EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4109707/2021

Held in Glasgow on 31 October – 8 November 2022
Deliberations on 10 and 11 November 2022; and 16 December 2022

Employment Judge D Hoey
Members A B Grant and N Elliot

Mr Michael Horgan	**Claimant** **Represented by:** **Mr M McLaughlin - Solicitor**
Chevron Transport Corporation Limited	**Respondent** **Represented by:** **Mr Jones - Barrister** **[Instructed by Pinsent Masons]**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Tribunal is that the claim of unfair dismissal (and automatic unfair dismissal) is ill founded and it is dismissed.

REASONS

1. By ET1 presented on 21 May 2021 the claimant claimed unfair dismissal, contending his dismissal was automatically unfair by reason of having made protected and qualifying disclosures which failing that his dismissal (ostensibly by reason of redundancy) was unfair on normal principles. The claim was disputed by the respondent who contended that the dismissal was fair.

2. The hearing was conducted in person with both parties being represented. The first day of the case was spent discussing case management issues with the parties and affording the parties time to work upon a statement of agreed

facts and disputed issues and an agreed list of issues. Some of the witnesses gave evidence remotely and while there were some issues, each witness was able to give their evidence to the Tribunal. The productions amounted to 601 pages with pages having been added during the course of the Hearing.

3. The claimant presented his evidence in chief by way of a witness statement with relevant questions being asked of him. The other witnesses comprised Mr Cook (former line manager of claimant), Ms Gonzales (HR Business Partner), Mr Tait (General Manager), Ms White (General Manager, who was HR manager at the time), Ms Padilla (HR Business Partner), Mr Ramachandran (Senior Manager) and Ms Connelly (Senior Manager). Each witness gave oral evidence and was asked relevant questions.

Issues to be determined

4. The parties had worked together to focus the issues. It was agreed that for the purposes of the hearing the respondent would accept the disclosures alleged by the claimant were qualifying and protected disclosures (such that this was not a live issue) and that remedy would be determined at a separate hearing, if needed. The issues to be determined by the Tribunal were as follows:

Automatic unfair dismissal *(Section 130A Employment Rights Act 1996)*

1. Was the reason or principal reason for dismissal because the claimant made one or more protected disclosures? The claimant relies upon three alleged protected disclosures said to be comprised in (1) an email and attachment dated 5 December 2012; (2) a disclosure made orally at a meeting on 25 May 2013; and (3) a further oral disclosure made in June 2013. As the Respondent is not able either to admit or deny the Claimant’s alleged protected disclosures it has elected not to put them in issue.

Unfair dismissal *(Section 94)*

1. If the reason for the claimant's dismissal was not because he made a protected disclosure, was the reason, or the principal reason because of redundancy?

2. If so, did the respondent conduct a reasonable consultation with the claimant about the redundancy situation?

3. Was the selection process reasonable?

4. Did the respondent take reasonable steps in respect of identifying and considering the claimant for alternative roles?

5. Was the dismissal within the range of reasonable responses open to the Respondent?

Remedy

1. In the event that redundancy process was in any respect unfair, to what extent would the claimant have been dismissed in any event.

5. The claimant's agent advised that there was no separate claim for an enhanced redundancy payment or breach of contract as this was part of the compensatory award, if the claim was successful and would be dealt with at any remedy hearing required.

Findings in fact

6. The Tribunal is able to make the following findings of fact which it has done from the evidence submitted to it, both orally and in writing and from the statement of agreed facts. The Tribunal only makes findings that are necessary to determine the issues before it (and not in relation to all disputes that arose nor in relation to all the evidence led before the Tribunal). Where there was a conflict in evidence, the conflict was resolved by considering the entire evidence and making a decision as to what was more likely than not to be the case.

Background

7. The respondent is a company registered in Bermuda. It is part of a wider Chevron Corporation Group of companies. The respondent is often referred to internally as Chevron Shipping Company or Chevron Shipping. The respondent owns and operates vessels, which it uses to transport crude oil, refined products, liquefied petroleum gas and liquefied natural gas for Chevron customers worldwide. The respondent's main function is to support Chevron's Shipping business. The respondent is comprised several different departments all offering marine expertise. The company is broadly made up of several divisions explained below.

8. Marine Terminals (formerly Offshore Marine & Terminals) provided marine expertise and functional support for all of Chevron's marine terminals. Amongst the marine terminals which mooring masters may work are those in Angola and Nigeria. The Mooring Masters manage maintenance and operation of offshore berths and report to Senior Mooring Masters or Marine Operations Superintendents. These generally come in the form of Single Point Mooring Berths but also include Floating Storage & Offloading Units and Floating Production Storage and Offloading units.

9. Mooring Masters are highly skilled master mariners and manage berthing, hose connection, and loading/unloading operation at Chevron Terminals. The Marine Terminals department is now headed up by Mr Tait who is a successor to Mr Coombs as General Manager.

10. The Oil Fleet is comprised of a fleet of Very Large Crude Carriers, Suezmaxes and Aframaxes which generally trade between Saudi Arabia and the US. The Gas Fleet consisted of a fleet of LNG Carriers which are managed from Singapore. This is a smaller department than the others within Chevron Shipping.

11. The US and Lightering Fleet solely trades around the US. The lightering vessels support the larger vessels by taking the crude from the gulf to the US west coast and then transporting the crude to Chevron refineries around the

US. A typical example would be loading offshore Los Angeles and then discharging at Richmond in San Francisco.

12. The Marine Assurance department ensures that all Chevron owned and operated terminals as well as terminals which Chevron does business with conform to a certain standard. The Marine Assurance Team are also in charge of ensuring that all third party chartered vessels conform to Chevron as well as international standards and best practices also.

Contract and policy documents

13. The terms and conditions of service for officers (June 2019) edition (which applied to the claimant) explained that beside the customary duties of their assigned rank, officers shall perform duties deemed necessary for the navigation operation and maintenance of the vessel and for safety of those on board. The length of assignment is determined by the respondent. The maximum assignment length is normally 3 months (3.5 months for officers). Changes can be communicated in the seafarer's employment agreement.

14. Officers may be assigned to standby and paid a standby payment in certain cases and the employer can determine any reassignment.

15. If an officer accepts a special assignment, the additional terms and conditions pertaining to that agreement would prevail for the duration of the assignment.

16. An addendum to the terms and conditions for officers which applied to mooring masters applies to an assignment given to the individual. That set out normal working hours and time off and stated that in the event the mooring master is reassigned to work outside the local area not carrying out mooring master work, seagoing assignment terms and conditions will apply.

17. The respondent operated a number of relevant policy documents. This included a "Business Conduct and Ethics Code" which set out at length the expectation of staff and the standards that applied across the company.

Background

18. The claimant was employed by the respondent from 1 September 2006 until 31 December 2020.

19. When the claimant was first employed he was a qualified Master Mariner. He was employed as a Trainee Mooring Master and his first rotational posting was at the Malongo Terminal, in Cabinda, Angola. His was a seagoing, ex patriate role which he did on a rotational basis of 28 days in Africa followed by 28 days at home.

20. On or about January 2010, he was transferred to another mooring master role at the Escravos Terminal in Nigeria.

21. A mooring master is a master mariner that goes on board a ship as it arrives at the port facility to advise the captain to ensure the vessel arrives safely and securely and in supporting the captain in loading and unloading and leaving the facility safely. The mooring master reports to the senior mooring master who reports to the mooring operations team leader who in turn reports to the marine operations superintendent who is responsible for the mooring masters and others.

First disclosure

22. On 5 December 2012 the claimant sent an email to his senior mooring master and assistant senior mooring master noting the current chafe chain arrangement is far from perfect. It said that there would be a discussion of moving to a continuous piece of chain and amend the chain arrangement.

Incident

23. On 26 May 2013, the MV Jascon 4 sank (Jascon 4 incident) with the result that all but one of its crew lost their lives. The claimant and a colleague Andy Rowden were both involved in the mooring operation that morning. The respondent decided that the claimant and Mr Rowden (the other mooring master on duty on the morning that the tug sank) should be repatriated for

their own safety. The claimant left Nigeria immediately after the incident and then spent some time at home in Ireland.

24. The respondent supported the claimant in the aftermath of the incident, including by providing mental health support and allowing him to return home for a period. The claimant assisted the respondent in dealing with enquiries and investigations that flowed from the incident.

Second and third disclosures

25. The second disclosure was made on or around 25 May 2013 the claimant is said to have relayed concerns as to the operational capability of the Jescon 4 vessel to the Assistant Senior Mooring Master,

26. The final disclosure was a disclosure made orally at a meeting on in June 2013 to the respondent's solicitors, Stephenson Harwood.

Knowledge of disclosures

27. The claimant told the solicitors for the respondent about the email of 5 December 2012. Mr Tait was not aware of this. Nor was Mr Ross, Mr Davies, Mr Herron or Mr Coombs. Those individuals were not aware of the disclosures the claimant had made. From the evidence led before the Tribunal, the Tribunal found that the individuals who made the decision with regard to the claimant were not aware of the disclosures (and that the disclosures were not in any sense a reason for the treatment he received).

28. The claimant requested from Assistant Senior Mooring Master that the Jascon 4 not be assigned as the designated tug for the berthing of the Alexis Kosygin due to his concerns regarding its seaworthiness. That was not something that had been passed to the senior managers.

29. The claimant was told by Mr Tait and Ms Georgio about the results of the internal investigation on 7 July 2014. Mr Tait made reference to the shackles in discussing matters with he claimant which was because of his belief as to the reason for the incident, which was not caused by a single failure.

30. Although the claimant said he had not been interviewed in relation to the matter, he may have believed this to be an interview by a solicitor. There had been a discussion with the claimant as to the incident.

31. None of the witnesses who gave evidence on behalf of the respondent knew of any of the 3 disclosures (and these were not a reason for the claimant's subsequent dismissal).

Psychotherapist report

32. On 3 October 2013 the psychotherapist who was treating the claimant provided a report. The claimant's general recovery had gone well. The claimant was said to be determined to return to work in an agreed role as soon as possible which was supported. The psychotherapist recommended the claimant's return to be a location other than Nigeria for the foreseeable future. If his return were to be to a mooring master role it would be desirable for this to happen in a location where the demands of the position are mild to moderate in a location such as USA or Australia rather than the Africa continent. The least stressful location should be identified. An alternative scenario would be for the claimant to be given a supervisory/compliance or monitoring role some distance from hands on experience which could happen in any location except Nigeria. That would facilitate a return to work at sea in a responsible way. The claimant had found his tax bill a major stumbling block and if that were dealt with by the company he would find that to release goodwill, motivation and commitment on the claimant's part.

Return to work

33. The claimant returned to work on or about 4 November 2013 and was assigned to act as Marine Advisor (Shuttle Tankers) in London. The secondment was a temporary assignment to last approximately 3 to 6 months.

34. The claimant was issued with a temporary ex patriate assignment letter dated 21 October 2013 which included the terms and conditions of his temporary assignment as Marine Advisers which was to last from November 2014 for 3 to 6 months. The terms and conditions were based on the claimant being on

a temporary assignment. The letter included details on holidays, location premium, expenses, taxes and medical clearance and other items.

Allegations of claimant's inappropriate behaviour but no action taken

35. At a Christmas party in London on 5 December 2013 it had been alleged that the claimant had acted inappropriately towards a number of other colleagues (including alleged inappropriate contact with female staff and inappropriate statement comments and questions to at least one female). This had been denied by the claimant but they had removed him from the party. The respondent decided not to take any further action against the claimant.

Claimant moves to California

36. In or about February 2014 the claimant was seconded to California as Marine Advisor for Offshore and Marine Terminals for what was expected to be approximately 6 months. This was covered by a temporary expatriate assignment letter dated 1 July 2014 which was to cover the terms and conditions of the claimant's assignment as Marine Adviser in California. It was expected to last approximately 6 months.

Claimant moves to Dubai

37. On or about 1 March 2015 the claimant was assigned to Dubai, as Regional Marine Superintendent. This was a sought after role which was often used as a developmental role (which could be used to aid a transition into a senior shoreside role). The post holder would support vessels and their captains and develop a network of local contacts. The claimant was given the job as the respondent (and senior staff within the respondent) believed it would be a good developmental opportunity for the claimant. It was a managed move (rather than the normal Personnel Development Committee (PDC) appointment) which meant that the appointment was made without the position having ben advertised and then a selection panel (the PDC) making the appointment, which was a common method of appointing for roles on an ongoing basis. It was a sought after role and the claimant understood that it was a developmental opportunity for him.

38. The assignment was originally expected to last approximately three years but was extended by a further year and the claimant was in that role for four and a half years. This assignment had been confirmed in Assignment Letter dated 12 November 2014 which confirmed the assignment was as Regional Marine Superintendent based in Dubai and was expected to last for at least 2 years. The terms stated that the claimant was to remain on CTCL payroll and continue to receive his mooring master's salary. As he was to remain on the CTCL seagoing payroll he would continue to receive all CTCL seagoing benefits with expatriate allowances. Taxes would be reimbursed and a location premium paid. There were further payments due to him during the assignment.

39. On 6 February 2015 a further resident assignment letter was issued to the claimant confirming his assignment as Regional Marine Superintendent in Dubai was to last for around 3 years. The document stated that after approximately one year management would engage in discussions with the claimant about possible transfer to shoreside payroll. The document stated that the claimant would remain om CTCL payroll and continue to receive the mooring master salary with additional payment and allowances. His total annual income would be $223,877 with 6 weeks leave.

40. At no stage during his time carrying out the role did the claimant suggest that he was unhappy (or being unfairly or adversely treated, whether due to any protected disclosures or otherwise).

41. Although the claimant records his time carrying out this role on LinkedIn as "Director of Operations" that was not true (and was done by the claimant to seek to attract new employers). The claimant had also described a role he carried out as General Manager. There is no such role. The claimant's role was regional marine superintendent. The claimant had created these job descriptions as he believed that was more likely to attract new employers. His profile also noted that each role he had carried out (including his final role below) had led to increasing responsibility.

42. When the claimant left the role, his replacement had been someone for whom the role was seen as developmental, to assist their skills and experience with a view to transferring to another role after 3 or 4 years just as had happened with the claimant.

Angolan role

43. On around November 2018 the claimant had a discussion with the Vice President of Operations, Mr Davies about a role in Angola. Following the discussion, the claimant sent an email on 9 November 2018 to Mr Davies, copied to Mr Tait, Ms Connelly and Mr Herron. He said: *"Just a quick follow up on the conversation we had on Wednesday. I have spoken to my wife and I will be applying for the job in Angola today. I have no doubts that I am a good candidate for this role as I have extensive offshore and DP experience. As soon as I get back to Dubai I will start putting plans in place to prepare for my departure. As I said to you during our chat should you see value in keeping me in Dubai for a while longer to assist with the various logistical challenges I am happy to be your man on the ground to sort these out until things stabilise. As always thanks for your help and support and congratulations to you and all in copy on the arrival of the El Segundo Voyager today!"*

44. While the claimant believed he had been promised the Angolan role, he had been encouraged to apply for this and he had not been promised it. Those with whom he spoke did not have the authority to guarantee the claimant would secure the role. It was the claimant's firm belief (in himself) that he considered the role to be his but that had not been promised. The claimant believed that as he was the best candidate (in comparison to all other candidates within the respondent) he assumed and believed the role would be his. The claimant had been encouraged to apply for the role which he did. The role had been advertised (via the PDC process) on a contingent basis (which meant it was subject to a condition being satisfied, in this case the incumbent's visa situation) but that was not something the claimant had appreciated at the time.

45. The respondent was keen to support the claimant. This was an example of the respondent wishing to provide the claimant with a role that was suitable for him (and was evidence of why the claimant was incorrect in his belief the respondent did not wish to return the claimant to Africa). It was also a role that was supported by the medical report provided in October 2013. The claimant made an application for the role (which was expressly stated to be "contingent") via the PDC process.

46. Later that day Mr Davies replied to the claimant saying *"Lets see where we end up but I fully understand your situation and the scope of future challenges for you."*

47. On 19 December 2018 Mr Arenella (the Global Marine Safety Reliability and Efficiency Manager) advised the claimant that the Marine Offshore Operations Adviser role had not been filled during the PDC and was on hold. The respondent was awaiting the current job holder's visa extension status from the government. Mr Tait advised the claimant that he had just found out that it was not known whether or not the then incumbent would be allowed to remain in post due to his age (which was why the role was contingent – it was only a vacancy if the incumbent was not staying). The claimant replied stating *"No worries. I could well be in Dubai a while longer perhaps".*

48. A PDC was the common way in which the respondent would fill available vacancies across the organisation. It stood for personnel development committee and would usually sit twice a year. During each event selection teams would convene and consider each candidate for each advertised role and select the best candidates (namely those with the best skills and capabilities in light of the selection criteria for each role). Role could also be filled via the managed move process without a formal selection process.

49. The Angolan role was later advertised via the PDC when the incumbent's visa had run out and when the incumbent was unable to secure another visa. The appointment was made via the PDC process which the claimant had not seen and so did not apply. The successful candidate had previous experience and previously managed a team for over 3 years. The candidate had high level

leadership and management skills. Had the incumbent not received his visa renewal on the first occasion, the claimant would have been given the role.

Claimant becomes nautical instructor in Glasgow

50. On 25 April 2019 the claimant was issued with a "repatriation to temporary assignment" document confirming the claimant's new terms and conditions as a Nautical Instructor in Glasgow. That document contained the terms and conditions application to his repatriation from resident in Dubai to temporary special assignment in Glasgow. The claimant was to remain on CTCL payroll. His tax would be paid and additional allowances and payments were set out. He was to continue to receive all his sea going benefits. His contractual terms (as a sea farer) were respected and he would be paid as an ex pat employee with tax and benefits paid for him.

51. The move had been arranged as a managed transfer. This had arisen due to the departure of the claimant's predecessor, a contractor whose contract had not been renewed due to performance issues. The claimant was considered to be an excellent candidate for the role given his experience and skills.

52. The claimant moved to his final role, Nautical Instructor, at the Centre of Learning and Development in Glasgow. The Dubai role (the role the claimant carried out before moving to Glasgow) was generally considered a developmental position carried out for around 3 years before moving on. The claimant had carried out 4.5 years and been successful and the respondent considered it time to afford another individual the same developmental opportunity that had been given to the claimant (with another individual having been found). The respondent was aware that the claimant's family had moved from Dubai and that the Nautical Instructor role had become available, due to the non-renewal of the then incumbent (on performance grounds). The role was considered a great fit for the claimant given his experience and skills. At no stage did the claimant suggest his move to Glasgow was because of any protected disclosure or that he was being treated unfairly. While the claimant understood he was to be assigned to Angola, and therefore the claimant

considered his Glasgow posting to be temporary, this had not been promised to him.

53. The claimant reported to Mr Hughes, Principal Nautical Instructor and the training team ultimately reported to Mr Ramachandran.

54. On 30 July 2019 the claimant sent an email to Mr Tait copied to Mr Herron, Mr Davies, Mr Ross and Mr Chittiboina (his replacement in Dubai) on the following terms: *"Last night I shook hands with Mr Chittibonia who has now officially taken over from me. I would like to thank you, Mr Herron, Mr Davies and Mr Ross for giving me the opportunity of being the Regional Marine Superintendent for Dubai. It has been a great assignment and we've had some interesting challenges but overcame ever one of them. I have built strong relationships here and made many friends. I'm about to board the flight to Dublin now .. Finally I would like to thank you for your support and excellent leadership and I wish you the best of luck in your role as Fleet Manager which is both truly deserved and a positive step forward for the company."*

55. Mr Herron replied: *"You've done an exceptional job in Dubai for us and as you rightly say have dealt admirably with some very interesting challenges. Good luck in your new assignment and I look forward to seeing you in September at the seminar."*

56. Mr Davies replied thanking the claimant for all his work in Dubai and then reinforcing the comments made by Mr Herron appreciating the significant effort the claimant put into supporting the team and making things happen. He wished him well in his new assignment. The claimant said it was *"much appreciated".*

The Angolan job's candidate is confirmed

57. On 14 November 2019 the respondent had prepared a release noting new appointments following a PDC. The announcement confirmed new appointments effective 1 January 2020. One of the new appointments was that Mr Gruszczynski, a current Marine Risk Advisor, had been selected for the Marine Offshore Operations Advisor position in Angola. That appointment

had been made following a PDC process which the claimant had not seen (and therefore not applied).

58. Mr Davies sent an email on the day he received confirmation that this was about to happen to Mr Tait and Mr Coomes asking if anyone had spoken to the claimant about the appointment given it was a role in which the claimant was interested. Mr Tait stated that *"RK has spoken to [the claimant]".*

59. On 21 December 2019 the claimant had cause to email Mr Tait about individuals who had been training. He ended the email: *"Finally a quick thanks for everything during my time working for you. I miss working with the team a lot but its great to see steady progress and continual improvements being made. Keep up the excellent work. Wishing you a wonderful Christmas."*

60. Mr Tait replied the following day thanking the claimant. He also said that he felt bad about the outcome on the Angola job which had been advertised at the last PDC and said he understood the claimant would be disappointed. He said there had been a breakdown in communication as the claimant should have been notified of the need to apply (which the claimant had not done). The claimant was told that he would hopefully work through it and demonstrate value and something would come up. He said he missed having the claimant on the team and wished the claimant a happy new year.

The transformation exercise

61. In 2020 the Chevron Group conducted a restructuring exercise that was known internally as the "Transformation" exercise. The exercise was first announced in or about November 2019. The process was modelled on an existing internal career development process, the PDC. In essence, what it meant was that a wide range of jobs were made available for appointment and employees were able to apply not just for the job that they already held, but for other jobs. Alongside that process were briefings, engagement meetings and training to help those engaged in the process.

62. Part of the rationale for the transformation exercise was the challenging environment in which the respondent operated and the desire to keep pace

with a rapidly hanging external environment. The respondent wished to transform its operating models, organisation structures and work flows and business processes. Various communications were issued on different platforms to all staff to share the rationale and how the process would impact upon staff. The claimant was aware of these communications and of the rationale for the process.

63. Seagoing roles were outside the scope of the Transformation Exercise but all those carrying out inscope shoreside roles would be at risk (whether or not they were on a shoreside contract). The project team (senior management) had determined that all those carrying out shoreside roles would be inscope (even if engaged on a seagoing contract). This affected the claimant and others. At no stage during the process did the claimant raise any concern about being inscope (nor did he suggest that he ought to automatically return to a seagoing role). The claimant did not wish to convert to local payroll (even although he knew this restricted the roles for which he could apply).

64. Some shore-based roles were removed from the business unit organisational structure putting those employed in them at risk. Others, including the role in Glasgow which the claimant had been occupying on an assignment basis, were classified as “local only” meaning that they could not be held by an employee who was not prepared to agree to local, rather than ex patriate, terms. It was substantially cheaper to employ someone on local terms than to employ someone on ex patriate terms and it was expected that the respondent would be able to find someone either already employed on local terms or who was prepared to move to local terms to perform the jobs.

65. The Transformation Exercise was divided into four phases by reference to the pay scale grades (“PSGs”) of the relevant roles. The first phase dealt with the most senior roles. The largest number of roles fell into the fourth phase.

66. Employees were able to apply for up to 4 roles (which need not include the one that they had previously held) in each round. If their job was in scope and they wished to remain in post, they had to apply for their job as part of the

process. They could apply for roles that were one grade higher or lower than their existing role.

67. Affected employees were given advanced notice of the deadlines for applying for roles and the associated “selection events”.

Staff engagement

68. On 17 April 2020 an email was issued to the Midstream Team inviting them to an engagement series with the Executive Sponsor. The goal was to engage with the workforce and be as transparent as possible about the transformation journey given the unprecedented times and uncertainty. The aim was to explain what was known and set out the progress and answer any questions. Upcoming events were also signposted and an email address was given for any comments.

69. A follow up email was issued on 5 May 2020 to midstream colleagues. That confirmed that the previous sessions had been recorded and could be viewed online and dates were given as to forthcoming events to engage with staff. A bespoke website had been created with resources and information about the changes. This was followed up with a video on transforming to win on 26 May 2020 noting the progress made in the volatile markets.

70. The transformation exercise was proceeding during the pandemic which had impacted upon the respondent (and the world generally) and the environment in which the respondent traded was very challenging with cost being a key consideration and driver for the process, to maintain viability.

71. The communication noted that all business functions were transforming their workflows and operating models and evaluating their organisational structures to best deliver the changes. That was likely to result in fewer positions which presents a challenge given the pandemic and weak market environment. There was a forecast of 10 to 15 % reduction in positions across the company the majority of which were to take place that year.

72. The objective was to coordinate selection activities across the transformation efforts to complete most selections by the end of October. Local leadership

would communicate selection events to those in scope. Selection events would be conducted in rounds by salary level. After senior staff had concluded the next round would focus on PSG 28 to 30 in June 2020. A link was given for those in scope to receive more information.

73. The communication stated that the business was committed to conducting selections transparently allowing people with diverse experience and backgrounds to be valued and respected. Selection teams would reflect visible diversity and perspectives from the groups and functions. The names of selection team members and the composition of the selection teams would be shared prior to the selection round to provide transparency into who makes the selection decisions.

74. Given the extraordinary nature of the change process, enhanced resources were made available to staff. The bespoke website was available for those to consider for more information.

75. Staff were reminded that during the change process which was personal and professionally stressful the employee assistance programme and other company resources remained available to help physical and mental well being.

76. A further communication was issued on 26 May 2020 noting background and progress. The price of oil had reached a 20 year low and the global economy had reached a virtual standstill. When transformation started oil was $60 a barrel which had decreased to $30.Transformation was even more relevant. Details as to the progress was set out, noting some of the changes. It confirmed that the outcome would result in fewer positions which meant fewer people which was said to be a difficult decision to communicate. Staff were advised that it was anticipated that the workforce would be reduced by 15 to 20% which would be achieved with selection events. Those in scope would receive information. It was reiterated that the selection process was to be conducted transparently and fairly. Further resources were signposted including the bespoke website and a FAQ document was issued.

77. The process involved the loss of around 4,000 roles (with around 20,000 open jobs being advertised via the portal). The selection process would therefore be considering over 100,000 candidates for roles.

78. In a separate email to shipping colleagues, staff were advised that the business was seeking to achieve an expense reduction of around $25 million by the end of 2021. Ideas staff had contributed were being explored and views were sought. Workforce reduction of between 15 and 20% was forecast. While the overall structure of the organisation would not look drastically different there would be changes to lower the cost structure and streamline delivery. The structure would be shared as it was finalised. Links were given the process and engagement sessions with staff were set up. Links to support information were given.

The process to be followed

79. The **FAQ document** was sent to all staff and set out detail as to the process to be undertaken. This was a detailed 64 page document. That provided some general information in relation to the process but noted that there would be a living document online setting out up to date answers as the process developed. Feedback or questions could be raised with a specific email address.

80. A selection event was explained in detail with a video to watch. The selection event gives the employee an opportunity to learn about the new organisation structure and jobs available. Those in scope would be identified first by business leaders and the HR team with positions available for selection being defined with selection criteria determined. When the event begins inscope employees are given details of available jobs for which they qualify and they can apply for multiple roles. Once the posting is closed the selection teams meet to fill the positions and review and make determinations. Those not selected may have the chance to participate in future selection events. If an individual failed to secure a position and there were no further posting opportunities, they may leave the company and may be eligible for severance. Processes, timing and criteria vary in each selection event and staff were

advised to carefully review and follow the specific information relating to each selection event.

81. Those inscope were those identified as being part of reorganisation. That could mean the position was being re-evaluated or the numbers of roles were being reduced. Those in scope would be advised as to the timing of the selection event and would be given links to the support offered during the selection process and given the opportunity to review and post for available jobs.

82. Staff on international payroll would only be able to participate in the transformation process if they were in a position that was in scope.

83. In some situations selection activities might be conducted locally (and be reserved to local payroll employees only). Staff would be advised as to the impact of their role and the available opportunities.

84. Guidance was given to assist those with the process, which included the completion of the documents setting out their experience. Staff were advised to begin preparations for their experience and history, with the process being conducted electronically.

85. In scope round 4 employees would be given a link to a site where they could view jobs which could be broken down to all jobs, ex pat eligible jobs and relocation eligible jobs.

86. Guidance was given on applying for jobs. That included when the tool for posting for a job would close and a notice that staff would not receive an email confirming their submission and so a personal note should be kept. Inscope employees choose which roles to apply and should post for a minimum of 1 posting and a maximum of 4. It was possible for staff to be “written in” to positions during the selection event, if needed to fill jobs.

87. If an employee was eligible to post in an optional selection event the individual would receive 2 further posting opportunities. Employees could apply for jobs outside the selection event and should contact their supervisor to check they have the qualifications.

88. Training in the process and the completion of the online tool was available.

89. If an individual was in scope and wanted to remain in their current post the individual would require to post for that position (in addition to others in which the individual was interested). Inscope employees could post for positions at their current salary level or one level up or down.

90. The notes emphasised that administrative employees would be included in the process as with all employees.

91. The tool would make it clear which roles were “relocation eligible” and which roles were ex pat eligible. It was possible to view ex pat eligible jobs only.

92. The guidance stated that if an individual was planning to be away from work without access to the network, they were to advise their local HR business partner and/or supervisor who could keep them up to date. During the process it was important that staff were available and have online access to review job descriptions and discuss roles in advance with their supervisor and the selection event representative and to complete the process within each deadline.

93. The Guidance also gave assistance as to how jobs were to be filled. Decisions were to be made by selection teams based on employee performance, skills and qualifications relative to the job description and business need. Some positions may remain vacant if the right candidate (with the necessary skills and capabilities) had not been identified.

94. A selection event representative would represent each candidate at the selection event. That person would be identified and communicated in advance to whom information could be given in advance. Selection decisions would be based on business need with employees receiving one job offer. It is possible for selection representatives to add individuals to job slates for which they are qualified to support business need, even if they did not self nominate but that would be on an exceptional basis. Out of scope employees would not be considered for positions in the selection event.

95. For positions considered to be inscope, the selection panel would fill the position based on the requirements of the position and assessment of qualified individuals, which meant the incumbent would not automatically take precedence over better placed candidates.

96. Candidate shortlisting guidance had been issued to job owners and selection representatives. This noted that the job owner had the responsibility to shortlist and prioritise shortlisted candidates and explain why others were not shortlisted. Job owners are also accountable for informing selection representatives of the results. The stated aim was to be transparent and fair to all inscope employees. Job owners and selection representatives would review the slate ahead of the selection event and identify a shortlist with a view to reaching consensus. The online tool should be updated to reflect the job owners' selection representative's preferred ranking of shortlisted candidates. Job owners and selection representatives were required to ensure they understood each candidate's skills and fit for the positions. It may be necessary for job owners to speak to the supervisor or selection representative for more information to ensure they had sufficient knowledge to make an informed choice.

97. Job owners had access to the list of each job each candidate has applied for, each candidate's own ranking preference, the selection criteria for each position and each candidate's performance history together with each candidate's online summary (of their skills and experience). Job owners had access to the candidates' job profiles.

98. Those to be shortlisted would include the incumbent (unless there were "known performance issues"), candidates who best meet or exceed the selection criteria (or in limited cases candidates who have enterprise potential that could benefit from development potential in the role). If there are no candidates, it was not required to shortlist any candidate. Those who do not meet the selection criteria, are significantly less qualified than others or who have a demonstrable reason should not normally be shortlisted. Appointment was ultimately a matter of business need. The data provided to the selection team included the performance appraisal outcomes of the candidates.

99. The job owner would ordinary shortlist prior to the selection meeting. Selection team members would review the shortlist and provide additional input as they consider necessary and modify the shortlist if required. The short list is not final until the selection meeting discussion.

100. Selection event representatives should be able to explain at the selection event the reasoning why candidates were or were not shortlisted and the reasoning for their preferred ranking.

101. Job offers would be confirmed by email and phone with start dates confirmed. Global mobility specialists would support expatriate employees whose positions have been eliminated.

102. Diversity was to be a key part of the process and in this regard and to promote inclusivity an inclusion counsellor would be part of the selection process and provide a perspective outside of the function or business unit to the selection team to check against unconscious bias (such as similarity, experience and distance bias) and to encourage “more complete thinking” Each selection team would have an inclusion counsellor whose role is to listen to the discussion and interject if unconscious bias may be present, to guide the discussion and examine and challenge the rationale, to assist in ensuring appropriate behaviours giving criteria appropriate weight and to ensure discussions as to candidates are robust and deliberate. Inclusion counsellors will be identified by management based upon their demonstrated commitment to diversity and inclusion.

103. If an individual did not wish to be considered for a role and wishes to be considered for severance the process for so doing was set out. A video was also included. Such decisions would be made by management and there was no guarantee as business need would take precedence.

104. If an individual was not selected they would be considered “left standing” and would be given details of their severance package. Detailed information and guidance was given as to the sums that would be offered.

105. Global offshore payroll employees who are identified as inscope would be given the chance to apply for any expatriate position globally and any US position if the other posting requirements were met.

106. The Personnel Development Committee PDC process was scheduled to take place in the first half of 2020 as normal with a view to be taken as to whether the second half of 2020 be dealt with via the transformation process only.

107. Details were given of the other resources to help staff during the process, including contacting their supervisor and HR business partner, a safe confidential and impartial resource for brainstorming and employee assistance.

108. The plan was that **round 2** would be open for PSG 28 to 30 (as a primary event) and PSG 27 (as an optional event). Jobs would be available for review in June with job application period beginning in June 22, selection meetings beginning on July 6 and notifications on 13 July.

109. For **round 3** PSG 25 to 27 (primary event), PSG 24 (optional event(and PSG 28 (if not yet selected) with jobs available for review on August 10, job application period from 17 August and Selection meetings on 31 August and notifications on 8 September.

110. For **round 4** the scope is PSG 24 and below (as a primary event) and PSG 25 (if not selected) with jobs available for review on September 17, job application period begins on September 24 selection meetings on October 12 and notifications on October 27.

Mental health challenges

111. During lockdown the claimant experienced difficulties in his personal life. He approached a counsellor for advice and support in managing health issues including in relation to PTSD following the Jascon4 incident. The claimant had not raised any concerns about his mental health with his supervisor, who was unaware of the challenges he had raised with the nurse. The claimant had indicated he had these matters under control.

Discussion relating to conversion to change to local payroll

112. On 26 May 2020 Mr Ramachandran (the person ultimately responsible for training, to whom the principal nautical instructor reported) had a discussion with the claimant about payroll conversion. If the claimant had agreed to convert to local payroll there would be more job opportunities for him (since it was likely that cost would be a factor in any reorganisation and it made economic sense to reduce costs and engage more local payroll staff than more expense expat staff). The claimant had been expecting the discussion but he was not supportive of the proposal. The claimant advised that he was unable to take the reduction in salary. The claimant was focused on the short term perspective and his family commitments. It was unlikely that the claimant would accept conversion to local payroll. Had the claimant converted to local salary (rather than an ex pat role) he would be able to compete for a substantially larger number of roles (including the nautical instructor role) in the forthcoming Transformation exercise. Being an ex pat costs the company around 2.5 times the amount of a local payroll individual (since the company pays the tax and other sums pertaining to the ex pat including housing and other allowances).

113. Mr Ramachandran had the discussion with the claimant as he had hoped the claimant would consider converting and thereby place him on a stronger footing when reorganisation commenced, but it was a matter for the claimant. It had also been open to the claimant to apply for other relevant roles when in the Glasgow role as they became available.

Instructor role to be local payroll only – cost savings are needed

114. Mr Ramachandran was concerned that there was little justification in keeping a CTCL payroll employee in Glasgow as an instructor given the desire to reduce costs. It was likely that someone on local payroll (who was earning considerably less) would be interested in the role.

115. Ms White (General Manager, formerly HR manager) was of the view that being on local payroll for that role made business sense going forward with the claimant being able to apply for other expat roles. She believed that the

role should become local payroll only (not expat eligible). Mr Ramachandran agreed noting that it was possible to cover the role via a contractor, as had happened before the claimant arrived.

Transformation discussion

116. The HR business partner for the area reached out to each employee on 28 May 2020 by email noting that there was a planned headcount reduction of 15-20% which she recognised was challenging. She noted that she would make herself available if anyone wished to discuss matters with her.

117. On 29 May 2020 the claimant contacted Ms White by email. He noted that he had spoken with Mr Ramachandran and understood that the prospect of him remaining on an expat contract was slim. The claimant explained that he had expensive school fees to cover. If he were to transfer to local payroll he would have to change his daughters schools again and look at domestic upheaval.

118. The claimant noted that his life following his departure from Nigeria had not been good given the financial benefits of that role and location. He said he had been expecting the role in Angola and the Glasgow role was to be temporary. That role had not challenged him and he hoped a new role could be found for him which utilised his full skills and experience.

Claimant asks to be given a role without need for process

119. The claimant noted that Mr Howe and Mr Pederson were retiring soon and the claimant believed he was the perfect candidate for both roles. He asked Ms White to speak with Mark and Tim as they were familiar with the claimant's situation to see if they would see the benefit of the claimant "slotting into a position" that would have him gainfully employed and prevent further disruption to his family. He appreciated the challenges the company faced but felt that he should be put to far better use in a more challenging position such as a Marine Superintendent or Operations Superintendent as he was hard working and diligent.

120. Ms White replied an hour later noting that the claimant would be able to compete in the upcoming selection events. He would not be forced to stay in

his current role. She advised the claimant that the leadership team wanted to open as many roles as possible during the upcoming selection events which would give the claimant the same ability to apply for other roles that become available. She said that it was the claimant's call whether or not he applied to remain in his current position and he was not required to convert to local payroll if he did not wish to. She offered to chat more with him when the organisational roles had been identified (which would allow him to identify which roles are expat eligible). She emphasised that as the process was focused on cost reduction which would mean that fewer roles would be expat eligible

121. The claimant replied the following day thanking her for the prompt reply and saying he would wait to see what happens once the positions were identified.

Transformation continues

122. On June 6 2020 Mr Ramachandran emailed the team updating them as to progress as to the transformation and the proposed structure. He noted that staff might have questions and they could be addressed to him or their supervisor. He issued a further update on 20 June 2020 confirming progress on transformation with draft documents attached and that training materials were available. Any questions were to be directed to him.

123. On 22 June 2020 Mr Ross (Shipping President) issued a further communication with the draft organisational chart and noting forthcoming engagement sessions and ways in which individuals could engage with the process. Those affected were encouraged to submit relevant questions. A team meeting was arranged on 24 June 2020 to discuss and identify any issues or questions.

124. On 25 June 2020 the principal nautical instructor provided Mr Ramachandran with his views as to the options going forward with regard to the temporary role the claimant was undertaking. Mr Ramachandran replied noting that it was important to be fair to all employees. Following discussion as to the matter it had been decided that marine employees on special assignment in the UK (which included the claimant and 2 others) would not be eligible for

non-expat positions, as the aim was to be consistent across the board. The aim was to select the best candidates for each role whilst creating opportunities for all staff.

125. On 7 July 2020 the claimant asked Ms Padilla, the HR business partner for the team, what his severance entitlement would be if he was on assignment in the UK. She replied that day explaining that only UK payroll employees would be entitled to such a package.

126. On 13 July 2020 staff were advised of the support available for the transformation process and given details of the information session and further reminded of the link to the online tools and guidance.

127. A team meeting was arranged on 29 July 2020 to discuss the up to date position and deal with questions and answers. The meeting covered how the transformation process would work and the tools available to assist participants.

128. On 11 August 2020 the claimant learned that new job postings had been issued. These had not been notified to him as they were round 3 selections for PSG 25 to 27 on UK domestic payroll.

129. The UK HR business partner sought guidance as to how to manage the process given the claimant was an expat and only able to compete for expat eligible positions in the UK. It was agreed that Mr Connors (HR business partner) would touch base with the claimant to identify the positions he wished to be considered for and he would work out a walk in process to ensure the claimant was given a fair opportunity.

130. The business had also taken a decision to ensure all mariners working shoreside or in O&MT loaned out positions were to be recognised and in scope and given access to appropriate roles. The respondent wished to be consistent and ensure all those on mariner contracts on special assignment/carrying out shoreside roles were treated in a fair and consistent way.

Claimant given access to round 3 positions

131. On 19 August 2020 the claimant was advised by email that the positions had been opened up for him to view on the portal. These were positions that were technically a grade above the claimant's but the claimant had relevant skills that the respondent considered it fair for him to be able to apply for those positions.

132. The claimant had been on leave but was working on 19 August and could have checked the vacancies at that point. He had been at work when the email was issued advising him the positions could be viewed by him. The claimant sent an email on 27 August to Mr Connors noting that there were no positions showing up on the portal. He said he was interested in PSG 25 jobs (and he had been a PSG 24 for 15 years). That was because the claimant had checked the system after the process had closed. He had missed the email.

133. On 3 September 2020 the claimant emailed Mr Connors and Ms White, copied to Mr Coombs. He noted that on 2 September he had spoken to Mr Connors on the telephone . He included his earlier emails and said he had slipped through the net regarding round 3 job postings. He was unclear why he was unable to apply for local payroll positions. He asked that a dispensation be made to allow him to apply for roles in which he was interested. He said he had copied Mr Coombs into the email as he knew about the claimant's interest in the superintendent role in Cabinda. The claimant had not initially been given access as his PSG had not registered on the system (as he had been engaged on a seafarer contract). The system was manually changed to afford the claimant access.

134. Ms White had made enquiries with colleagues (including Mr Coombs) and the selection manager. She advised the claimant on 3 September 2020 that there were stronger candidates on the slate for the Angolan role and therefore adding the claimant to the list would not alter the outcome. Adding the claimant to that list of candidates would not have made any difference to the outcome, had the claimant placed himself on the list when the process was ongoing. The claimant had been given access to round 3 roles but he had missed the cut off.

135. She noted that the claimant had been given access to the round 3 postings prior to the closure on 21 August and the claimant had the opportunity to apply for the roles. He was advised to ensure he familiarised himself with the timescale for round 4 and raises any concerns during the posting period. Round 3 was an optional round for the claimant given his grading which would fall within round 4 (which would be when the claimant would be in scope). Although the claimant stated that he could not access the roles online he had the opportunity to do so since he was working on at least one of the days after the claimant had been given online access to the available roles but he had not checked the system (nor had he taken steps to check the system when he was on leave, despite knowing the transformation exercise was progressing when he was on leave). He did not ask his line manager to inform him of the position when he was on leave.

Claimant missed cut off to apply for round 3 roles

136. The claimant had not proactively taken steps to apply for the role (and round 3 roles generally). He had known of the process but had not checked the timescales or had missed them. He realised around a week after the selection process had closed that he had missed the timescale. As there were other candidates who had applied for the role who were considered stronger candidates compared to the claimant for the roles in question (in terms of experience and skills) the respondent chose not to place the claimant into the process for those roles.

137. Mr Ramachandran was surprised the claimant had not made a timely application for the role or advised his manager about any absence from work given the ongoing process and the detailed communications that had been issued setting out the timeline and importance of ensuring timescales were not missed.

138. On 15 September 2020 announcements were issued as to the outcome of the round 3 selection event. Staff were advised that later that week the round 4 selection event would open with position being available for PSG 24 and below. Links were given to the online resources and further information about

the process. The claimant was given detailed information about the round 4 process, including the actions and timescales.

139. The candidate who was successful for the Angolan role had applied for the role during the PSG process. The successful candidate was experienced and suitable for the role. The claimant had never been assistant mooring manager nor senior mooring manager and had comparably less management experience in the respondent's view.

Round 4 begins – claimant in scope

140. On 20 September 2020 the claimant was given details given he was an inscope employee for the round 4 selection event. He was given the link to the round 4 jobs. He was told again of the timescales for applications and that his selection representative (who would represent him at the selection meetings) would be Mr Ramachandran. He was advised that he could meet his supervisor, Mr Ramachandran, or the job owners to discus the positions and his interests and views. He was advised as to when the selection team names would be disclosed.

141. Had the claimant converted to local payroll it was likely he would have secured that role given his expertise and experience but the claimant did not wish to take the reduction in income. A key part of the transformation exercise was about reducing cost. Staff had been asked for views and proposals. The respondent had decided that the Nautical Instructor role the claimant had carried out should be a local payroll position given the nature of the role and context. The role was not initially filled following the transformation exercise but a candidate subsequently was identified who converted to local payroll.

Claimant asks job owners for views

142. On 24 September 2020 the claimant contacted Mr Tait by email headed "R4 advice". He noted that the expat eligible positions were very limited in round 4. He noted that he still had his apartment in Dubai and a regional marine supervisor had been posted in Dubai. As he had his shipping network there he considered himself to be an inexpensive and very effective option to fill

that role. He asked Mr Tait if he would be wasting his time applying for the position as he had done it before. He asked fore Mr Tait's thoughts as his options were looking very limited.

143. Mr Tait noted that there was a chance that the claimant could be successful if he applied for that role and so he recommended the claimant apply. Given the reduction in expat positions across the organisation as a whole competition had increased. He suggested the claimant consider conversion to local payroll which would open up a large number of other roles in the UK. He offered to speak with the claimant if that would help.

144. The claimant replied noting that it was probably too late to convert to local payroll and would "play it by ear". He thanked Mr Tait for the advice and said he would apply for the role and give the job owner a heads up by email.

Claimant's job representative encourages him to apply

145. On 28 September 2020 Mr Ramachandran contacted the claimant by email. He noted that the claimant had not applied for any roles and the deadline was approaching. As his selection rep he was able to represent the claimant and the claimant was to let him know which roles he was applying for.

146. The claimant replied noting that he had contacted other job owners but did not consider the responses to be positive. As he was not on UK payroll he was only eligible to apply for expat positions in the UK. He confirmed he would make his applications later that day for appropriate positions.

Claimant applies for roles

147. On 29 September 2020 the claimant participated in Round 4 of the Transformation Exercise. He did not apply for his existing job, which was not eligible for expatriate appointment in the UK. The claimant applied for 4 positions.

148. The **first position** was a **Marine Superintendent** in Singapore within the Fleet Operations group. The job owner for this role was Mr Herron. There were 12 candidates on the slate for this role. The selection criteria comprised

aligning and inspiring (setting clear expectations and aligning teams on shared goals and outcome), Communicating transparently, supporting others in times of need, building relationships, recognising others and adjusting behaviour based on feedback, Encouraging new ideas, adapting to change, enabling others to develop, delivering results, empowering others to make decisions, identifying important data for decision making, removing barriers to achieve results, using impactful data to track performance, seagoing tanker experience as a senior officer, supervisory experience, good communication skills across a variety of functions and stakeholders, good analytical skills, team player and strong influencer with (ideally) a master's licence/The claimant was not successful in securing this role. He was not shortlisted.

149. The **second position** for another **Marine Superintendent** role in Singapore within the Marine Assurance department. The job owner for this role was Mr Davies and there were 8 candidates. The selection criteria comprised aligning and inspiring, setting clear expectations and aligning teams on shared outcomes, communicating transparently, supporting others, building relationships and taking responsibility for outcomes, fostering positive relationships, ensuring inclusive treatment, share information and resources, promoting healthy debate, growing capabilities, recognising others, adjusting behaviour based on feedback, providing feedback to others, encouraging new ideas, adapting to change, enabling others to develop, delivering results, identifying important data for decision making, removing barriers for results, using impactful data having seagoing experience preferable as Master or Chief Engineer on oil tankers and liquified gas chemical or offshore vessels, familiarity with marine technologies and marine support in the industry with good written and verbal communication stills and ability to foster collaborative relationships with all partners and a demonstrated ability to identify and build key relationships that contribute to high class business results.

150. The **third role** was **Marine Superintendent** in Dubai. The job owner was Mr Herron and there were 9 candidates. This was based in fleet operations. The claimant was ranked second. The successful candidate was the incumbent (CHECK) Mr Chittibonia. The section criteria comprised aligning and inspiring,

setting clear expectations and aligning teams on shared outcomes, communicating transparently, supporting others, building relationships and taking responsibility for outcomes, fostering positive relationships, ensuring inclusive treatment, share information and resources, promoting healthy debate, growing capabilities, recognising others, adjusting behaviour based on feedback, providing feedback to others, encouraging new ideas, adapting to change, enabling others to develop, delivering results, identifying important data for decision making, removing barriers for results, using impactful data having seagoing tanker experience with supervisory experience.

151. The **fourth role** was **Marine Superintendent** in London in the operations team. The job owner was Mr Davis and there were 10 candidates. The claimant was not successful in this role. The selection criteria comprised aligning and inspiring, setting clear expectations and aligning teams on shared outcomes, communicating transparently, supporting others, building relationships and taking responsibility for outcomes, fostering positive relationships, ensuring inclusive treatment, share information and resources, promoting healthy debate, growing capabilities, recognising others, adjusting behaviour based on feedback, providing feedback to others, encouraging new ideas, adapting to change, enabling others to develop, delivering results, identifying important data for decision making, removing barriers for results, using impactful data having strong marine operational skills such as terminal operations, tanker operations cargo operations or navigational competency. The candidate will interact with management of chartered and operates vessels and shipping management and will require to inspect and audit as required.

152. The claimant advised Mr Ramachandran as to his selection.

153. For each of the 4 roles the selection panel explored the candidates. The claimant's position was set out by his employee representative who was able to contribute to the discussion by reference to the claimant and the other candidates. Each discussion involved the job owner (or their delegate) who had appraised themselves of the details of each candidate and their experience (together with the requirements of the role). The job owner (or

their delegate) was able to review each candidate and provide a ranking. The meeting was able to proceed with a discussion involving the job owner and each employee representative. It was not practicable (not suitable) for each individual candidate to present their own case at the meeting, but the candidate's representative was able to do so (and the candidate had the chance to meet with the representative and ensure they were fully equipped with the individual's case for appointment). Candidates were also encouraged to speak with the job owners (or their delegate) in advance to ensure the job owner fully understood the individuals and their full background. The meeting would discuss preferred candidates and each employee representative would be able to robustly discuss their own candidates as required. The diversity and inclusion representative would also ensure a robust and fair discussion took place, avoiding bias and focussing on objectively and fairness, to ensure the process and final appointment was objective and fair.

154. The selection panel ranked candidates and appointed a candidate based upon the selection criteria, taking account of business need. The successful candidate in each of the 4 exercises was more qualified or experienced than the claimant in respect of the particular role in question. The respondent carefully assessed each candidate and make a decision based upon business need. The respondent did not appoint the claimant to any of the roles as they found another candidate who was better suited to the roles. The selection manager (and his or her representative) knew of the claimant and his experience, skills and attributes and were able to assess the claimant as against the other candidates in light of the specific roles under discussion. There was no connection between the appointment of the other candidates (and not the claimant) and any protected disclosure.

155. In relation to the first and second role, the successful candidates had more relevant experience particularly with regard to liquefied natural gas tankers and better and more relevant experience with regard to marine safety, offshore projects and vetting and assurance. The successful candidates were considered to have more relevant experience than the claimant's. The

successful candidates were also locally based with more relevant experience than the claimant.

156. The third role was the role the claimant had previously carried out before moving to Glasgow. The claimant had been ranked second on the shortlist at the selection event. He had the skills and experience to carry out the role but the successful candidate was the incumbent who had been carrying out the role successfully for a year and was one year into a 3 year assignment. The successful candidate had the relevant skills and experience for the role. The claimant had come second in the process and was unsuccessful.

157. The successful candidate for the fourth role was a local candidate who had greater relevant experience than the claimant.

158. The respondent had taken into account cost as a relevant factor during discussions but took careful account of experience, skills and knowledge to ensure the appointment was fairly made on merit.

159. The claimant was told on 29 October 2020 that he had not been successful and that he was given a date for his last working day in his Glasgow assignment. His last working day was to be 18 December 2020. He would be repatriated to his home country. At no stage during the process did the claimant allege that the process had in some way been influenced by any of the protected disclosures or that he considered himself to have been singled out unfairly. Given his status as an expat employee on those terms and conditions competition was intense for a limited number of roles. While the claimant believed he was more capable than the other candidates, the respondent assessed each candidate and made a decision based on each candidate's experience and knowledge.

160. Upon being advised that the claimant had not been successful, he did not express surprise. He had not been confident given the limited roles and context. He did not raise any concerns about the process or his selection at the time nor did he seek specific feedback. No written notes were taken of the relevant selection meetings but it was open to individuals to seek feedback if so desired.

161. The claimant did not ask to be considered for any seagoing roles and there was no evidence of any seagoing roles available at the time. In the absence of any alternative available roles, the claimant's employment was to end. While the seagoing area of the business had not been subject to transformation and headcount reduction, that area was undergoing cost cutting measures. Other individuals based on a seagoing contract (including mooring masters) had been affected by the transformation exercise as they were also carrying out shoreside roles at the relevant time.

162. While the claimant had understood Mr Ross had advised him in 2014 that the respondent was "reluctant" to return the claimant to active duty operations and was keen to support the claimant in a transition to shore side management roles, the claimant did not subsequently raise the matter or ask to return to seagoing duties.

163. On 23 and 30 November 2020, the claimant asked that his employment be extended by three months to give him time to organise his affairs. The respondent refused as they wished to be consistent with other staff.

164. The claimant's employment ended on 1 January 2021. He was paid a lump sum payment equivalent to 90 day's base salary in lieu of his notice payment (amounting to $34,038) with additional payments of $5,105.70.

Observations on the evidence

165. There was little evidence of material issues that was in dispute and the parties had worked together to seek to agree relevant facts. Each witness had done their best to recall matters and the Tribunal did not find any witness to be incredible or seeking to mislead the Tribunal.

166. One of the key disputes was whether or not the disclosures the claimant had made were in some way connected to the claimant's dismissal. The claimant accepted in cross examination that it was essentially a belief he had that his disclosures had been a reason for his treatment, but he was unable to provide any detail as to what specifically it was (or by whom).

167. The claimant was extremely confident of his abilities and could not accept that the respondent had opted to appoint other candidates ahead of him. He considered it "inconceivable" he was not retained and was unable to accept other candidates might have better experience or be better candidates.

168. The Tribunal found the respondent's witnesses and approach to appointment to be a genuine attempt to secure the best individuals for the roles. The process was designed to seek to allow interested individuals to present their cases to their selection representatives and job owners and to wisely choose 4 positions. By the time the selection exercise took place the individuals making the decisions would have known all relevant details of each candidate.

169. In cross examination the claimant suggested that he was more likely to secure the Dubai role (which was the role he had been shortlisted for). The Singapore and London roles went to individuals with specialist skills (which the claimant did not have, at least to the same extent).

170. With regard to knowledge of disclosures, the Tribunal was satisfied that the individuals making the decisions with regard to the claimant did not have knowledge of the disclosures. A number of submissions were made in relation to this and they are considered in turn.

171. From the evidence led before the Tribunal although the claimant had advised the respondent's solicitors of the issues this was not something shown to be known by the individuals who managed the claimant and made decisions. There was no evidence those individuals were aware of the disclosures. Messrs Tait, Ross, Davies, Herron or Coombs were not aware of the disclosures.

172. Similarly the fact the claimant requested from Assistant Senior Mooring Master that the Jascon 4 not be assigned as the designated tug for the berthing of the Alexis Kosygin due to his concerns regarding its seaworthiness did not mean Mr Tait or Mr Coombs were made aware of the request. The Tribunal found Mr Tait's evidence that he was not aware of the position to have been reliable evidence.

173. The Tribunal accepted Mr Tait's evidence that he was not aware of the disclosures and the first time he had seen them was in preparing for the Hearing. There was no evidence of the disclosures having been raised with him at any stage in his discussions with the claimant during his employment. When he discussed his views of the cause of the events reference to the shackles was because they formed part of the multifactorial causes of the incident.

174. While some evidence had been raised about a potential conflict of interest issue, this was not something relevant to the issues to be determined and the Tribunal accepted the evidence Mr Tait gave.

175. The claimant's agent argued the claimant had not been interviewed and that supported an inference that "Mr Tait and others were aware of the disclosures previously made and the likelihood that he would make them again and that they might need to be included in the internal report on the tragedy". The Tribunal did not accept that submission. Mr Tait's evidence was that he knew the claimant had been interviewed because he had seen interview notes.

176. The claimant's agent argued that the assignments following the incident were all 'managed moves' which did not require the claimant to apply for them via the 'normal' PDC exercises and this suggested "the respondent carefully orchestrated the claimant's entire career thereafter to ensure he was placed where they wanted him" which was said to be "an effort by the respondent, more particularly senior management who were the decision makers in these moves, to keep a close eye on the claimant to prevent him from damaging the respondent's reputation and/or speaking to any information that would place them under liability for the incident ".

177. The Tribunal found that the approach the respondent had taken was in fact supportive and positive for the claimant. His move to Dubai had in fact been to support the claimant and provide him with a developmental role. Although the claimant suggested there was an ulterior motive in moving him to that location, his own witness had suggested it was (in part) his decision and desire to provide the claimant with this role given the claimant's skills. The

assignments the claimant received were roles the claimant's managers believed supported his position. They were consistent with the psychotherapist's report and were not moves the clamant raised any concerns about. The Tribunal considered the respondent to have acted in good faith.

178. With regard to the final move to Glasgow the Tribunal found that this was part of a genuine desire to assist the claimant and allow him to continue to work to identify future plans. He had spent over 4 years in the Dubai role which was a developmental role ordinarily lasting 3 years. The clamant had done an excellent job and this was recognised by his managers. The claimant raised no concerns about his move to Glasgow, which appeared to provide the claimant with a great fit given his skills. It was open to the claimant to apply via the usual processes for any roles that became available. The Angolan job had been given to another individual as the claimant had failed to identify the vacancy (and apply) after the contingent role for which he had been successful did not proceed. The respondent had gone through a PDC process with the claimant applying on the first occasion and there was no evidence the second occasion was contrived. It was regrettable the claimant had not been advised as to the position but not surprising given the claimant had moved on but it was the claimant's responsibility to identify suitable roles for which he wished to apply, if he so wished.

179. The Tribunal accepted the respondent's submission that "the fact that the claimant was subject to managed moves does not imply that the purpose of these moves was to "keep a close eye on" him". As submitted by the respondent's senior counsel it was not true that the claimant did not apply to any of his subsequent roles post Nigeria, as he applied for the Angola role in 2018 and roles during Transformation. The way in which the claimant was assigned roles, from the Tribunal's assessment of the evidence, was fair and reasonable and supported no inference of any attempt to remove the claimant or manoeuvre him in a position that he could be dismissed. Had the respondent wished to do so, there were a number of opportunities prior to this that existed. Instead the respondent worked with the claimant, seeking to support him and identify roles they considered suitable for him. The fact the

respondent offered conversion to local pay supported this conclusion since had the claimant agreed, while his income would have reduced, he would, in all likelihood, have remained in a position post transformation and have been able to identify other roles thereafter in subsequent PDC processes. There was no suggestion the offer to convert him to local payroll was not a genuine offer, which, had it been taken, would have ensured the claimant would have remained in his role (and remained in a role that would have allowed him to look at other roles thereafter if he so wished). The respondent gave the claimant a number of opportunities which could have strengthened his position. While there were reasons for choosing not to do so, the respondent was supportive of the claimant given the challenges they faced.

180. The Tribunal did not accept the suggestion that the desire was to remove the claimant. While the claimant was on a seagoing contract he was treated in the same was as others on special assignments carrying out shoreside roles on a seagoing contract. While other employers may have adopted a different approach, the approach the respondent took was fair and reasonable. It ensured the claimant was able to identify vacancies and participate in the process. He had a fair opportunity to being retained in respect of the vacant roles, as had others who were in scope. At no stage during the transformation process did the claimant ask to be considered for seagoing roles nor was there any evidence of any such vacancies in existence. While he could have returned to “standby”, it was not unreasonable for the respondent to progress as they did. The evidence from the respondent was they regarded the claimant highly. They rightly thanked the claimant for his hard work and effort and sought to identify alternative roles for him. There were no roles.

181. While it was alleged in submissions that Mr Ross “put a barrier between himself and the claimant” this was not something about which the Tribunal heard evidence. The evidence the Tribunal had suggested Mr Ross and the claimant’s other leaders had recognised the hard work he had done and his efforts. They had been supportive of the claimant and sought to assist him

182. The claimant’s argent argued that around September 2019 Mr Tait had come to Glasgow for a Vessel Management Team Seminar and Mr Tait had been

evasive. The Tribunal did not accept that Mr Tait had been evasive or dismissive. The Tribunal did not consider that meeting to be material or supportive of the claimant's position. The Tribunal accepted Mr Tait's evidence and found his evidence on this issue more likely than not to be the case than the claimant's position. The claimant had exaggerated matters before to his advantage (such as in his LinkedIn profile) and his evidence that he believed he was better than all the other candidates. In the event of a dispute the Tribunal found Mr Tait's evidence to be preferable.

183. The claimant' agent argued the claimant and a colleague had been interested in the Angolan job but neither had found any notifications of it. This was not considered material by the Tribunal. In any event the fact someone else appeared to be treated in the same way as the claimant (where there was no evidence that the other persons had made any disclosures) did not support the claimant's position that he was being singled out because of his disclosures.

184. The Tribunal did not accept the submissions that "once it had been confirmed to the claimant that he was not going to be assigned to Angola and would instead be staying in Glasgow in the role as a nautical instructor for the foreseeable future, it was clear to the claimant that the respondent had no plans for him to progress his career or return to Chevron Shipping in any capacity". While the claimant argued the role in Glasgow was a demotion, his LinkedIn profile stated that his roles had been increasing in responsibility. The Tribunal did not consider this to be an attempt to "to stall his progression and ultimately show him the door". The respondent was, like most employers, facing considerable challenges to its business and future. The respondent took steps to protect its position. The claimant had been treated fairly and reasonably in an attempt to find him alterative roles, given the nature of his contract. He had chosen not to become a local payroll employee and understood that by making that choice he was limited in his options. The options he had were fairly and reasonably progressed.

185. With regard to round 3 the claimant alleged the approach showed an attempt to treat the claimant unfairly. The Tribunal did not accept that submission.

While the claimant could not be criticised for not checking his emails when on leave, the claimant understood that the Transformation process was ongoing. He knew by not checking his emails it was possible he would miss a timescale or an important development. He had not advised his line manager or asked to be updated verbally. The respondent did give the claimant the opportunity of participating in round 3 and did consider writing him into a vacancy but it was clear that there was at least one candidate who the claimant and his witness accepted was readily capable and qualified. The respondent was satisfied there were a number of such candidates. The approach taken by the respondent on the facts given the context was not unreasonable or unfair and did not suggest an attempt to treat the claimant adversely because of his disclosures. While other employers may have handled the matter differently the Tribunal was satisfied the approach taken was fair and reasonable.

186. Finally with regard to round 4 the claimant argued he ought to have been given the Dubai role give he had carried it out. The role was given to the incumbent and had been doing an excellent job. While being an incumbent does not guarantee the role, it was a relevant factor. The role was a developmental role which the claimant had done for over 4 years. It normally lasted for around 3 years. The incumbent had been doing a good job and was in the course of the 3 year role. It was not unfair or unreasonable to make the decision the respondent did. The selection panel considered the claimant who was ranked second, and made a decision that was justified on the facts. The section was not illogical but one which a reasonable employer could make. The claimant's disclosures had no bearing upon this matter.

187. The Tribunal was satisfied from the evidence that the disclosures had no impact or relevance to the decisions that were taken.

Law

188. The parties had broadly agreed upon the relevant legal principles which can be summarised as follows.

Automatically unfair dismissal

189. Section 103A of the Employment Rights Act 1996 provides: "An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason for (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure."

190. The reason for a dismissal is "a set of facts known to the employer, or it may be of beliefs held by him which cause him to dismiss the employee" Cairns LJ in **Abernethy v Mott Hay and Anderson** 1974 ICR 323 at page 330B-C,

191. The Tribunal must focus on the decision to dismiss and asks itself what fact or belief caused the employer to reach that decision.

192. Decisions other than the decision to dismiss itself do not fall within the scope of s.103A. Thus if a redundant employee wishes to complain that they were selected for redundancy because they made a protected disclosure, there is a discrete protection afforded by section 105(6A). If the employee wishes to complain about decisions which were neither the decision to dismiss nor a decision to select for redundancy, then they may rely on the protection against subjection to detriment to be found in section 47B.

193. There is no basis for reading section 103A as if it covered all cases that fall within section 105(6A). To fall within section 103A it is not enough for a decision to dismiss to be in some way influenced by the fact that the employee made a protected disclosure – **Eiger v Korshunova** 2017 IRLR 115; it has to be the reason or the principal reason. If the reason or principal reason is redundancy (which section 105(6A) requires) it cannot also be the making of a protected disclosure. An employer cannot have two principal reasons.

194. In some limited cases it may be permissible for Tribunals to "look behind" the stated reason for dismissal. In **Jhuti v Royal Mail** 2020 ICR 731 the Supreme Court held that in general Tribunals should focus upon the reason given by the decision maker, subject to exceptions, such as where someone in the hierarchy of responsibility above the employee determines that for one reason the employer should be dismissed but that reason is hidden behind an invented reason which the decision maker adopts. In those exceptional cases

it is the Tribunal's duty to look beyond the invented reason. The Supreme Court noted that instances of decisions to dismiss in good faith, not just for a wrong reason, but or a reason which the employee's line manager has dishonestly constructed, will not be common. A reason cannot be imputed to the decision-making employee.

195. If the decision-making employee's reason or principal reason is redundancy, redundancy is the employer's reason.

196. Although the claimant does not have the burden of establishing that the reason (or principal reason) for dismissal was his making protected disclosures, he must produce some evidence to support his case (**Kuzel v Roche Products Ltd** [2008] ICR 799).

Unfair dismissal: redundancy

197. Section 98 of the Employment Rights Act 1996 provides (so far as is presently relevant):

> *"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –*
>
> *(a) the reason (or, if more than one, the principal reason) for the dismissal, and*
>
> *(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
>
> *(2) A reason falls within this subsection if it –*
>
> *…*
>
> *(c) is that the employee was redundant, …*
>
> *…"*

198. "Redundancy" is defined at ERA 1996, s. 139 as follows:

"(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to –

(a) the fact that his employer has ceased, 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."

199. The reason for a dismissal may be redundancy in circumstances where the employee's own job was not work of the particular kind for which the requirement had ceased or diminished (see **Murray v Foyle Meats Ltd** [1999] ICR 827). It is the requirement for employees to do work of a particular kind which is significant. The fact work is constant or increasing is irrelevant. Provided fewer employees are needed to do work of a particular kind there is a redundancy situation – **McCrea v Cullen** 1988 IRLR 30. It is important to consider whether the dismissal was attributable to the diminution or cessation of the requirements of the employer for employees to carry out work of particular kinds (which could involve work of several kinds) – **Contract Bottling Ltd v Cave** EAT/525/12.

200. The starting point for principles determining the fairness of a redundancy dismissal is **Williams v Compair Maxam** [1982] ICR 156. Issues of unfairness may arise if there is insufficient warning (to enable employees to understand what is likely to happen and to plan), insufficient consultation (to

agree how dismissals would be effected to limit the hardship where possible), a fair process of selection (avoiding, where possible, total reliance on subjective views of managers with a degree of objectivity and ensuring the process is fair in accordance with the criteria) or insufficient efforts to identify alternative employment. This provided guidance and the Tribunal should ensure the employer acts fairly and reasonably on the facts.

201. **Morgan v Welsh Rugby Union** [2011] IRLR 376 notes that when appointing individuals during a redundancy exercise, the employer is forward-looking and the process may centre on an assessment of the ability of the individual to perform in the role. It is recognised that the process may involve an element of judgment but it must ultimately be fair and reasonable in all the circumstances. That case involved the creation of new roles as opposed to fewer staff being required for existing roles. This was considered in **Gwynedd Council v Barratt** [2020] IRLR 847 (and on appeal 2021 IRLR 1028) and in **Green v London Borough of Barking** EAT/157/16 where the Employment Appeal Tribunal emphasised the Tribunal should consider the wording of the statute in assessing the fairness of the process and in particular noting that the employer must act within the range of reasonable responses at each stage of a reorganisation exercise and the guidance set out in **Williams** is relevant.

202. Another potentially fair reason is where the reason was some other substantial reason of a kind such as to justify the dismissal of an employee holding the position the employee held (section 98(1)(b)). Dismissals arising from business re-organisation can potentially fall within this category (**Hollister v National Farmers Union** [1979] ICR 542).

203. Were the Tribunal to conclude that there was some procedural unfairness in the dismissal, it should ask itself whether or not, had the procedure been a fair one, the claimant would have been dismissed in any event (**Polkey v AE Dayton Services Ltd** 1988] AC 344).

Submissions

204. Both parties provided detailed written submissions to which they both spoke having had the opportunity to comment upon each other's submissions. The

claimant's agent took the opportunity to provide supplementary written submissions and comment after the case had concluded. The parties' full submissions were fully taken into account (even if not referred to in full). The submissions are summarised where relevant below.

Discussion and decision

205. The Tribunal reached a unanimous decision on each of the issues and approaches the matter in the way the parties did.

Reason for dismissal – automatically unfair dismissal

Claimant's submissions

206. The claimant's agent argued that enough evidence had been led to suggest that the disclosures might have been the reason for his dismissal and the burden of proof rested with the respondent to show its reason for dismissal. Ultimately the tribunal has to be satisfied that the disclosure was the sole or principal reason for the dismissal.

207. The claimant's position in relation to the Transformation exercises that that was not the reason for his dismissal rather it was the mechanism by which his dismissal was secured. He maintains that Tait, Ross, Coombs, and Herron were all likely to be aware of his protected disclosures. The claimant's agent argued this was not a case where dismissal was a lengthy and carefully choreographed process which started in 2013 but rather the plan crystallised "at a later date" and that in the early years the respondent's priority was simply managing him closely, keeping a close eye on him whilst the legal and regulatory processes ran their course. It therefore does not undermine the claimant's position that the respondent made decisions or acted towards him in a way that was neutral or to his benefit in the period 2013 to 2018.

208. It was argued that things did change in 2018-2019. He took at face value the discussion about the Angola job a job which was ultimately told was his if he wanted it. He returned to Dubai to put his affairs in order ready for his move and it's at that stage that something did occur behind the scenes. He told about the contingency issue and accepted that thinking he would remain in

Dubai for a further year. Thing things took "a strange turn" in February 2019 when Mr Tait phoned him telling him firstly that he would be staying in to Dubai and then secondly that he would have to move to Glasgow. The claimant was being placed in circumstances in which it was probable that he would be a casualty of the transformation process. This was a decision that came from Mark Ross and was to be executed by Messrs Tait, Herron, and Coombs.

209. It was not said that Mesdames Gonzalez, White, Padilla, or Connolly acted out of knowledge of the disclosures. Given the way that the claimant had been positioned in Glasgow they were able to go about their business in the Transformation but unwittingly participate in a process that brought the claims employment to an end because of the disclosures he had made historically. Messrs Tait, Ross, Coombs, and Herron positioning the claimant in Glasgow in the way that they did they effectively contaminated the process and created a probability that he would be a casualty of the transformation process.

210. The claimant's agent argued this is a **Jhuti** type case with Tait and Ross as manipulators. He was positioned in Glasgow because of his disclosures and the residual discomfort that the caused the Shipping Senior team. They did so in the knowledge that given the claimant's resistance to accepting shoreside terms, Transformation would lead inevitably lead to his dismissal. The enforced move to Glasgow is what sealed the claimant's fate. Illustrated by analogy, if a person is placed on a train track and forcibly kept there, whilst the train will play its part in the ultimate demise, the real and principal reason for the demise is that the person was forced there and kept there.

Respondent's submissions

211. Senior counsel for the respondent noted there was no dispute that the claimant was "left standing". At that point he had no role to discharge. It is for that reason that the respondent terminated his employment. What happened to the claimant happened to all those left standing who did not secure another role. Even the claimant does not (in truth) argue that, once left standing, the reason for the decision to terminate was principally the fact that he had made protected disclosures. His case appears to be that earlier decisions had the

effect of leaving him redundant and that his having made protected disclosures was the reason for those earlier decisions.

212. Senior counsel for the respondent contended that the reason or principal reason for the dismissal was not the fact that the claimant had made protected disclosures but the fact that he was redundant. Since s. 103A is the only whistleblowing claim pleaded, it should be dismissed.

213. Senior counsel for the respondent argued that there was no evidence that the protected disclosures were the reason that the claimant was left standing. It was submitted that the claimant's case on this issue was wholly speculative. He is unable to be specific about the inferences that he wants drawn and even the broad unparticularised suggestion that the respondent wanted to be rid of him and took its chance during Transformation is inconsistent with the facts.

214. Put to him that he had no evidence to suggest that Mr Ross (whom he had identified as someone determined to be rid of him) was working actively to prevent him obtaining any of the roles for which he applied in the course of Transformation, he accepted the proposition. The best he could do was to suggest that it was significant that Mr Ross had not specifically emailed him thanks in July 2019 at the end of his time in Dubai. The claimant invited the Tribunal to conclude from the apparent absent of a specific thanks and congratulation not only that Mr Ross was hostile to him, but that he was hostile to him because he made disclosures and that he had as a matter of fact interfered with the Transformation Exercise. In other words, the whole case has to be inferred: what happened, who did it and why. It is a claim that should never have been brought.

215. When pushed to be clear as to what he was alleging, the claimant suggested that either Mr Ross specifically or, more nebulously, senior management had "grown tired" of managing the claimant's career (though there was no evidence that Mr Ross had been doing that either). If fatigue or ennui at micromanaging the claimant's career development had caused Mr Ross to force the Claimant's dismissal, his section 103A claim would inevitably fail as that weariness and not the PIDs, would be the principal reason for his

dismissal. Thus, his final formulation of his core allegation is not only pure speculation, but it would also not make out his claim even if true. The claimant's agent argued there was a malign motive behind the steps that were taken.

216. Senior counsel argued the way in which the claimant was handled showed they supported him and were not seeking to dismiss him contrary to the claimants agent assertion that the respondent was "trying to prevent the real story of the causes of the sinking of the Jascon 4 ever coming out"

217. With regard to the period from May 2013 to November 2019 senior counsel noted there was no evidence of either the claimant or anyone else making any relevant decision-maker aware that he had made disclosures. In the light of that obvious difficulty, the claimant attempts to fill the evidential gap by suggesting that knowledge and animus can be inferred from the respondent's conduct. However, at that point the claimant encounters the second difficulty: the respondent's conduct does not suggest any hostility towards the claimant either. On the contrary, what characterises the respondent's actions is a concern for his wellbeing and assistance to progress his career.

218. Starting with 28 May 2013, when the claimant left Nigeria, his own evidence is that it was to ensure his safety. The respondent made EAP assistance available. On his return home to Ireland, the Respondent paid for the claimant to receive support from a psychotherapist whose assistance he valued.

219. The claimant returned to work with a posting to a role as Marine Advisor Shuttle Tankers based in London by which time he had been certified fit for work and represented that he had no mental health problems.

220. The claimant identified two aspects of his career progression during this period that he suggests are somehow suspicious: he never went back to Africa; and each move he made was a "managed move".

221. As to the lack of a return to Africa:

    (1) The advice given to the respondent by the claimant's own therapist was that he should not return to Nigeria "for the foreseeable future".

The further advice was that if the claimant were to return to being a Mooring Master "it would be desirable that this would happen in a location where the demands of the position are at the mild to moderate end" which was "more likely to be possible in locations such as the USA or Australia rather than the African continent". The claimant was reported to be "enthusiastic" about the possibility of "taking up a supervisory compliance monitoring role of whatever sort that would provide him with some distance from his hands on experience";

(2) The first indication of the claimant being willing to return to Africa in any capacity was in 2018 when he applied for the role of Offshore Marine Adviser in Angola as part of the PDC process. He was conditionally selected for that role which is impossible to reconcile with the respondent being determined to keep him away from Africa. Mr Tait described the proposed move "the right thing to do" and a "forward move). The claimant's evidence was that Mark Ross also identified an Angola posting as a possible next career step but this cannot be reconciled with there being any perceived need to keep him away from the continent;

(3) Recognising the impossibility of reconciling his case on the point with the undisputed facts and contemporaneous documents, the claimant is reduced to suggesting that an undefined "something" changed between October 2018 (when the Angola role was first advertised) and October 2019 (when it was advertised for a second time, the incumbent's visa having expired). This position involves twin mysteries:

(a) What the respondent's difficulty with the claimant being in Africa is supposed, in fact to be, and

(b) What is supposed to have changed between the two PDC exercises.

222. The first has never been specified. The second now appears to be a "tiredness" with managing his career advancement. Legally, to be relevant at

all the "something" must be the claimant's protected disclosures. But those disclosures were made 6 years earlier. The first two were actually made in Africa. Why would that be an issue for the employer in 2019 if it had not been in 2018? Given that the protected disclosures are historic, why would it make any difference whether the claimant was in Africa or anywhere else?

223. As to the "managed moves", that is simply one of two ways that someone may come to be appointed to a post. Mr Ramachandran explained in his evidence that a managed move was the way that seafarers often came to be placed in on shore assignments.

224. The claimant seems never previously to have thought it sinister, still less to have objected to it. Indeed, during the course of the Transformation exercise he specifically asked to be "slotted in" to a role he understood was likely soon to be vacant. At the time of the assignments to London, San Ramon and Dubai, the respondent was looking to find a role that took account of the claimant's mental health. The first two were in the light of the advice from the claimant's therapist. Mr Cook told the Tribunal that that was the reason that he was placed in the Dubai role. It is not explained why the efforts specifically undertaken to assist the claimant are now said to indicate malice.

225. The role in London related to Shuttle tankers. As the claimant was a former master on shuttle tankers it leveraged his experience whilst meeting the requirement identified in the therapist's advice. The move to San Ramon after three months followed an incident in London. An investigation concluded that his actions at a dinner "constitute[d] a degree of sexual harassment" and that other behaviour had been "aggressive and threatening". In many employments a conclusion of that kind would have proven career-ending. In the claimant's case he was posted to California where he given a job helping to draft proposals for Marine Standards, which he accepted was work to which he was suited and which, again, matched the recommendation of his psychotherapist.

226. In 2015, the claimant was appointed to be Regional Marine Supervisor in Dubai. As both Mr Cook and the claimant himself confirmed, the role was seen

as developmental – one that would enable an employee to acquire the skills that he needed to make further career progress. The claimant's solicitor described the role as "senior and responsible". The claimant himself described it as "a great assignment". He thanked Mr Tait, a man that he now says was determined to be rid of him, for his "support and excellent leadership". That email was written at a point at which the claimant knew that he was going to Glasgow.

227. Before the Glasgow assignment, the claimant had applied in 2018 for the role in Angola described above. Although there is some dispute over the facts associated with the first application, it was conceded on behalf of the claimant that Mr Tait and Mr Davis were acting in good faith in respect of his application. It was competitive and he would have been appointed had the incumbent's visa not been renewed. The claimant was keen to do the role. As observed above, the enthusiastic support of his line managers for his application cannot be reconciled with the notion that there was no desire for him to make career progress or with an hostility to his working in Africa. Again, on the former point, Mr Tait had specifically stressed that it he saw it as a "forward move".

228. In 2019 the job became open for appointment again. The claimant alleges that, in effect, the availability of the role was concealed from him. There is no basis for such an allegation. The following factors point strongly away:

(1) The respondent's database suggests that the job was advertised, so the respondent would have had no reason to think that the claimant would not apply;

(2) In any event, nothing had happened in the period since the last application process that would explain the respondent's supposed reversal of position on its willingness to appoint the claimant;

(3) He was in no different a position to his colleague and since there is no reason to believe that the latter was "targeted" nor is there any reason to think the claimant was. Since his evidence was that his colleague

helped him set up the alert, any technical difficulty that affected the claimant's colleague would have affected them both; and

(4) If, as the claimant claims to have deduced from his body language at a seminar, Mr Tait was in some way complicit, Mr Tait's writing to the claimant to accept that more should have been done to bring the vacancy to the claimant's attention would be an irrational thing to do.

229. The final role was Glasgow. This role was said by the claimant's solicitor to amount to a big step backwards and that it was artificially created so as to put him in it. The claimant's suggestion seems to be both that it was created in order to facilitate his move into the Angola position and that it was created in order to put him in a position where he was then to be dismissed. However:

(1) The vacancy was not "created" for either purpose. It arose as a result of a decision on the part of Mr Ramachandran not to renew the engagement of a contractor;

(2) A decision having been made to end the assignment in Dubai. The assignment had already lasted much longer than originally envisaged and the claimant accepted that it had developed him as far as it could. The claimant needed a job to do. He might have been in a materially worse position during Transformation if he had been without a role at all; and

(3) If the respondent had meant the Nautical Instructor role to lead to the end of the claimant's employment, it would have required some degree of prophecy (as Transformation had not been announced at that point and the new proposed Shipping structure was still many months away). It is also impossible to reconcile any such intention with the offer made to the claimant to move to the local payroll. Had he accepted that offer, it would have all but guaranteed that he remained in employment.

230. As to the "step backwards", since no-one seems to have been suggesting that there would be anything to prevent him from applying for other roles

should any become available even if one assumed that it could be described as a step back, it was not a permanent assignment. A PDC exercise opened a month after his appointment.

231. Despite his dismissive view of the status of "lecturers", the claimant was thought to be well suited to the role. His own LinkedIn profile suggests that this was the latest stop in a trend of "increasing responsibility" and identifies the project the commercialisation project that he was given to work on as a particular achievement. It was a PSG 24 role that paid him more than he would have received as statutory professor at Oxford. The Claimant says that it was a PSG 23 role, though it is not clear why. In any event he would still be earning six figures. The claimant played the Glasgow role down in his evidence before the Tribunal for much the same reason he admits he played it up on his LinkedIn page; it is to his material advantage to do so.

(ii) From December 2019 until December 2020

232. There is no evidence that the protected disclosures made by the claimant 7 years earlier made any difference to how he was treated during the course of Transformation.

233. There were three seafarers on special assignment to the learning team during Transformation. Like the claimant, their roles were in scope. Like the claimant, they were limited to applying for ex pat eligible jobs at home and abroad unless they elected to convert to local payroll. The claimant accepted that their treatment was identical to his. The claimant's agent tried to distinguish their positions on the basis that they were more inclined to move to local payroll but that is irrelevant: the question is not what their preference was but whether there is any indication that the claimant was treated differently. If not, there is no disparity in treatment for which having made a protected disclosure needs to be invoked as an explanation. Otherwise, his real complaint is that he did not get especially favourable treatment.

234. The only other basis identified for an inference is that the claimant says he should so obviously have been appointed to:

(1) The Round 3 Marine Superintendent role in Angola; or

(2) The Round 4 Marine Superintendent role in Dubai;

that his protected disclosures are the only possible explanation. But there is a ready explanation, which is that the respondent simply appointed the people that they thought were best suited to the roles and who best served the needs of the business.

235. Taking the round 3 role first. There was an issue as to whether or not the claimant should be permitted to participate in the process at all. Ms Gonzales was concerned that he did not meet the necessary minimum PSG equivalent. Within 4 hours of her email, Messrs Herron and Coombs had concluded that he should be permitted to participate in round 3. There is no credible explanation for why, if by this point the respondent had resolved to do what it could to be rid of him, it would have allowed him to participate in Round 3. For all the respondent knew, once given access to the CTO system on 19 August 2020, the claimant would have made an application. The claimant did not meet the deadline. At that point the respondent had a further opportunity to simply rule him out. Instead, it was decided to see whether or not he could be "written in". Again, why even enquire if the intention is to prevent him getting that (or any) job? The job owner's response was that there were "stronger candidates on the slate".

236. There is no evidence that the job owner or his delegate had any knowledge at all of the protected disclosures, still less that they were the reason for not allowing him to be a write in candidate. Even doing his very best for the claimant, Mr Cook had to accept that Mr Bickerdike was a strong candidate, so there is nothing obviously irrational about their view. Quite why second ranked would not have been a strong candidate is not explained. Mr Cook was disparaging of Mr Hendry, but, unlike the claimant, he had been a Marine Superintendent at a Terminal and had management (as opposed to command) experience. Mr Cook complained that Mr Hendry's port was not a deep water terminal. However, the claimant had not been a Marine Superintendent in a deep water port either. There was no explanation given

as to why a Marine Superintendent would need a detailed knowledge of the dynamic forces applied to Offshore structures in circumstances where he would have had senior and experienced people with precisely such knowledge available to assist him.

237. However, it was submitted that the claimant's arguments are ultimately defeated by his own evidence. He says that Mr Hendry was the weakest of all the candidates. The consequence of that analysis is that all other candidates are in precisely the same position as the claimant; beaten to the job by a weaker candidate. In those circumstances, it is impossible to conclude that he was in any way singled out because of his protected disclosures.

238. The claimant's agent argued that Mr Hendry should not have been on the shortlist let alone appointed. It was a managed arbitrary move.

239. Turning to the Dubai role, the reason why the claimant was not appointed was the very reason given to him before he applied: Mr Chittaboine was only recently appointed. He was an incumbent in a development role that the claimant had already performed. The claimant's email of 24 September 2020 makes it clear that he was applying on a "just in case" basis. His position at the time was not that it would be irrational to appoint anyone other than him. It is not perverse of Mr Tait to reach the conclusion that it better met the needs of the business to keep someone in need of development in a development role in which he was performing well; quite the contrary.

240. The claimant's agent argued the process was no more than the job holder picking whoever he preferred irrespective of merit or suitability for the job role.

Decision on automatically unfair dismissal

241. The Tribunal considered the evidence led in detail. As set out above the Tribunal found no evidence that would allow the Tribunal to find that the disclosures were in any way related to the decision to dismissal the claimant or the circumstances that led to his dismissal. The Tribunal finds that the senior counsel for the respondent's submissions have merit. The Tribunal having analysed the evidence in detail finds no connection between the

disclosures that were made and the decision to dismiss the claimant (and the other decisions that were made prior to his dismissal). The approach the respondent took was to support the claimant and find suitable roles for him, The claimant chose to be an expat employee with the terms and conditions attached. That meant he would ordinarily be placed in different places.

242. The disclosures the claimant made were unconnected to the claimant's dismissal and are dismissed. The Tribunal carefully considered each of the inferences the claimant asked the Tribunal make but for the reasons set out above was not prepared to make such an inference. The facts as found by the Tribunal did not support the assertion that the disclosures were in any way linked to the treatment of the claimant.

243. In important respects the claimant was supported by the respondent and given assistance with a view to retaining the claimant on a long term basis. That included raising the issue of payroll conversion to allow the claimant to become a local payroll employee (and thereby retain the role had had been given). The fact the claimant was given the Dubai role was also supportive of him, something his line manager (and witness) considered in the claimant's best interests (and not for any negative reasons as alleged by the claimant in his witness statement). That was a sought after role in an area that was attractive to the claimant (and others) and was a developmental role. The claimant was also given access to round 3 roles during transformation, had he kept up to date with the timescales. There were a number of opportunities to have dismissed the claimant prior to the transformation exercise had the respondent wished to do so (such as in relation to the incident in Christmas).

244. In short the facts do not support the assertion that the dismissal was connected in any sense to the disclosures. The respondent supported the claimant and offered a number of roles that objectively viewed were positive. That included the Glasgow role which objectively viewed was a good move. Although the claimant saw that move as a transitional step (to Angola) in principle there was nothing to stop the claimant from accepting that role and seeking other roles in the usual manner. His salary and benefits package was retained and he was not required to convert to shoreside payroll. Had he

accepted the change it is likely the claimant would have retained his position but for financial reasons was unable to do so. The claimant was not put under any pressure to accept such a change. He chose to accept the risk. The claimant himself suggested in his Linkedin profile that his moved resulted in increasing responsibility and suggested himself the Glasgow role was a positive move. It gave the claimant new skills and allowed him to develop himself as a stepping stone elsewhere in the normal course.

245. Those making the decisions were unaware of the disclosures relied upon and there was no evidence the requirements within **Jhuti** had been established to allow the disclosures to be considered a reason for the dismissal. The Tribunal was satisfied that the conditions set out in **Jhuti** had not been met in this case and the respondent's senior counsel's submissions have merit. The reason for the dismissal was entirely unconnected with the disclosures (which were unknown to those who made the decisions). It was also not appropriate on the evidence to make the inferences sought by the claimant's agent.

246. The claimant had the opportunity to become a local employee and thereby significantly (it not totally) reduce the risk that he would be left standing. That in itself indicated that the respondent was seeking to support the claimant and was not at any time seeking to manoeuvre the claimant into a position that his dismissal was inevitable.

247. The respondent's senior counsel's submissions as set out above have merit and show why from the facts as found, the reason for the dismissal was not in any sense connected to any of the disclosures the claimant made. The claimant was given a fair opportunity to be considered for the available roles. He was shortlisted for one role and genuine consideration was given to the claimant's appointment. In each of the applications made by the claimant, the successful candidate was, from the evidence before the Tribunal, clearly appointable. The decision not to appoint the claimant to any of the roles (nor to slot the claimant into a position) was in no sense whatsoever related to any disclosure the claimant made. The given business reasons were the set of facts or beliefs the respondent had for the decisions they took, unconnected to any disclosure. The Tribunal did not accept the claimant's agent's

submission that the claimant's dismissal had in some way been planned and was related to his disclosures. That was not the position found by the Tribunal.

248. The claimant's agent argued matters changed at the time the Angola job was offered to the claimant. The Tribunal carefully considered each of the claimant's arguments and the evidence but did not consider them to be meritorious. The respondent acted in good faith, offering the claimant the role on a contingent basis (which was how it had been advertised). There was no reason why the respondent would have done so if it did not intend to provide the claimant with the role. The fact the claimant did not see the job re-advertised when it became available was not the respondent's fault. There was no reason why the respondent would necessarily tell the claimant when the role became available given he had moved on, but it was recognised that the failure to tell the claimant about it was regrettable. The respondent acted in good faith and the approach the respondent took was supportive of the claimant, acting in an attempt to develop his skills and allow him to identify a suitable role in light of his skills and experience. The claimant accepted he had no evidence that the reason for his dismissal was in any way connected to the disclosures, arguing it was his belief. That was not in dispute but from the evidence before the Tribunal that belief was entirely misplaced.

249. Having carefully assessed the evidence and the submissions by the claimant, the Tribunal finds that none of the disclosures relied upon were the principal or sole reason for the dismissal. The disclosures were entirely unconnected to the decision to dismiss the claimant.

250. The claimant's claim that he had been automatically unfairly dismissed is therefore ill founded.

Unfair dismissal

Was there a redundancy situation?

251. The claimant's agent observed that the respondent does not have to show a diminution or anticipated diminution in the work that the claimant did or could be asked to do under his contract but needs to show that it had it had a

diminishing requirement for employees of a particular kind somewhere in its business and then show that the claimant's dismissal was attributable to that state of affairs.

252. It was submitted that the respondent had not identified the work of a particular kind for which it had a diminishing need. There was reference to reducing the number of "Midstream" or "Shoreside" employees but these terms do not describe work done by employees of a particular kind. They are generic descriptions of parts of the shipping business and describe employees who carry out a number of different work types. The reality was that the respondent was simply cutting headcount and there was no evidence that it directed its mind to where the reduction would come from. Put simply, it was not particular where the reduction came from.

253. If that was wrong, the respondent failed to show that the claimant's dismissal was attributable to the diminishing need. The claimant was a Seafarer. Seafarers were specifically excluded from the Transformation exercise and deemed out of scope. If Seafarers were out of scope, then the Transformation Process could not and should not have led to the claimant's dismissal.

254. It was irrelevant that the claimant did not say during the process that he was out of scope. The burden of proof on showing a potentially fair reason existed rests with the respondent. It is for the respondent to show that putting the claimant in scope was reasonable.

Decision on the reason for dismissal

255. The Tribunal considered the evidence. The Tribunal was satisfied that the reason for the claimant's dismissal was redundancy as defined above. There was a diminution in the requirements of the respondent for workers of a particular kind. The requirement for staff to carry out work had diminished. The diminution was in respect of the decreased numbers of posts the respondent was able to sustain. Given the context in which the respondent operated at the time, a commercial decision had been taken to significantly reduce the workforce by cutting the number of positions. The price of oil had reduced and there were significant pressures upon the business. The

transformation process was instigated, amongst other things, to reduce the number of posts by a significant extent. That was not disputed by the claimant. The evidence before the Tribunal was that there were particular positions that the respondent had decided to remove from the organisational structure. In other words, fewer employees were needed by the respondent to carry out particular work (the work carried out by those whose positions had been removed) and the claimant was dismissed for that reason.

256. The Tribunal considered that the position the claimant carried on had not itself been identified as a position which was to be removed. However, the issue is whether the claimant was dismissed because the respondent had a diminution in requirements for employees to carry out work of a particular kind. The claimant's agent is correct in the words of the statute have to be given a meaning but the Tribunal must assess whether or not the state of affairs set out in the statute exists. There were roles of a particular kind the need for which had diminished. The respondent had taken a commercial decision to reduce headcount in the relevant area of the business by 10% (with thousands of roles disappearing and more changing). The fact there had been a headcount reduction was not challenged by the claimant. There were undoubtedly fewer particular jobs within the organisation as a result of the process and the claimant was dismissed because of the reduced need for employees of a particular kind (those which had disappeared or changed).

257. The statute does not require it to be the claimant's role which had ceased or diminished but rather the reason for the dismissal was because the employer had a diminished need for employees to carry out work of a particular kind or in the place they were employed. That was a state of affairs that existed in this case. The respondent required fewer employees to carry out work in the areas that posts were disappearing.

258. It was also the case that the role the claimant carried out in Glasgow, which was hitherto open to those on an ex pat contract, was no longer a role that was being offered to those on such a contract. That particular role, an ex pat role in Glasgow, no longer existed. The Tribunal did not consider that, however, to be relevant in assessing whether the claimant was dismissed by

reason of redundancy, given his role still existed. He was, however, dismissed because the respondent required fewer employees to do work of a particular kind which satisfied the legal definition.

259. The claimant's dismissal was wholly or mainly attributable to the fact the requirements of the business for employees to carry out work of a particular kind had ceased or diminished or was expected to cease or diminish.

260. If the Tribunal was wrong in this regard the Tribunal would have found that he claimant was dismissed for some other substantial reason justifying his dismissal. The reason why the respondent had dismissed the claimant (and a large number of other staff) was due to compelling commercial reasons given the context of the business at the time the decision was made. There were substantially reduced oil. The environment was very challenging. A global pandemic had arisen. There was a substantial reason of a kind such as to justify the dismissal of an employee holding the position the claimant did. This was not something the claimant had challenged and in any event was demonstrably the case. There were seismic changes within the industry and environment in which the respondent operated and steps were being taken to reduce headcount and streamline the organisation to ensure it was capable of meeting the challenges ahead. The claimant was, in the alternative, dismissed for that reason, which is a potentially fair reason.

261. The claimant's dismissal was therefore for a potentially fair reason. The next issue is whether the respondent acted fairly and reasonably in all the circumstances in treating that reason as sufficient to dismiss.

Claimant's submission on fairness

262. The claimant's agent argued that the respondent specifically excluded seafarers from the exercise. It's witnesses could not explain why this was so one describing the claimant's circumstances as a "grey area". There was no evidence at all that the respondent had in any way applied its mind as to how to treat the Seafarers temporarily working shoreside on special assignments such as the claimant. Either deliberately or unthinkingly, the respondent allowed the claimant and limited number of others in his circumstances to

become caught up in a headcount reduction exercise which did not involve them. To quote Ms White "…all I know is he was sitting in one of my jobs". The claimant's contract contained terms which dictated what happened at the end of an assignment: he went on standby or went on to a new posting. Ms Padilla said it was not uncommon for seafarers to work shoreside and then simply return to fleet.

263. With regard to consultation, that was said to be an exercise of form over substance. The Transformation process was designed to reduce headcount in the most efficient and speedy way possible. That led to a lack of meaningful consultation and lack of transparency. Consultation appears to have been essentially self-service given the superficial evidence led about teams calls and websites where employees could access information. There has been no evidence about what was said on calls or what information was imparted. The claimant seems to have little or no understanding of the process

264. The claimant was not permitted to write a self-assessment document explaining why he was a good fit for the various jobs that he was allowed to apply for. He was not given the opportunity to attend a meeting with a decision maker and make his own case. Short listing was done privately by the relevant manager. Discussion at selection events focused solely on shortlisted candidates and the reality is that most shortlisted candidates were appointed. His appointed representative did not fight his corner if he was not shortlisted and in relation to the one job that he was shortlisted for agreed with the preference of the job sponsor Mr Tait. Quite simply he had no voice in the process. He was not told why he had been unsuccessful and so had no opportunity to challenge the respondent's decisions.

265. It was alleged that "doors were slamming in the claimant's face throughout 2020" and there was a collective closed mind towards the claimant's attempts to return to fleet or otherwise find a challenging role. The first Angola job disappeared for him in at best mysterious circumstances. He was told that if he wanted to stay in Glasgow, he would have to go on shoreside terms. His approach to Ms White regarding Cabinda and the Marine Assurance roles

was shrugged off. His approaches to Mr Tait and other regarding Round 4 jobs were met with indifference.

266. He was wrongly deemed ineligible for Round 3 which caused him to miss the deadline. He was strong candidate on a weak list candidate. The list contained only one strong candidate. He could and should have been written in but wasn't. He was not written in because Mr Hendry had already been earmarked for the job. On any analysis he was a better suited candidate than Mr Hendry

267. Mr Tait gave the incumbent in the Dubai role the job on the basis that he was the incumbent. The Respondent's FAQ states that this should not have happened, and that selection should have been on merit and suitability for the role. The reality is that Mr Chittaboine was managed into this role and had always been Mr Tait's preference. The claimant was simply not considered for this role at all by Mr Tait.

268. The London and Singapore positions were offered to locally resident employees who were either on a shoreside contract or prepared to transfer to such a contract. Missy Connolly who shortlisted for those roles did not know of the claimant's experience that would have made him suitable for these roles. When asked why the claimant was not shortlisted, she ignored the question and spoke about that fact that the two successful candidates were resident in the required locations and agreed to shoreside contracts. In truth no proper consideration was given at all to the claimant's application for any of the roles. There was a dismissal mindset caused by the fact that he was on an ex-pat contract. The inference could be drawn that one of the secret objectives of the Transformation exercise was to get as many employees as possible off those contracts.

269. Finally, if the respondent had acted reasonably in seeking another post for the claimant it would simply have returned him to fleet as he had been asking for over a year.

270. In respect of Polkey, given the closed mind of the respondent's decision makers, it is not possible to recreate the world as it might have been. These

were failure of substance not procedure. If that is wrong and it is permissible for the tribunal to ask what would have happened if the Respondent had given genuine and proper consideration to the claimant's applications and circumstances generally, he would have been appointed written in to the Round 3 role, been offered the Dubai job or one the London or Singapore jobs.

271. Further if was a procedural error not to appreciate that the claimant was out of scope then if the respondent had addressed its mind to that fact, it would have returned him to fleet.

Respondent's submissions and comments by the claimant's agent

272. The claimant was a seafarer and thus outside the scope of the Transformation Exercise. There is no dispute that, as a matter of fact, the claimant's role was placed in scope and, as consequence, so was he. Nor is there any dispute that, as a matter of fact, that reflected a business decision that the roles performed by mariners on special assignment should be included in the Transformation exercise.

273. The claimant's agent argued there was no evidence of this being any form of reasoned business decision to place. The respondent placed roles in scope they did not place people in scope. They gave no thought at all to the fact that some roles were occupied by Seafarers. The claimant was treated as though he was a shoreside employee not Seafarer.

274. Senior counsel for the respondent noted there seem to be two arguments being run by the claimant. The first, and most extreme, is that it was not open to the respondent to make the decision that it did, i.e. that it was unfair to include mariners on shore-based special assignment. The answers to that argument are that the decision as to the proper scope of the exercise is a business decision for the Chevron Group Management. The Tribunal is effectively being invited to substitute its view for that of the Respondent on a matter of business judgement. In any event, the decision is obviously fair. That is true whether one focuses on roles or on people:

275. If the roles performed by mariners on assignment were excluded from Transformation it was said to lead to perverse and unfair situations. For example, the respondent would not have been able to move the claimant's Nautical Instructor job back to being a job for locally-based staff. The mere fact that the job happened to be performed by someone employed on a seafarer's contract would require the respondent to maintain it as an expat-eligible role. If the intention had been to eliminate the role, that would not have been open to the respondent, on the claimant's argument.

276. The claimant's agent argued this analysis was flawed as the respondent could make the roles shoreside and return Seafaring job holders to fleet or find a seafaring role for them. The respondent failed to appreciate or understand its contractual relationship with Seafarers even though they created the relationship and the claimant's circumstances were not considered at all.

277. Senior counsel for the respondent observed that if the roles were in scope but the ex-pat incumbents were outside the scope of Transformation, an incumbent seafarer who wanted to remain in post would not be able to apply for their own job. That would have been so even if they were the best candidate and the respondent wanted to keep them where they were.

278. The claimant's agent disagreed as the respondent dealt with this issue repeatedly during Transformation. It told people they would remain in post if they would agree to shoreside terms (see London and Singapore). Many did agree. The claimant did not. That was his contractual entitlement. If Seafarer and respondent want the same outcome, they simply varied their contractual terms. It was perverse to dismiss a Seafarer from a temporary shoreside job that he did not want in the first place without considering at all the nature of the contractual relationship. This represents yet more clear evidence showing that the real flaw in the process was that it focused on the role only and ignored the circumstances of the role holder.

279. Senior counsel noted the second argument was, in effect, that whilst both the claimant's role and in consequence the claimant could properly be included in scope, if it transpired that he was left standing he should be immune for

dismissal for redundancy. That seems to be the suggestion that arises from the references to the contract providing for "standby" at the end of a seafaring assignment.

280. Senior counsel suggested there was an obvious problem with this argument: "Imagine, for instance, that the decision as to who was in scope was reversed so that the only jobs in scope were roles on ships and the only people in scope were the mariners who performed them. On the claimant's argument, the redundancy exercise would be pointless. They might identify 15% of the fleet complement as redundant, but they would be entitled to sit on standby until something else came up. The answer is that provisions relating what is to happen to employees between assignments cannot be read as applying to situations where they have been identified as redundant."

281. The claimant's agent argued this submission was misplaced. The claimant's argument was only made in connection with being shoreside temporarily during a shoreside headcount reduction argument. If the respondent had a diminishing requirement for Seafarers, it could have carried out a selection in that population and then exercise the powers of termination that were applicable in the Seafaring terms and conditions. The claimant did not and does not argue that he should have remained on standby indefinitely. There was no diminishing requirement for Mooring Masters and so the claimant should have returned to fleet. Standby simply provides pay for the gap period between assignments.

282. Senior counsel for the respondent set out another problem with the claimant's argument: it leads to extravagant unfairness. The claimant says, in effect, that though immune to dismissal, he should be entitled to apply for jobs during Transformation. If he beats a competitor to a job, they may be dismissed. If they succeed, he remains employed. He is able to transfer the risk of termination entirely to those colleagues with whom he is competing for roles.

283. Finally, it should be noted that neither formulation of the argument was one that he advanced at the time of his dismissal. Nor, it would appear did any of the other people in comparable positions.

284. With regard to the argument the claimant was not redundant because there is no reduction in the need for Mooring Masters, senior counsel for the respondent noted this is a point which the claimant did not expressly plead.

285. Mooring Master roles were not in scope for Transformation. It is correct, therefore, to say that there was no reduction in the requirement for Mooring Masters. However, that is irrelevant because the claimant was not redundant because the respondent needed fewer Mooring Masters. He was redundant because the respondent required fewer employees across a wide range of roles and, at the end of the Transformation process, the claimant was left standing without a role to perform. As Murray makes clear, that is still a redundancy dismissal. Even if it were not, it would still be a substantial reason of a kind such as to justify a dismissal within the meaning of ERA 1996, s. 98(1)(b).

286. The claimant's agent argued in response that the particular work type should be identified and had not been so in this case.

287. With regard to the argument the respondent's selection exercise was a sham with decisions having been taken in advance as to whom to appoint, one approach could have been to identify who was in a role affected by Transformation, select them for redundancy and then look at any vacancy that emerged in the period before employment terminated. In the claimant's case, the respondent could have told the claimant that his role was to become local-based; that that meant the claimant could not stay in role; and unless another role arose he would be dismissed.

288. The exercise of opening up jobs for application was intended not only to give employees the chance to compete for jobs without there needing to be a specific vacancy but also to help ensure that the respondent was able to make sure that those they considered the best candidates were appointed to the right roles. As in Morgan it was a "forward-looking" exercise. However, the consequence of taking this approach was to generate a task in which allocation of a huge number of jobs had to be performed in a very limited time.

289. The claimant's agent argued this ignores the respondent's own evidence since these were not new jobs. Appointments were said to be made on the basis of capability, qualification and fit for the current role. In some cases that we heard about incumbents were appointed because they were incumbents (London / Singapore). It was not forward looking and no witness or document said that it was. The priorities appeared to be local candidates prepared to accept shoreside terms. The focus was on cost not capability.

290. The respondent argued that this approach is an unfamiliar one in the UK but was an approach which, of necessity, was to apply globally and which leveraged a model that the business was already familiar with; the PDC.

291. The claimant's agent argued this was tantamount to an admission that the exercise was too big and too onerous to be fair

292. Senior counsel for the respondent state that in this model, the role of job owner (or delegate) is of critical importance. They know the requirements of the job better than anyone and, in most cases, have a good working knowledge of the skills and experience of the candidates for the roles. It is the job owner who is given the responsibility of shortlisting candidates with the assistance of their delegate or "selection representative". The process could have simply stopped there. The job owner could have been left to choose who to appoint without further process. However, process provides for additional steps and involvement of others in order to maximise fairness and transparency.

293. The claimant's agent argued that the reality was that the process did stop there. Job holders selected a short list and the shortlist was ranked. Selection event discussion (to the extent that there was any) appeared to focus on the shortlisted candidates only with representative likely to defer to job owners.

294. Senior counsel for the respondent argued there was a selection event and the shortlist is not finalised until the selection meeting discussion takes place. The job owner can be asked to explain his shortlisting by a diversity and inclusion representative who was specifically tasked with the ensuring that decisions were not the product of bias. The employee has a selection representative of

their own (the ROM rep) in the room who can challenge a shortlisting decision if they consider there is a case to be made. An HR representative is also present to ensure procedural propriety. Together they form the "selection team" and the selection decision is owned collectively. There are clear examples of candidates who are shortlisted and ranked 1 who do not get the job. The claimant's agent argued the reality was different.

295. Senior counsel for the respondent submitted it was important to appreciate what is not claimed for the selection event. First, it is not an exercise into which the job owner is required to enter with a completely open mind. That is clear from the fact that they are required to create a shortlist and rank those on it before the event takes place. Second, the ROM reps are not expected to fight their employee's corner even where it is plain that they are not the best candidate. The ROM rep is also part of the selection team. It is not a trial; it is a job selection.

296. In reply the claimant's agent argued a basic requirement of a fair redundancy process where selection is in play in the UK is giving the at-risk employee a chance to challenge their scoring or persuade decisions makers to appoint them to a vacancy or alternative role. It is never described as a trial and it is not clear why the respondent refers to that now. It is more often thought of as a chance for an employee to persuade a decision maker to keep him or her in employment: you should have given me more points or I am very well suited to that role The reality is that the ROM reps were there to help the Job Holders to reach the right result for Chevron. Their priority was the welfare of Chevron not the employee. Not only was the claimant's own voice not heard in the process, but no one also else was speaking for the claimant.

297. Potential candidates were invited to reach out to job holders to discuss positions in which they were interested. Where, in the job owner's view, prospects were poor, fairness obliged them to say so. To do otherwise would be to encourage a candidate to waste one of their limited number of possible applications. The claimant himself contacted Mr Tait about the Dubai job and got an entirely straight answer.

298. The claimant's agent argued Mr Tait "encouraged him to apply when he already knew that he wanted the incumbent not the claimant".

299. Criticism of decisions having been made in advance is misplaced because the evidence upon which it is based is either:

(1) Properly understood realistic and truthful advice about prospects communicated in the interests of fairness;

(2) A shortlisting process that was expressly provided for in the process itself; or

(3) Representative of a misunderstanding of the nature and purpose of selection event.

300. The claimant's agent submitted that "PDC and Transformation were simply vehicles designed to give the appearance of fairness and transparency".

301. The selection exercise was unfair because there was insufficient consultation:

302. The familiar pattern in the UK is a series of consultation meetings which deal with warning, selection and then efforts to find alternative employment. Given the process adopted in this case, a linear approach of that kind was impossible. Instead, the business adopted a wide range of measures to enable employees affected to receive the information and assistance that they needed despite lockdown. These measures included:

(1) Explanatory videos;

(2) Online engagement meetings;

(3) Meetings at team level;

(4) Access to HR Partners;

(5) Access to job owners;

(6) The EAP

(7) Web-based materials including dedicated transformation websites and a detailed FAQ;

(8) Guidance sessions on coping with change and maintaining a healthy mind;

(9) Guidance on how best to prepare for selection; and

(10) Appointment of and access to a ROM Rep.

303. In reply the claimant's agent argued no substance had been provided as to this and the onus was on the employees to ask to be consulted with self-service consultation.

304. With regard to the argument that the selection was perverse, with regard to round 3 selection, senior counsel for the respondent argued it was not perverse to fail to give the job of Superintendent Marine in Cabinda to the claimant because he was not a candidate for selection. The reason for that was twofold:

(1) He did not make an application in time, despite having been given the ability to do so. His initial explanation that he did not see the email on 19 August 2020 because he was on holiday is contradicted by his own time records. This resulted in the job owner having to be consulted as to whether or not he should be allowed to be a write in candidate.

305. The claimant's agent argued the respondent wrongly rendered him ineligible, gave him access for a day then refused to walk him in despite a desperately weak candidate list

(2) The job owner decided that the existing slate of applications was sufficiently strong that adding the claimant would not materially affect the outcome.

306. The claimant's agent argued not writing him in was perverse. Mr Hendry was managed into the role despite his obvious lack of qualification and experience.

307. There is no basis for suggesting that the job owner's view was reached other than in good faith. This was disputed by the claimant's agent who argued the two best candidates (in fact the only two qualified) were both rejected and the 3rd ranked candidate appointed.

308. If it was in any way unfair to omit the claimant from the candidate list, it is contended that the outcome would have been the same in any event. Mr Hendry would have been appointed. Polkey would, in those circumstances, have the effect that no compensatory award should be made.

309. The claimant's agent argued no employer acting reasonably would have appointed Mr Hendry over the claimant.

310. With regard to round 4 selection, there were four roles for which the claimant applied. In his witness statement he relied on three of them as roles he says he should have been appointed to.

311. The first was the Regional Marine Superintendent Role in Dubai. The rationality of that the appointment to that role was set out above.

312. The second is Marine Superintendent in London. That role went to someone who was local-based. The claimant was not prepared to transfer to local terms. Ms Connolly explained why she chose the successful candidate. He was not chosen merely because, as a locally-based employee he was cheaper. She also discussed his experience. There was a curious exchange where suggestions were made to her about the claimant's experience and she was asked if she was aware of certain experience that it was claimed he had. She said that she was not. However, what was not put to her is any suggestion that that information was actually before her. Nor does the Claimant's witness suggest that it was. Nor did he say it was in his oral testimony.

313. The third was Singapore Marine Superintendent. The roles went to one local candidate and one incumbent who swapped to local terms. The roles related to the LNG fleet which the claimant accepted was not a fleet he had served in.

314. The claimant's agent argued that in relation to Dubai, the decision was made on the basis of incumbency and so the claimant was not considered for this role at all.

315. Ms Connolly did not mention LNC or gas experience and that was not the reason the claimant was not shortlisted. When asked why she did not shortlist the claimant she gave an answer about why she appointed the successful candidates. That was based on them agreeing shoreside contracts and the fact that they were living in the job location. The appointment had nothing to do with who was the best candidate for the role. It was submitted the claimant was not considered at all for this role.

316. Senior counsel argued appointments were made in good faith, being decisions open to a reasonable employer. Even if some procedural unfairness can be identified (which it cannot), there is no realistic prospect that the claimant would have been appointed and Polkey applies.

317. The claimant's agent argued he was not genuinely considered for the roles and the selections were clearly pre-determined and the claimant did not stand a chance with any of them.

Decision on fairness of the dismissal

318. The Tribunal carefully considered the facts in light of the applicable legal principles in this area having found that the reason for the claimant's dismissal was a potentially fair one, being redundancy or some other substantial reason of a kind to justify his dismissal. The next issue was whether or not the dismissal for that reason was fair in all the circumstances.

319. The respondent had given as much warning as to the possibility of impending redundancies to enable employees to take early steps to inform themselves of the facts and take steps to protect their position. The claimant had been given opportunities, for example, to consider conversion to local payroll (to maximise his position given the financial challenges likely to arise) and to apply for other roles. There had been significant forewarning of the process and its impact to the claimant and his colleagues and the respondent had

taken significant steps to publicise the process and how it would impact upon staff generally and specifically.

320. A process had been devised that sought to take into account the specific needs of the business while seeking to ensure a reasonably objective process was undertaken. In the absence of a trade union this was a matter the respondent had carried out and communicated clearly and at length to staff. Staff views had been sought. The claimant had been advised at various junctures as to the approach being taken both in relation to the generality (in terms of the process) but also in relation to the specific position as it impacted upon his team at the time. He had the opportunity, if he wished to take it, to get involved in the process and give views as to the approach and ways to minimise the impact. There had been direct communication via email and in team meetings together with online updates and sessions together with an online portal. This was not disputed by the claimant, albeit he chose not to fully engage in or with it.

321. The Tribunal did not consider the claimant's agent's submissions with regard to the unfairness of the dismissal and process to have merit. The process that was undertaken was undertaken in this case in good faith. The claimant was given a number of opportunities in respect of roles for which he was interested, his position having become at risk. He did not apply for the role he was carrying out at the time (as he wished to remain on his ex pat contract, albeit he had been given the opportunity to revert to local terms) and he chose to apply for 4 other roles. He did not ask to return to fleet when he applied for the roles nor when the outcome was given to him (when he was given the opportunity to ask any question or seek information) nor did he present any challenge to the approach taken and engaged with the process. The claimant participated in the process in good faith as the respondent had. Regrettably no alternative was found for the claimant but he was properly considered for the roles he had sought, the claimant having set out his relevant experience and engaged with the job holders and his representative.

322. The process itself and procedure was a process that fell within the range of reasonable responses open to a reasonable employer. While there were other

ways of carrying out the process, an equally reasonable employer could carry out the process in the way the respondent did in this case, both generally and specifically in relation to the claimant. The procedure that led to the claimant's dismissal on the facts fell within the range of responses open to a reasonable employer.

323. Having identified the vacancies and process, staff were given a fair opportunity to apply for the available roles. Staff were encouraged to speak with the line manager of the role in which they were interested both to find out more about role and their fit with it but also to ensure the role owner knew about the individual and their skill set and fit for the role. Staff also had the opportunity to ensure the person at the meeting had full information about the individual and could ensure, where relevant, the decision makers were fully equipped with information necessary to allow a fair decision to be taken. The independent member was also present during the discussion to ensure a fair and robust discussion took place, rather than a fair accompli.

324. The process was not perfect but it was reasonable and fair. The decision in respect of each of the roles was taken in a fair and reasonable way. The assessment was based on a forward looking basis. Decisions were taken based on the knowledge of the candidates and the requirements of the business for the role in question which had been set out in advance. While some employers may have taken notes and carried out a formal assessment process, in this case the discussions that took place were based upon known roles and criteria for each role and the candidates' knowledge and experience was assessed in light of the role and the information about each of the candidates. Each candidate had the same opportunity to ensure those making the decisions were fully informed. Each candidate had a representative who would ensure the candidate's position was considered if relevant (given there may have been better candidates being considered).

325. The fact the claimant was unable to present his case personally during the selection meetings did not render the decision to dismiss him unfair. The claimant had been given a fair and full opportunity to ensure those making the decision had full knowledge of his experience and suitability for the role.

Those making the decision knew of the claimant and the decision maker did consider each candidate and reach a decision that was fair and reasonable, even if not one with which the claimant agreed. Each candidate was treated in the same way. The fact the job owner may have had a preferred candidate did not per se mean the claimant was not given a fair chance of securing the role. It was entirely possible the job owner could have been persuaded that their preferred candidate was less suitable for the role than another. The selection meetings involved a robust discussion where required with an HR representative in attendance and an independent member. If the preferred candidate was a better candidate for the role from a comparison of the skills and abilities of the candidates (compared to the criteria for each role) it was unlikely the claimant (or other lesser qualified individual) would be appointed, irrespective of what discussion took place. Each candidate's representative was able to challenge any decision that they considered to be unfair for their candidate and ensure their candidate was fully and properly considered. For some situations it was clear that the candidate was not as suitable as the others that had been identified in which case there would be no or little further discussion about that individual. The selection criteria were understood and applied in a fair and reasonable way. The approach taken was a fair and reasonable way to deal with the matter on the facts of this case.

326. The successful candidates in each of the roles for which the claimant applied were candidates who had experience and ability. They were credible candidates and appointed in good faith. While the claimant considered himself to be better that all the other candidates, the respondent fully considered the claimant and the alternative candidates and reached a decision that a reasonable employer could have arrived at, irrespective of (but taking into account) the claimant's view.

327. The claimant was given the opportunity to ask for more information if he was unsuccessful. He did not avail himself of that opportunity.

Specific grounds of challenge considered

328. The Tribunal then turned to the specific grounds advanced in support of the assertion that the dismissal was unfair.

329. The claimant's agent argued that the respondent specifically excluded seafarers from the exercise and it was unfair to dismiss the claimant, who was a sea farer.

330. While this issue had not been set out in writing, whether in the FAQ or otherwise, the evidence presented to the Tribunal showed that the respondent considered those who were employed on a sea faring contract but who were carrying out shoreside duties (whether on special assignment or otherwise). The respondent decided that all staff carrying out the roles that had been identified as at risk during the Transformation exercise would be at risk, irrespective of their contractual position.

331. The Tribunal did not uphold the claimant's agent's argument that those on seagoing contracts had been forgotten and the watchword for the process was efficiency over substance and transparency with reactive decision making. The respondent did consider the issue as to managing those on seagoing contracts who were carrying out shoreside roles and decided that such individuals would be inscope where the role they carried out was an affected role.

332. The fact the claimant was arguing those on a seagoing contract had not specifically been considered during the process to an extent undermined the argument that the claimant had been placed in his final role to manoeuvre his exit from the business since this argument suggested a conscious decision had not been taken to place those on seagoing contracts inscope (which, if correct, would have not resulted in the claimant's dismissal). In any event having carefully considered the evidence and process adopted, the Tribunal found a reasoned decision had been made with regard to the claimant (and those in the same position as the claimant). The approach in so doing was fair and reasonable.

333. The approach taken by the respondent was fair and reasonable. At no stage had the claimant raised any issue as to the approach taken during the process

and he engaged with the process. His contract was such that he would ordinarily be placed on assignment, rather than be based permanently at any location or role. While it was open to the respondent to have returned the claimant to fleet, to a sea faring role, it was not under an obligation to do so given the redundancy situation the respondent faced and in the absence of any request from the claimant to do so at the relevant juncture. There was no evidence of any specific role which the claimant suggested he ought to have been transferred to. While it was open to return him to standby and thereafter find him a seagoing role, there was no obligation requiring the respondent to do so, given the redundancy situation they faced and the context of the process. Their approach fell within the range of responses open to a reasonable employer.

334. While some reasonable employers may have chosen to return those on a sea faring contract to fleet, an equally reasonable employer given the situation they faced and in the context of the facts of this case, could equally have proceeded as the respondent did. The respondent acted fairly and reasonably in their approach to those engaged under a sea faring contract who were carrying out shoreside roles. The claimant was treated in the same way as all sea farers were who were carrying out shoreside inscope roles. The approach was consistent and fair.

335. The claimant's agent argued that "with regard to consultation, that was said to be an exercise of form over substance. The transformation process was designed to reduce headcount in the most efficient and speedy way possible. That led to a lack of meaningful consultation and lack of transparency." The Tribunal did not accept that the consultation was not meaningful. The respondent had fully engaged with the workforce and had asked for comment and ways to mitigate the effect the commercial environment had upon the business and ways to reduce the impact upon staff. The claimant had chosen not fully to engage in that process, which was a matter for him. The Tribunal was satisfied from the evidence presented that the approach taken to consultation was fair and reasonable. This was not an exercise of form over substance but a genuine attempt to engage with staff within a challenging

commercial environment and seek to ensure those with the appropriate skills were retained in the roles that existed. A fair and reasonable process was devised which applied to everyone in the same way and which fully and properly considered each individual going forward.

336. The claimant's agent argued that as the claimant was not permitted to write a self-assessment document explaining why he was a good fit for the various jobs that he was allowed to apply for nor given the opportunity to attend a meeting with a decision maker and make his own case the approach was unfair. The test is whether the respondent acted fairly and reasonably in all the circumstances. The approach that was taken in this case was fair and reasonable. As set out above the respondent gave each affected individual a number of ways to ensure they had the best possible opportunity to secure an alternative role. The available roles were fully set out, with the job owner being made clear. Applicants could speak to the job owner to explain their position and make enquiries as to the role and their suitability. Applicants could (and should) also speak to their representative to ensure they were fully appraised as to their skill set and suitability. The inability to attend the meeting personally nor provide a specific written response did not result in the process being unfair given the other ways in which candidates could present their position.

337. The Tribunal did not accept that the respondent changed its approach to the claimant from 2020 and that he was being manoeuvred into a position where he would be dismissed, thereby rendering the process unfair. The Tribunal carefully considered the evidence, particularly around the Angolan job and the claimant's agent's submissions. The claimant was supported and given opportunities to allow him to develop. He was able to apply for ongoing vacancies in the usual way. Further, there was no evidence that the claimant's move to the Glasgow role would in fact lead to his dismissal since if he had opted to convert to local payroll he would not have been dismissed. The Tribunal was satisfied the respondent acted in good faith towards the claimant and provided him with a fair opportunity to remain in employment. This was not an attempt to remove the claimant from the business in bad faith. The

claimant was treated in the same fair way as all other affected staff. He had a number of opportunities to avoid dismissal and he was genuinely and properly considered for alternative roles. It was only when that process was exhausted was the claimant dismissed, there being no reasonable alternatives.

338. The claimant was given access to round 3 vacancies even although he had not managed to make an application within the timescale, which had been publicised. The claimant knew about the timescales and while he had been on leave, he could have made arrangements for information about vacancies to be given to him. The respondent considered the claimant and made a reasonable decision as to round 3 given the other candidates. The approach the respondent took to round 3 was fair. The respondent reasonably concluded that even if the claimant had made an application, he would not have succeeded given the context and other candidate. That was a reasonable conclusion to reach on the evidence.

339. With regard to round 4, the approach the respondent took was fair and reasonable. The claimant was given a fair opportunity to apply for relevant jobs. The respondent considered the claimant's position as they did other candidates with regard to the advertised approach and acted in good faith. The decisions taken were fair and reasonable. The Tribunal did not consider it accurate to argue, as the claimant did, that he had not been considered for these roles properly. A fair and robust process took place with regard to the roles the claimant wished to undertake. He was not successful. The claimant believed he was the best candidate in respect of each role but the decision the respondent took was fair and reasonable on the facts with those being appointed being credible candidates with different skills and experience from the claimant (but skills and experience that was no less relevant).

340. The Tribunal carefully considered the approach the respondent took in respect of each application the claimant made. For each role the respondent considered the claimant and the other candidates. In each case there was a stronger candidate who was reasonably preferred to the claimant. The respondent took into account the claimant's position but the rationale for

appointing the successful candidate was supported by the evidence and was fair and reasonable.

341. The Tribunal did not uphold the claimant's agent's assertion that an inference to be drawn was "that one of the secret objectives of the transformation exercise was to get as many employees as possible off those contracts". Saving cost was clearly an important consideration but that part of the requirement to appoint individuals based upon business need. The respondent took each candidate's full background into account and made a decision that was fair and reasonable. Cost was not irrelevant but it was not the principal driving factor.

342. The Tribunal considered the argument that to have acted reasonably the respondent should "simply have returned him to fleet as he had been asking for over a year". The Tribunal did not consider that to be a fair criticism of the process. The claimant had engaged in the process and had not asked to be returned to fleet during the relevant discussions at stage 4. He was given the opportunity to ask questions when the decisions had been taken. There was no evidence of any specific vacancies available for which the claimant could be considered at the time and he did not raise this issue at the appropriate juncture (such as when he was told the outcome of the round 4 process). He was left with no role to carry out, and in the circumstances it was fair and reasonable for the respondent to dismiss the claimant by reason of redundancy or some other substantial reason in light of the process that had taken place.

343. While some reasonable employers would have considered offering a return to fleet (in the absence of this being specifically raised by the claimant), on the facts of this case, an equally reasonable employer could have acted as the respondent did given the context. The claimant was given a full opportunity to set out the roles he wished to carry and engage in the process. The claimant did so and was not successful. The failure to return the claimant to fleet was not such as to render the dismissal unfair in all the circumstances.

344. The Tribunal did not accept the claimant's agent's argument that "it was perverse to dismiss a seafarer from a temporary shoreside job that he did not want in the first place without considering at all the nature of the contractual relationship". The process was focused on roles and did take account of the circumstances of the role holder given the approach that was taken and the involvement of the claimant in rounds 3 and 4. While some reasonable employers may have automatically returned seafarers to fleet, an equally reasonable employer faced with the facts of this case could decide to dismiss given the context and facts of this case.

345. The Tribunal considered the argument of the respondent that the fact there was no reduction in the requirement for Mooring Masters was not relevant because the claimant was not redundant because the respondent needed fewer Mooring Masters. He was dismissed because the respondent required fewer employees across a wide range of roles and, at the end of the transformation process, the claimant was left standing without a role to perform.

346. The Tribunal upheld the respondent's submissions as to the fairness of the selection process. The exercise of opening up jobs for application was intended not only to give employees the chance to compete for jobs without there needing to be a specific vacancy but also to help ensure that the respondent was able to make sure that those they considered the best candidates were appointed to the right roles. This was a "forward-looking" exercise. While the roles being created were not new roles *per se*, the aim was to ensure affected staff could fairly apply for the roles. For the claimant in particular it was not uncommon for him to move from assignment to assignment depending upon availability, business need and his desire and business need. Nevertheless the Tribunal analysed the procedure carefully.

347. The respondent was looking to fill the roles with individuals with suitable skill sets and experience going forward. The respondent considered each role and candidates and made a decision based upon business need in a transparent and fair way. While cost was not an irrelevant consideration, the focus was on business need to ensure the appointed candidate was best placed to carry

out the role taking careful account of their skills and experience. That involved consideration of each candidate and a robust assessment and comparison with a decision being taken, which on the facts was substantively and procedurally fair. The Tribunal was satisfied the approach taken in relation to the claimant was fair and reasonable in relation to each of the roles for which he applied.

348. This case was not on all fours with **Morgan** (as this was not a situation where new roles were being created and those at risk having to apply for such roles). The Tribunal therefore approached its assessment of the process by returning to the words of the statute and the authorities to assess whether the respondent acted fairly and reasonably in all the circumstances in dismissing the claimant by reason of redundancy (or for some other substantial reason) taking account of resources, the size of the respondent, equity and the merits. The Tribunal considered, having carefully assessed the evidence, that the process adopted on the unique facts of this case, was fair and the respondent acted fairly and reasonably in carrying out the process and dismissing the claimant as a result, taking account of the size and resources of the respondent, equity and the merits of this case. While there was a degree of subjectivity that did not render the process unfair given the facts of this case and the way in which the respondent managed the process. Having considered the guidance in **Williams**, the Tribunal finds the process to be fair and reasonable in context. The Tribunal took care to assess the procedure in light of the authorities, recognising that requiring affected staff to apply for available roles is not a common approach in dealing with redundancy situations and could give rise to unfairness.

349. In this case on the facts the respondent sought to ensure the process was fair and robust, having a person representing each candidate and an independent member to ensure robust and fair discussion took place. The role of job owner (or delegate) was of critical importance. They know the requirements of the job better than anyone and, in most cases, have a good working knowledge of the skills and experience of the candidates for the roles. It is the job owner

who is given the responsibility of shortlisting candidates with the assistance of their delegate or "selection representative".

350. The Tribunal did not accept the claimant's agent's suggestion that no discussion took place with regard to candidates and that the process was essentially a rubber stamping exercise. The job owner did identify their preferences but it was open to the candidate's representative to set out their position where the person believed that the ranked candidates were less suitable than the claimant. In this case the ranked candidates were ranked fairly and reasonably and the process taken was fair and reasonable, particularly given each candidate had the right to approach the job owner and set out their position in advance (in addition to ensuring their representative was fully up to date with their position and experience).

351. The Tribunal was satisfied that the approach set out in the documentation was in fact operated in practice with the selection teams properly considering each of the candidates and making a fair decision based upon all the information before them. The facts in this case are unique and have been considered in light of the legal test with regard to the fairness of the dismissal.

352. The Tribunal considered the claimant's agent's argument that a basic requirement of a fair redundancy process is giving the at-risk employee a chance to challenge their scoring or persuade decisions makers to appoint them to a vacancy or alternative role. In this case candidates were given a fair opportunity to ensure their position as understood, whether by speaking to the job owner or their representative. The claimant was also given the opportunity to seek further information following a decision having been made. They had a fair opportunity to set out their position in writing (by completing their respective forms) and by speaking to the decision in makers, whose identity had been disclosed in advance. Candidates had been encouraged to make contact with the decision makers to ensure they were able to present their position and ensure all relevant facts were understood. The claimant had done so and the Tribunal was satisfied even if a different process had been undertaken the outcome would have been the same given the candidates that were appointed and the relevant roles and their experience and skill set.

353. The Tribunal upheld senior counsel for the respondent's submission that the process carried out was substantive and fair. The various information giving exercises and steps taken by the respondent was fair and reasonable. The claimant was invited to a number of team meetings to discuss the approach and was given access to a number of sources that set out the approach to be taken. There was no suggestion the claimant did not understand the approach. While he may not fully have engaged or made specific suggestions, the claimant was given the same information as other affected staff and understood how the process operated and who to ask and where to look for more information.

354. The Tribunal did not find the selection process to be perverse as alleged by the claimant's agent. The Tribunal found the approach taken with regard to round 3 selection was fair and reasonable. The claimant did not make an application in time, despite having been given the ability to do so. Senior counsel for the respondent was correct to not that the claimant's initial explanation that he did not see the email on 19 August 2020 because he was on holiday is contradicted by his own time records which suggested he was at work and could have taken steps at the time, knowing the process was ongoing. In any event the respondent did consider whether to allow the claimant to apply despite having been late and chose not to do so as there were better candidates who had applied in time. While the claimant disagreed, that was not an unreasonable approach or conclusion for the respondent to take given the individuals involved. The job owner decided that the existing slate of applications was sufficiently strong that adding the claimant would not materially affect the outcome. While the claimant believed Mr Hendry was less eligible than the claimant, it was reasonable for the respondent to conclude otherwise given the experience Mr Hendry had and the nature of the role (which contrasted with the claimant's experience).

355. With regard to round 4 selection, the Tribunal considered the four roles for which the claimant applied.

356. The first was the Regional Marine Superintendent Role in Dubai. The successful candidate was chosen because the incumbent was carrying out

the role on a developmental basis and was considered a good candidate given his skills and experience. That was the basis the claimant had carried out the role prior to the incumbent. The decision taken was fair and reasonable.

357. The second was the Marine Superintendent in London. That role went to someone who was local-based. The claimant was not prepared to transfer to local terms. The claimant was not chosen merely because, as a locally-based employee he was cheaper. Candidates' experience was considered and the successful candidate had more relevant experience. A decision was taken which was reasonable in the circumstances.

358. The third and fourth roles were Marine Superintendent. The roles went to one local candidate and one incumbent who swapped to local terms. The roles related to the LNG fleet which the claimant accepted was not a fleet he had served in. The successful candidates had relevant experience and skills and the decision taken was fair and reasonable.

359. The claimant's agent argued that in relation to Dubai, the decision was made on the basis of incumbency and so the claimant was not considered for this role at all. The Tribunal did not accept the claimant's agent's argument that appointment had "nothing to do with who was the best candidate for the role". The claimant was genuinely considered for each role and a decision made that was fair and reasonable, albeit one with which the claimant disagreed.

360. The Tribunal accepted senior counsel for the respondents' argument that appointments were made in good faith, being decisions open to a reasonable employer. Selection was not predetermined as submitted by the claimant's agent.

361. The Tribunal is satisfied that the procedure that was undertaken was fair and reasonable. It fell within the range of responses open to a reasonable employer in the context of this case. While other reasonable employers may have adopted a different process, as set out by the claimant's agent, the Tribunal was satisfied that an equally reasonable employer could have approached matters as the respondent did in this case.

362. The Tribunal returned to the issues to be determined in this case with regard to the fairness of the dismissal.

363. The respondent carried out a reasonable consultation with the claimant about the redundancy situation which was meaningful and substantive. It was transparent and fair.

364. The Tribunal also concluded that the selection process was reasonable. The claimant was given a fair opportunity at being considered for alternative roles and was properly and fairly considered for such roles.

365. The respondent took reasonable steps to identify and consider the claimant for alternative roles. The claimant was given the opportunity to become a shoreside employee (and retain his role). He was then given the opportunity to apply for roles in round 3 and then in round 4. The roles for which he applied were roles that were ultimately awarded to other individuals, but the selection process was fair and the process robust, with the claimant's position being reasonably considered. It was not unreasonable for the claimant not to have been offered such positions on the facts.

366. Finally the claimant's dismissal was within the range of reasonable responses open to the respondent. While some equally reasonable employers may not have dismissed, an equally reasonable employer could have.

367. The procedure that was undertaken was fair in all the circumstances taking account of the size and resources of the respondent, equity and merits of the case.

368. The Tribunal is also satisfied that dismissal of the claimant was fair and reasonable. The claimant's position was fully considered and he was given a fair opportunity to apply for alternative roles. The roles for which he applied had other suitable candidates and the successful candidate in each case had different skills and experience from the claimant and the decision not to appoint the claimant to those roles was fair and reasonable. While other reasonable employers may have appointed the claimant, an equally

reasonable employer on the facts of this case could have proceeded as the respondent did.

Taking a step back

369. The Tribunal took a step back to assess the procedure that was followed and the approach taken specifically with regard to the claimant. The Tribunal was satisfied that the approach was fair and reasonable. The size and resources of the respondent was fully taken into account together with the context. The equity and substantial merits were also considered. The approach taken was fair.

370. The claimant's dismissal fell within the range of reasonable responses open to the respondent.

371. In all the circumstances the claimant's dismissal was fair.

Employment Judge: **D Hoey**
Date of Judgment: **20 December 2022**
Entered in register: **23 December 2022**
and copied to parties