunal to consider were discussed and agreed at the outset of the hearing, as follows:
 - 2.1. It was not in dispute that the Respondent dismissed the Claimant
 - 2.2. What was the reason for the dismissal, and was it a fair one for the purpose of section 98 of the Employment Rights Act 1996? The Respondent relies on redundancy
 - 2.3. Did the Respondent act reasonably in the circumstances (including the size and administrative resources of the R's undertaking) in treating it as a sufficient reason for dismissing C? The Tribunal will take into account in particular:
 - 2.3.1. Was the Claimant's role genuinely redundant?

- 2.3.2. Did the Respondent consult with the Claimant before making the decision to dismiss him?
 - 2.3.3. Did the Respondent take reasonable steps to find alternatives to dismissal? In particular, should the Claimant have been appointed to the post of Revenue Management Planning Executive, or any of the remaining posts he applied for?
 - 2.4. If the Claimant was unfairly dismissed, what compensation ought to be awarded. In particular, would the Claimant have been fairly dismissed in any event? And if so, when?
3. It was agreed that the Tribunal would deal first with the question of liability, together with the question of whether, if the Claimant had been unfairly dismissed, he would have been fairly dismissed in any event. It was further agreed at the start of the hearing that, in light of the number of witnesses and the volume of evidence, judgment would need to be reserved.

Procedure, documents and evidence heard

4. I heard evidence from the Claimant, and on his behalf from Debbie Scoon, a colleague.
5. On behalf of the Respondent, I heard evidence from John Cheetham, Chief Commercial Officer, Rob Cockett, Head of Revenue, Mark Reeves, Resource and Manpower Planning Manager, and Steven Blunden, Head of Data, Insights and OR.
6. I had before me a bundle of 367 pages, plus a separate remedy bundle of 35 pages. At the conclusion of the evidence, I received written submissions from the Claimant, and from Miss Tutin on behalf of the Respondent. Both supplemented their written submissions with oral submissions.

Fact findings

7. I make the following findings of fact on balance of probability.
8. The Respondent sells and optimises cargo capacity on behalf of the airlines within the International Airlines Group (IAG) – which includes British Airways among others. The Respondent predominantly sells capacity on passenger flights. The scheduling of the flights used by the Respondent is therefore primarily driven by passenger demand rather than cargo demand.
9. The Claimant was employed by the Respondent as a Planning and Business Development Manager. His role was graded as Cargo Management Team (“CMT”), which is a junior management or administration grade.

10. The Claimant's role sat within the Respondent's Commercial directorate. His immediate line manager was Rebecca Grace, RM Hub Services Optimisation Manager. The directorate answered ultimately to John Cheetham, the Chief Commercial Officer.
11. The Claimant's job description was not in evidence before me. Mr Cheetham's evidence was that he could not recall seeing a job description for the Claimant. I find on balance that the Claimant did not have a formal job description.
12. The evidence before the Tribunal was that the Claimant was an experienced and valued employee.
13. The Respondent suffered a significant downturn in activity as a result of the onset of the COVID-19 pandemic. A number of employees were furloughed. The Claimant was not furloughed. He suggested to Mr Cheetham in the course of cross-examination that this demonstrated that his role within the business was essential. Mr Cheetham's evidence was that the decision was made by the Claimant's line manager, and that in any event, any decision would have been based on the Claimant's role within the structure in place at the time.
14. During the early part of the COVID-19 pandemic, the Respondent's projections showed that they would not return to pre-COVID levels of activity until 2023 at the earliest. The Respondent's parent company, IAG, was suffering significant financial losses due to the reduced demand for passenger travel.
15. It was suggested to Mr Cheetham in the course of cross-examination that the Respondent had continued to be profitable throughout the pandemic, and that redundancies were not required. The question was premised on an extract from IAG's financial statements, which showed that the Respondent's contribution to the group's finances had increased. Mr Cheetham's evidence was that the Respondent is still operating well below 2019 cargo volumes, and that the overall financial position of the Group is weak. I accept Mr Cheetham's evidence in that regard.
16. Mr Cheetham was tasked by the Respondent with developing restructure proposals for the Commercial directorate. Mr Cheetham proposed to merge the Network and Revenue Management teams, and to reduce the Hub team (where the Claimant's role sat). Mr Cheetham's view was that the Claimant's role interfaced between Operations and the Hub, and that given the reduction in capacity and demand, that role could be absorbed elsewhere – partly into that of the Claimant's line manager, Rebecca Grace. Mr Cheetham spoke to Ms Grace in order to understand the interaction between the different roles within the department, including the Claimant's, and to identify where they may be duplication of work.

17. Mr Cheetham held two virtual Teams calls on 10 June 2020 to announce the restructure to staff.
18. Because of the number of redundancies being proposed across the business as a whole, the Respondent was required to consult collectively. Although the Respondent recognised Trade Unions in respect of some grades of staff, it did not recognise any Trade Union in respect of management grades (including the Claimant's CMT grade). Therefore, the Respondent arranged for that staff group to elect employee representatives for the purposes of collective consultation. One of the individuals elected was Rebecca Grace.
19. The Respondent wrote to the elected representatives on 22 June 2020 to commence the period of collective consultation, in accordance with section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992. The letter noted that 227 employees would be put at risk of redundancy. 50 of those were within the Commercial directorate; the letter set out the posts at risk. The Claimant's role of "Hub Planning & Development Manager (1 x CMT)" was included in the list of posts at risk. The letter went on to state that 147 roles would be retained, 27 of which were in the Commercial directorate. Employees were offered the opportunity of taking voluntary redundancy.
20. A total of six collective consultation meetings took place between the Respondent and the elected employee representatives. In addition to the collective consultation, the Claimant attended an individual consultation meeting with his line manager, Rebecca Grace, on 22 August 2022.
21. The Respondent developed a process for filling roles in the new structure. The employee representatives were consulted on that process. Roles in the new structure were described as either Open, Restricted or Closed:
 - 21.1. Restricted roles were those which had been identified as being at least a 70% match with a role in the old structure, in circumstances where there were more post-holders in the old structure than posts in the new structure. Competition for those roles would be restricted in the first instance to the post-holders in the old structure.
 - 21.2. Closed roles were those which had been identified as being at least a 70% match with a role in the old structure, in circumstances where there were no more post-holders in the old structure than posts in the new structure. The post-holders would automatically be slotted into those roles.
 - 21.3. Open roles were those for which there was no post in the old structure which was at least a 70% match. Any at-risk employee could apply for open roles.
22. The Claimant's role was not identified as being associated with either a Closed or Restricted role in the new structure. He was therefore able to apply for any of the Open roles. At risk employees could express a

preference for up to two roles, in priority order. Application was by way of a CV, plus answers to two application questions. Where colleagues were expressing an interest in two posts, they were able to submit separate CVs for each role, tailored to the role they were expressing an interest in. One of the application questions was based on the skills and capabilities required for the role, and one was behaviour-based.

23. Applications were scored in the following way:

23.1. The CV was scored by the hiring manager against CV indicators determined by the skills and experience required for the specific post. Candidates would receive a score of 1 if all indicators were ticked, 2 if most were ticked, 3 if half were ticked, 4 if less than half were ticked, and 5 if there was no evidence. The CV had a weighting of 20%.

23.2. The application questions were also scored by the hiring manager, against a set of criteria. Candidates would receive a score of 1 if all criteria were met, 2 if most were met, 3 if half were met, 4 if less than half were met and 5 if there was no evidence. Each question had a weighing of 20% for each question, so the questions were weighted at 40% in total.

23.3. Performance ratings for the previous two years were used. The data was taken from the Respondent's appraisal process, and the performance ratings had a weighting of 20% (10% for 2018 and 10% for 2019).

23.4. Absence management data for the previous two years was additionally used. Candidates would be given 1 point for hitting a stage 1 trigger, 2 points for hitting a stage 2 trigger and 3 points for hitting a stage 3 trigger. The absence data had a weighting of 20% (10% for 2018 and 10% for 2019).

24. The lower the overall score, the stronger the application. A score of 1 or 2 in each section was described as the minimum. A score of 3 would be reviewed, and may result in the candidate being invited to interview to allow more information to be gathered. A score of 4 or 5 in any part of the application would result in the application being unsuccessful.

25. The Claimant accepted in the course of cross-examination that he did not take issue with the process put in place by the Respondent for applying for roles in the new structure.

26. During the collective consultation process, and in response to representations made within that process, the Respondent created a new role of Resource Management Planning Executive. That role did not sit under the Claimant's line manager, Rebecca Grace. Rather, it sat under the Head of Revenue, Inventory & Pricing. The role was classed as an open role.

27. There was no evidence before me that the Claimant took issue with the role of Resource Management Planning Executive being classed as an

open one, or that he suggested during the consultation period that the role should have been closed or restricted. Nor did he make that suggestion in his witness statement. In the course of cross-examination, he accepted that he did not suggest that the role should have been restricted, and that his challenge was to the way he was scored for the role when he applied for it.

28. In his closing submissions, the Claimant did suggest for the first time that the role should have been closed and that he should have been slotted into it. I find that that was not a point which the Claimant raised at any stage during the consultation process. I prefer the evidence he gave in cross-examination, in which he accepted that he had no complaint about the role being categorised as an open one. I bear in mind that the Claimant is intelligent and articulate, and clearly has an in-depth understanding of the Respondent's operation. Had he felt, during the internal process, that the role ought to have been a closed one, I consider that he would have said so. I therefore find that, while the role of Resource Management Planning Executive had some overlap with his previous role, they were not a 70% match.
29. The Claimant only expressed an interest in one role in the first round of the redeployment process, that of Resource Management Planning Executive.
30. The expressions of interest for the role of Resource Management Planning Executive were marked by Rob Cockett, Head of Revenue. Mr Cockett gave the Claimant a score of 1 for his CV. For the Values and Behaviours question, he gave the Claimant a score of two, on the basis that he had met five out of the eight desirable criteria.
31. The role-specific question required the Claimant to describe how he influenced colleagues to reach an objective. Mr Cockett scored the Claimant a 4 for that question. That meant that the Claimant could not be appointed to the role (regardless of his other scores or those of the other applicants).
32. Two other displaced colleagues expressed an interest in the same role. One, Stephen Eldridge, obtained a different role in the new structure. The remaining applicant, Geetika Modgill, was also given the score of one for her CV, and two for the generic question. For the application question, Mr Cockett gave Ms Modgill a score of 2. Ms Modgill was appointed the position.
33. During the hearing before me, the Claimant raised two issues with Ms Modgill's scoring.
34. The Claimant first suggested to Mr Cockett that he had been motivated by his personal feelings towards Ms Modgill.

35. Ms Scoon's evidence was that at some point before the restructure, Mr Cockett had told her that he had feelings for Ms Modgill. In the course of cross examination, she attributed the word "besotted" to Mr Cockett, although that word did not appear in her witness statement.
36. The Claimant's evidence was that Mr Cockett had used the word "besotted" to describe his feelings for Ms Modgill, and that he had overheard the conversation (as he sat opposite Ms Scoon).
37. Mr Cockett's evidence was that he had a good professional relationship with Ms Modgill, and got on well with her, but that he never had feelings for her beyond those of a professional friendship. He did not directly deny making the comment alleged by Ms Scoon, although his evidence was that he could not remember making it. He did accept in evidence that he had a good relationship with Ms Scoon, and that he would talk to her about colleagues in the department including Ms Modgill. His evidence was that those conversations would typically take place late in the working day, and would be quite informal.
38. On balance, I find that Mr Cockett did tell Miss Scoon that he was "besotted" with Ms Modgill, in the context of an informal conversation regarding colleagues. However, I accept his evidence that he did not have a romantic feelings towards her.
39. It was put to Mr Cockett that his feelings towards Ms Modgill may have impacted his scoring at a subconscious level. His evidence was that it had not done so. In any event, Mr Cockett sought advice from the People team on the way he had approached the scoring process, in order to ensure that he had scored fairly and impartially.
40. The Claimant also suggested to Mr Cockett that Ms Modgill had had some absence which had not been correctly recorded by her line manager, and which consequently led to her being overscored for the absence management criteria. Mr Cockett's evidence was that he had not been responsible for that part of the scoring exercise, which was scored by HR. No direct evidence was called regarding Ms Modgill's absence history. In any event, I do not need to resolve the question of whether Ms Modgill's absence history was correctly scored, because it would not have made any difference to the Claimant's application. The Claimant had scored a 4, so could not have been appointed. Therefore, Ms Modgill's absence score could not have made any difference to whether the Claimant could have been appointed to the role.
41. Mr Cockett spoke to the Claimant on 22 September 2020 to tell him the outcome of the scoring process. Mr Cockett gave the Claimant some feedback regarding his application. The Claimant asked Mr Cockett if he could appeal the decision. Mr Cockett informed the Claimant that the appeals process was available via the Teams site. Mr Cockett explained to the Claimant that there would be a second round of vacancies circulated by email. The Claimant asked Mr Cockett some questions regarding the

process, which Mr Cockett was unable to answer. He referred the Claimant to HR.

42. The Claimant did not exercise his right to appeal the scoring for the Resource Management Planning Executive role.
43. After the first round of redeployment applications, the Respondent undertook a skills-matching exercise. Displaced individuals who had not succeeded in being appointed to role were reviewed alongside the remaining vacancies. Mr Cheetham's evidence was that the review focused on relevant recent experience. His evidence was that he had sufficient information about the Claimant's skills from his CV, and that consequently he was not hampered by the lack of a job description. His evidence was that less than five people were matched in that way across the whole business, and he could not recall anyone being skills matched within the Commercial directorate. I accept Mr Cheetham's evidence in that regard. The Claimant was not appointed to a post in the skills-matching exercise.
44. On 23 September 2022 the Respondent circulated the application process for the remaining vacancies. At that stage, all employees were permitted to apply for roles. Individuals whose roles remained at risk would be prioritised as long as they had the relevant skills and capabilities for the role.
45. Mr Cheetham had offered all unsuccessful candidates the opportunity to receive feedback regarding their applications. The Claimant took that offer up; he spoke to Mr Cheetham on 29 September 2022. The Claimant's evidence was that Mr Cheetham told him that he did not need to change either his answer to the generic question or his CV. Mr Cheetham's evidence was that, while he could not recall the conversation in detail, he would not have told the Claimant not to change his CV, as CVs need to be tailored to the specific role being applied to.
46. The Claimant's contemporaneous note of the conversation was in evidence before the Tribunal; it recorded that the Claimant was told his CV did not need to be altered. I find that the contemporaneous note reflected the Claimant's understanding of the conversation. However, I accept Mr Cheetham's evidence that while he gave feedback to the Claimant regarding the areas where he scored well, he did not tell the Claimant that his CV would never need to be altered. That is consistent with the Respondent's process, which allowed for separate CVs to be submitted if expressing an interest in more than one role. Insofar as the Claimant believed he was being told he did not need to alter his CV, I find he misunderstood what Mr Cheetham was saying.
47. The Claimant's evidence, in his witness statement, was that Mr Cheetham advised him not to appeal the outcome of the Resource Management Planning Executive selection exercise. In the course of cross-examination, he accepted that his contemporaneous notes did not record that, and that

he may have misremembered. Mr Cheetham's evidence was that he would not have advised anyone not to exercise their right to appeal. I find that Mr Cheetham did not advise the Claimant not to appeal.

48. The Claimant applied for five roles during the second round of applications: Manpower Planning Manager, Capacity Planning Manager, Key Account Performance Manager, Lead Operations Manager and ULD Logistics Manager. The Claimant's scores were as follows:

48.1. Manpower Planning Manager: CV – four, behaviours question – four, role specific question – three.

48.2. Capacity Planning Manager: CV – four, behaviours question – four, role specific question – four.

48.3. Key Account Performance Manager: CV – four, behaviours question – four, role specific question – two.

48.4. Lead Operations Manager: CV – two, role specific question – four.

48.5. ULD Logistics Manager: CV – two, behaviours question – two, role specific question – three.

49. The Claimant was accordingly considered unappointable for the first four roles. He was interviewed for the role of ULD Logistics Manager, but was unsuccessful as another candidate scored higher. He was asked if he would be interested in doing the role on a part-time basis; he indicated that he would not be interested.

50. On 19 October 2020 the Claimant spoke to Jason Dixon, the Head of Ascentis. Mr Dixon explained that there may be a vacancy for Operations Manager on Level 10. The Claimant indicated that he would be interested in the role. Mr Dixon indicated that the Claimant would need to be interviewed for the role. That interview did not materialise.

51. On 12 November 2020 the Claimant had a meeting with Mr Reeves, who marked his applications for the Manpower Planning Manager and Capacity Planning Manager roles. The purpose of the meeting was for Mr Reeves to give the Claimant feedback regarding his applications. During the course of giving that feedback, Mr Reeves mentioned to the Claimant that his experience had been that the Claimant could be confrontational. Mr Reeves' evidence was that he did not take that into account in marking the Claimant's applications, and that he mentioned it only in the context of giving the Claimant advice on suitability for roles in the business generally. I accept Mr Reeves' evidence in that regard.

52. On 19 November 2020, the Claimant had a meeting with Anthony Coombes from HR. The Claimant raised various concerns about the process, including the fact that he had not been skills-matched to any role, and the scoring of the roles he had applied for. Mr Coombes explained that the Claimant would be made compulsorily redundant, and that he could raise a formal grievance.

53. On 27 November 2020, the Claimant raised a formal grievance. The grievance covered his initial displacement, his failure to secure the role of Resource Management Planning Executive, his failure to be skills-matched, his failure to be appointed to the Manpower Planning role, and the fact that two of the other roles he had applied for were filled by employees who were not displaced.
54. Dawn Beard was appointed to hear the Claimant's grievance. She met the Claimant on 10 December 2020. She met six witnesses: Freya Spencer, Jason Dixon, Jess Wood, Lorna Jeffrey, Mark Reeves and Rebecca Grace.
55. Ms Beard wrote to the Claimant on 18 December 2020 to communicate the outcome of his grievance. The Claimant's grievance was not upheld.
56. The Claimant appealed against the grievance outcome. His appeal was heard by Steven Blunden. Mr Blunden met the Claimant on 13 January 2021.
57. Mr Blunden had access to the evidence gathered by Dawn Beard. He met with Dawn Beard, Rob Cockett and John Cheetham. He carried out his own scoring of the Claimant's CV and the generic (behaviour-based) application question. Mr Blunden concluded that he would likely have scored the Claimant a 2 for the generic question. That was the same score as the Claimant was given by Rob Cockett, although for different reasons.
58. Mr Blunden wrote to the Claimant on 1 February 2021, explaining that his appeal was not upheld.
59. It was suggested to Mr Blunden in the course of cross-examination that Ms Beard's approach to the grievance was not sufficiently thorough. Specific reference was made to her failure to interview some witnesses who Mr Blunden interviewed, failure to have a note-taker in meetings, failure to retain some of the documents she had considered, and failure to conduct her own benchmark scoring exercise.
60. Mr Blunden's evidence regarding his view of Ms Beard's approach to the grievance evolved somewhat in the course of giving evidence. His initial response was that different managers approach grievance processes in different ways, and that he considered that Ms Beard's approach was thorough.
61. Mr Blunden had kept detailed notes regarding his approach to the Claimant's grievance. For one element of the Claimant's grievance, regarding the roles of Lead Operations Manager and Key Account Performance Manager, Mr Blunden's contemporaneous notes recorded "Nick is right, Dawn's response appears to have missed the point of the grievance". When this was put to him in cross-examination, his response was that Ms Beard had skimmed over the point, and that he had investigated it but had come to the same outcome as Ms Beard.

62. I find that Mr Blunden did not believe that Ms Beard had approached the Claimant's grievance with sufficient rigour. However, in the course of considering the grievance appeal I find that he sought to remedy the defects that he had identified, by interviewing additional witnesses and conducting his own benchmark scoring exercise.
63. While the grievance process was going on, the Claimant applied for a further five roles. His termination date had been set to be 31 December 2020. It was extended by a month while those applications remained outstanding. The applications were ultimately unsuccessful.
64. The Claimant was dismissed on 31 January 2021. He was given a payment in lieu of notice, and a statutory redundancy payment.
65. The Claimant notified ACAS under the early conciliation process of a potential claim on 1 March 2021 and the ACAS Early Conciliation Certificate was issued on 12 March 2021. The claim was presented on 9 April 2021.

Law

Unfair dismissal

66. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111. The employee must show that they were dismissed by the respondent under section 95.
67. Section 98 of the 1996 Act deals with the fairness of dismissals. There are two stages within section 98. First, the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason.
68. Redundancy is a potentially fair reason for dismissal under section 98(2). Redundancy is defined in section 139 of the 1996 Act as follows:

“For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a) the fact that his employer has ceased or intends to cease—

- (i) to carry on the business for the purposes of which the employee was employed by him, or
- (ii) to carry on that business in the place where the employee was so employed, or

(b)the fact that the requirements of that business—
(i)for employees to carry out work of a particular kind,
or
(ii)for employees to carry out work of a particular kind
in the place where the employee was employed by
the employer,
have ceased or diminished or are expected to cease or
diminish.”

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

70. In redundancy dismissals, there is well-established guidance for Tribunals on fairness within section 98(4) in the decision of the EAT in *Williams v Compair Maxam Limited* [1982] IRLR 83. In order to act reasonably, an employer must give as much warning as possible of impending redundancies to employees, consult them about the decision, the process and alternatives to redundancy, and take reasonable steps to find alternatives such as redeployment to a different job.

71. The EAT in the case of *Morgan v Welsh Rugby Football Union* [2011] IRLR 376 dealt with the situation where an employer is appointing to new roles after a re-organisation, rather than selecting employees for redundancy. The EAT gave the following guidance:

“Where, however, an employer has to appoint to new roles after a re-organisation, the employer’s decision must of necessity be forward-looking. It is likely to centre upon an assessment of the ability of the individual to perform in the new role. Thus, for example, whereas *Williams* type selection will involve consultation and meeting, appointment to a new role is likely to involve, as it did here, something much more like an interview process.”

72. The Tribunal should be slow to second-guess a good faith assessment of an employee’s qualities.

73. It is not for the Tribunal to decide how an employer should manage its business. In determining whether it was appropriate for an employer to make cuts in a particular area of its business, I must consider whether the decision taken by the employer fell within the range of reasonable responses open to a reasonable employer.

Polkey

74. In the case of *Polkey v AE Dayton Services Ltd* [1987] UKHL 8, the House of Lords set down the principles on which a Tribunal may make an adjustment to a compensatory award on the grounds that if a fair process had been followed by the respondent in dealing with the claimant's case, the claimant might have been fairly dismissed. Further guidance was given in the cases of *Software 2000 Ltd v Andrews* [2007] ICR 825; *W Devis & Sons Ltd v Atkins* [1977] 3 All ER 40; and *Crédit Agricole Corporate and Investment Bank v Wardle* [2011] IRLR 604.
75. In undertaking the exercise of determining whether such a deduction ought to be made, I am not assessing what I would have done; I am assessing what this employer would or might have done. I must assess the actions of the employer before me, on the assumption that the employer would this time have acted fairly though it did not do so beforehand: *Hill v Governing Body of Great Tey Primary School* [2013] IRLR 274 at para 24.

Conclusions

76. I will deal first with the question of whether the Respondent had a fair reason for dismissing the Claimant. The Respondent relies upon redundancy.
77. It is common ground that the Claimant was dismissed. The financial situation the Respondent and its parent company found themselves in does not, in and of itself, create a redundancy situation. However, it formed the background against which the Respondent decided to reorganise and streamline its operations. That reorganisation led to some 227 roles being put at risk, of which the Respondent anticipated it would retain 147. The Respondent's requirement for employees had unarguably diminished.
78. The Claimant's role of Planning and Business Development Manager was one of the roles put at risk. That role no longer exists in the Respondent's structure. It was not suggested that the Respondent had any ulterior motive to dismiss the Claimant. I therefore conclude that the reason for dismissal was redundancy, which is a fair reason under s.98 of the Employment Rights Act 1996.
79. I turn then to the question of whether the dismissal was a fair one. In doing so, I bear in mind that the Respondent is a large and sophisticated employer, with a dedicated HR function.
80. The Claimant was first notified of the proposed redundancies in June 2020. The Respondent consulted collectively with the affected staff by way of elected representatives. The collective consultation covered the proposals being made by the Respondent, as well as the selection

process for alternative roles. The Claimant did not suggest that the consultation was not a meaningful one.

81. In addition to the collective consultation, the proposals were shared with staff at an open meeting, and the Claimant attended an individual consultation meeting with his line manager. I conclude that, taken as a whole, the Respondent consulted appropriately regarding the proposed redundancies.

82. I have already found that, while the role of Resource Management Planning Executive had some overlap with the Claimant's previous role, they were not a 70% match. Consequently, I conclude that the existence of the Resource Management Planning Executive role in the new structure did not suggest that the Claimant's role was not genuinely redundant.

83. Turning then to the efforts made by the Respondent to redeploy the Claimant, which was the main focus of the Claimant's case:

83.1. At the first stage of the process, the Claimant was given the opportunity to express an interest in two roles. He chose to apply for only one role, that of Resource Management Planning Executive.

83.2. I have already found that, in scoring Miss Modgill's application, Mr Cockett was not influenced his feelings towards her. I have found also that Miss Modgill's absence history was not incorrectly scored. But in any event, the Claimant's score for the role-specific question rendered him unappointable. It was not simply a case of Miss Modgill having outscored the Claimant – even had Miss Modgill scored less than the Claimant, that would not have led to the Claimant being appointed to the role.

83.3. The Claimant chose not to appeal the scoring of the Resource Management Planning Executive role, although he had the opportunity to do so.

83.4. The Claimant applied for five roles in the second round of the redeployment process. He scored 4 on at least one category in each application, with the exception of ULD Logistics Manager. The Claimant was interviewed for that role, but another candidate was successful at interview. The Claimant was asked if he would be interested in undertaking the ULD Logistics Manager role on a part-time basis, but he declined. I do not criticise the Claimant for doing so; he had been employed full-time and did not wish to work only part-time. But equally, in the context of whether the Respondent took reasonable steps to find alternative employment for him, I bear in mind that the offer was at least extended to him.

83.5. The Respondent's selection process inevitably involved a degree of subjectivity in the marking of the two application questions. The scores awarded to the Claimant for the generic behaviours question did vary between different applications. However, given that they were scoring applications for alternative roles rather than selecting out from a pool of potentially redundant employees, I conclude that the approach adopted by the

Respondent was one which was open to them. Any subjectivity in terms of the scoring was mitigated by the fact that, for the roles in which the Claimant expressed an interest, the scoring was carried out by one manager.

83.6. I have found that Mr Reeves did not take his views regarding the Claimant's behaviours into account in scoring his application questions; similarly, I have found that Mr Cockett was not influenced by any personal feelings towards Ms Modgill. I conclude that both approached the scoring exercise in good faith. The Claimant did not suggest any of the other managers approached the scoring process in anything other than good faith.

83.7. Finally, with regard to the skills-matching process, only a small number of individuals were appointed to roles in that way. Given that the Respondent had created a detailed selection process, that is perhaps unsurprising. In event, the fact that the Claimant expressed an interest in 11 roles without being appointed suggests that there was no vacancy for which the Claimant would have been a match. That is not to minimise the Claimant's skills and experience. It is clear from the evidence before the Tribunal that the Claimant was an experienced employee, whose skills had been valued by the Respondent for many years. It is simply that his particular set of skills and experience were not a match for any of the roles available.

84. Taking all of that into account, I conclude that the Respondent did take reasonable steps to find alternative employment for the Claimant.

85. Having elected not to appeal his scores, the Claimant also had the opportunity to raise a grievance about the restructure process. Given that the Claimant was signposted towards the grievance process to resolve his complaints regarding the restructure, I take the grievance into account in looking at the fairness of the process adopted by the Respondent.

86. I consider that there was some merit in the Claimant's complaints regarding Ms Beard's handling of the grievance. In particular, given that the Claimant had grieved about his displacement, his failure to secure the Resource Management Planning Executive role, and the lack of skills-matching, both Rob Cockett and John Cheetham should have been interviewed. Furthermore, Ms Beard appeared (as Mr Blunden recognised) to have missed the point of the Claimant's grievance regarding the Manpower Planning Executive role. However, Mr Blunden rectified those issues on appeal. Mr Blunden's investigation of the Claimant's appeal was detailed and thorough. In considering the fairness of the grievance process, I must look at the process as a whole. In doing so, I conclude that by the end of the appeal stage, the Claimant's grievance had been investigated and considered fairly.

87. For those reasons, I conclude that the Respondent followed a fair process overall. I further conclude that the Respondent acted reasonably in all of

the circumstances in treating the redundancy situation as a sufficient reason for dismissing the Claimant.

88. It follows that the dismissal was a fair one.

Employment Judge Leith

Date: 14 November 2022

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

18 November 2022

FOR EMPLOYMENT TRIBUNALS