EMPLOYMENT TRIBUNALS

Claimant: **Mr. Ashley Ede**

Respondents: **Royal Agricultural University**

Heard at: **Bristol by CVP** **On: 25 and 26 October 2023**

Before: **Employment Judge Walters**

Representation

Claimant: **Mr Searle of counsel**
Respondent: **Mr O'Dempsey of counsel**

JUDGMENT

The Claimant's claim that he was unfairly dismissed contrary to sections 94 and 98 of the Employment Rights Act 1996 is upheld.

REASONS

INTRODUCTION

1. On 16 December 2022 the Claimant commenced Employment Tribunal proceedings in the Bristol Employment Tribunal alleging that he had been unfairly dismissed from his employment with the Respondent on 17 September 2022.

2. The Respondent submitted a Grounds of Response in which it denied that the Claimant had been unfairly dismissed.

3. By a 'pro forma' set of directions the parties were ordered to exchange witness statements by 27 September 2023 and the parties duly exchanged witness statements although on what date is not clear. The Claimant relied upon his own witness statement and a statement from Professor Moore-Colyer. The Respondent relied upon witness statements from Sarah Lower and Charles Costa.

4. The case was listed for final hearing on 25 and 26 October 2023

5. On 25 October 2023 the parties attended the Tribunal by CVP. At the outset of the hearing the Tribunal determined that as the parties had not addressed the question of remedy in the witness statements and nor had there been any meaningful disclosure concerning the remedy issue that the matter would proceed on the basis of it being a hearing on liability only.

6. Counsel for the Claimant made an application to admit a further statement from the Claimant to deal with scoring of the criteria i.e. the Claimant tried to identify those who were also 'scored' but whose names were redacted and assert he was unfairly scored. **[173]** That application was objected to by the

Respondent. The Respondent pointed out that the statement was speculative and there had been no request made to remove the redactions. It was suggested further evidence would be required to deal with it. The Claimant could provide no meaningful explanation for the failure to adduce the additional evidence in the original statement: it was apparent that the need to adduce the evidence had simply been overlooked. The additional witness statement was not sent to the Respondent until late in the afternoon of 24 October.

7. The Tribunal considered that the admission of further evidence at such a late stage and without any prior warning of its impending disclosure was unfair on the Respondent because it meant that its lawyers would have to take further instructions and/or potentially seek to adduce additional evidence whether orally or by disclosure of documents in order to address the content of the statement. The consequence of the late application was that the hearing which had only been allocated a two day fixture would be at serious risk of going part heard.

8. Accordingly, the Tribunal refused to admit the further witness statement.

9. After determining the application the Tribunal heard the evidence in the case. The Tribunal heard evidence from all of the above named witnesses and they were duly cross-examined. The Tribunal had received the hearing bundle of documents and where documents were referred to in evidence those documents were considered by the Tribunal.

10. Due to the time taken to hear the evidence the parties were unable to make their closing submissions within the allocated time and so, with the agreement of the parties, the Tribunal ordered that the parties provide their closing submissions in writing by 16 November 2023 and that they also be given a further opportunity to comment in writing on each other’s submissions in writing by 30 November 2023.

11. The parties duly submitted their submissions in writing and their further submissions in writing and, having considered the evidence and the submissions, the Tribunal has given judgment above and these are now the written reasons for the judgment of the Tribunal.

THE ISSUES

12. The issues in the case were the subject of discussion between the parties in the lead up to the final hearing. A draft List of Issues was created by the Claimant and that was then the subject of one qualification in that the Respondent also contended that if there was no redundancy then the dismissal was for some other substantial reason. The email providing the List of Issues was not sent to the Tribunal until lunchtime on the first day of the hearing. The written document states as follows:

"1.3. Did a redundancy situation exist? Specifically, was there a diminished need for the role of a Senior Lecturer (Equine Management and Science)?

The Claimant will say that the decision to remove his role was perverse and entirely misconceived and that there was some other undisclosed factor behind his selection and that his redundancy was a fait accompli and influenced by bias.

1.4. Was Redundancy the real reason for the dismissal?

1.5. Did the Respondent act reasonably in all the circumstances, in treating redundancy as the reason for dismissing the Claimant? In essence, was the dismissal procedurally fair? The Claimant alleges that the dismissal was procedurally unfair in the following ways:

1.5.1. The respondent failed to adopt a fair basis on which to select for redundancy, namely:

1.5.1.1. They failed to adequately consult with the Claimant;

1.5.1.2. There was a lack of sufficient consultation and transparency in the scoring process. Particularly in relation to a lack of feedback on the scores given and there being no record of the discussion at the 'Matrix Panel' meeting on 14 June 2022.

1.5.1.3. The matrix scores given for the 'Workload' criteria did not reflect or align with the scoring criteria and guidance document (dated 10 May 2022). It was not clear from the scoring matrix, what the thresholds where for the scoring in respect of this criterion. It is unclear how the Claimant's score of '1' was justified and how many 'formal scheduled teaching contact hours' he would have needed in order to score a score of '3' or '5'. The definition of what constituted 'formal scheduled teaching contact hours' was also undefined and a decision was taken by the Respondent to unreasonably exclude the 'study tour' module from this calculation as it took place away from the University (i.e. in Kentucky). No reason or justification for this was communicated by the Respondent.

1.5.1.4. The matrix score for the 'Teaching and learning' criteria did not reflect or align with the scoring criteria and guidance. For this criterion the Claimant scored '1' which according to the scoring matrix meant that his teaching and learning was "not satisfactory". This score seems to be entirely subjective and without any objective justification, particularly given that the Claimant had never previously been challenged about any unsatisfactory performance. In fact, the Claimant has received many very positive comments about his teaching from students and colleagues including within mid-module reviews (submitted as evidence to support his scoring). This is further supported by the Claimant's annual appraisal documentation and would be supported by further testimonials from both staff colleagues and current students. The Claimant believes that the Respondent has tried to retrospectively justify their score for this criterion, starting at the dismissal meeting on 17 June 2022, in which it was it was implied by the pro-vice chancellor' that his teaching was 'not up to standard'. These comments were completely without basis in fact and are

evidence of the Respondent attempting to bolster a weak case for his selection for redundancy.

1.5.1.5. The Respondent failed to follow its own redundancy procedure or a fair procedure generally."

13. During the hearing it also became apparent that the Claimant was no longer contesting that the dismissal was unfair because it was not for a potentially fair reason. It was conceded on his behalf that redundancy was the reason for dismissal (as is confirmed in the closing submissions on his behalf). He did, however, suggest in his evidence that the motives of those involved were suspect.

14. Further, although not a liability issue the agreed course was for the parties to make their arguments about the Polkey principle. The Tribunal did not invite submissions on the question of contributory fault and it will not be dealt with in these reasons.

THE SUBMISSIONS OF THE PARTIES

15. Both parties put in detailed written submissions and it is unnecessary for the Tribunal to repeat the same here. What follows is only a brief summary of the main thrust of the submissions from each party and the submissions on the law are not repeated herein. The Tribunal has in many instances utilised the exact wording of the submissions made by counsel.

16. The Claimant's submissions were that:

a. the Respondent failed to properly consult with the Claimant. The consultation comprised a single meeting on 10 May 2022 at which the Claimant was told that he was at risk. The onus is always on an employer to arrange consultation meetings.

b. the Claimant was down-scored where others were up-scored
c. he was not given any opportunity to address or challenge the scores.
d. others' scores were not provided to the Claimant until these proceedings **[173]**
e. The Respondent failed to adhere to its own process, having promised or at the very least advised that there would be five meetings. **[118]** There was sufficient time for there to be the meetings and certainly if not all five then some of them.
f. The Respondent has not produced any evidence as to why the Claimant was scored a '1' in each criterion of Teaching and Learning and Workload. The Claimant contends that he would have scored 5 in both the disputed areas and there has been no effective challenge to that assertion.
g. Marking of 1 on Teaching and Learning did not reflect or align with the criteria and guidance. Also under Workload. The matrix scores given for the 'Workload' criteria did not reflect or align with the scoring criteria and guidance document. The definition of what constituted 'formal scheduled teaching contact hours' was also undefined and a decision was taken by the Respondent to unreasonably exclude the 'study tour' module from this calculation as it took place away from the University (i.e. in Kentucky). No reason or justification for this was communicated.
h. There was a lack of sufficient consultation and transparency in the scoring process. Particularly in relation to a lack of feedback on the scores given and there being no record of the discussion at the 'Matrix Panel' meeting on 14 June 2022. That alone calls into question the substantive fairness. It is such a crucial piece of evidence to be missing. That is usually the first piece of evidence to be deployed by any employer in these kinds of proceedings..
i. In any event, the Respondent accepts that the Claimant "*did not have the opportunity, despite being promised, to 'consult, discuss or challenge the score' That alone makes the dismissal unfair. It is so fundamental and supported by the jurisprudence. The appeal process was no more than window dressing. There was no attempt to understand the methodology or how the scores were reached. This was an exercise in*

futility and rubber stamping the decision to dismiss. The grounds of appeal are straightforward and clear [176]. It is the scoring that is at the heart of the challenge and yet the appeal officer did very little to resolve the obvious disconnect. This was demonstrated by the short outcome letter [208]. In their GoR R puts the onus on C and seems to suggest that C did not ask for clarity on the scoring [para 21 on 32]. That is patently incorrect. C asked what on any view were straightforward questions and the appeal panel said that they were unable to answer. They did not provide an answer on the day or anytime thereafter. That alone shows a lack of attention and proper approach.

j. The dismissal was so substantially unfair and it would not be appropriate to speculate as to what might have happened had the unfairness not occurred and there should be no finding that the compensation should be reduced under the Polkey principle.

17. The Respondent's submissions were that:

a. there was adequate consultation. The question of the adequacy of consultation is relevant to "*the overall question of whether the Respondent acted reasonably in treating the redundancy reason for dismissal as sufficient in the circumstances of the case including equity and the substantial merits of the case. The EJ should have regard to all the circumstances of the case including the size and administrative resources of the Respondent.*

b. Those circumstances include: (a) the intellectual level of the Claimant (b) his ability to be proactive (if he wished to be) in engaging in consultation (c) the fact that the Respondent's resources were SL (d) that the Claimant was one of seven who engaged in putting forward comments and proposed amendments to the selection criteria (e) that nothing that the Claimant wanted in the proposal for selection criteria were omitted from that consultation (f) some of the selection criteria amendment proposals were included in the ultimate selection criteria (g) the Claimant knew what the selection criteria were (and were not) when

he filled out his matrix form (h) the Claimant chose to ignore the descriptions of the selection criteria which the Respondent was using and instead put in matters which were not, in relation to those criteria, relevant (i) the Respondent was not unreasonable in choosing the selection criteria it used (j) the Claimant had enough information to enable him to launch an appeal indicating (even approximately) how many points he was arguing that he should receive under the matrix, and chose not to do so on appeal."

18. The Claimant had an opportunity to challenge the redundancy selection *"he did so: he was able to put together the matrix, the scores, the criteria to be applied, and to argue that a higher score should have been applied under any heading on his own analysis of those matters – he did not do this. He had the opportunity to put forward explanations for any factors that might have led to his selection, including his failure to observe the criteria which were applied when filling out his matrix)*.

19. The criteria were objective ad applied objectively. The system was a good one and the criteria applied were clear and there was no glaring inconsistency in the process. *The criticism of the "teaching and learning" criteria score, specifically the idea that the score of 1 equated to an allegation that the teaching and learning was "not satisfactory", is based on a simple misreading of the rubric. After the semi colon on p129 appear the words "no evidence of a contribution to scholarship or innovation in the curriculum*"

20. The Claimant had the opportunity to appeal to challenge his scoring.

21. The Respondent submitted that *"when viewed as a whole, the process that the Respondent followed for this cohort of employees was a reasonable one having regard to their intellectual abilities and status.*"

22. The Tribunal is asked to dismiss the Claimant's claim in its entirety; in the alternative, it is asked to find that he would have been dismissed at the same

point in time as he was inevitably and that compensation should be reduced by 100%.

THE LEGAL PRINCIPLES

REDUNDANCY

23. There is no issue that the Claimant was dismissed for redundancy under s.139 Employment Rights Act 1996 (ERA 1996). Redundancy is a potentially fair reason under s. 98 ERA 1996

24. In **Williams and ors v Compare Maxam Limited 1982 ICR 156** the EAT established guidelines that a reasonable employer might be expected to follow when making a dismissal for redundancy. The Tribunal must not impose its own views on what the employer did or did not do but ask itself whether the dismissal lay within the range of conduct which a reasonable employer could have adopted.

25. The factors suggested by the EAT in **Compair Maxam** were:

a. Whether the selection criteria were objectively chosen and fairly applied

b. Whether employees were warned and consulted about the redundancy

c. Whether if there was a union the union's view were canvassed

d. Whether any alternative work was available.

26. In situations where there is a pool for selection (as in this case)[1] the following principles are applicable:

[1] There is no criticism of the pool in this case

a. The criteria should be clear and transparent
b. The criteria should be objective
c. If objective, the Tribunal should not subject them to over-scrutiny. The Tribunal should consider whether the criteria were inherently unfair and whether they were applied in a reasonable fashion.
d. The Tribunal should ask itself whether a reasonable employer could have chosen the criteria
e. The application of any criteria must be reasonable: the Tribunal must not embark upon an examination of the actual scoring unless there had been bad faith or an obvious error. See **Dabson v David Cover and Sons Limited EAT 0374/10**
f. The Tribunal should not concern itself with whether the information utilised by the employer was accurate when the decision maker had no reason to doubt its accuracy. All the employer had to show was that it had set up a reasonable system which was fairly applied see **Buchanan v Tilcon Ltd 1983 IRLR 417, Ct Sess (Inner House).**
g. An employer whose scoring is challenged need only show that it carried out the exercise honestly and reasonably. There may, however, be instances when the marking could give rise to an inference that there was something unfair about the process see **Eaton Limited v King and ors 1995 IRLR 75**.

CONSULTATION

27. Fair and proper consultation is a necessary ingredient of a fair dismissal. In order for an employer to consult properly, it must have an open mind about the subject of the consultation Furthermore, it will only be meaningful if it happens at a formative stage see **R v British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price [1994] IRLR 72**

28. Consultation would ordinarily be held with the individual affected by the proposals and their union if there is one. The nature and formality of such consultation could be affected by the size and administrative resources of the Respondent see **De Grasse v Stockwell Tools Ltd UKEAT/529/89**

29. An employer should not assume that individual consultation was unnecessary because it has consulted with the relevant union see **Alexanders of Edinburgh Limited v Maxwell and ors 1997 ICR 399**

30. However, there is no rule of law that there must be individual consultation before dismissal see **Mugford v Midland Bank Plc UKEAT/760/96.**

31. The consultation must give an opportunity for the employee to comment on the basis of selection, both in terms of the pool and the selection criteria.

32. The affected employee must have the opportunity to challenge the redundancy selection see **Pinewood Repro Limited t/a/ County Print v Page 2011 ICR 508**. A failure to disclose to an employee selected for redundancy the details of his or her individual assessments may give rise to a finding that the employer failed in its duty to consult with the employee see **John Brown Engineering Ltd v Brown and ors 1997 IRLR 90. 35.** For there to be effective consultation, the employer must provide the employee with their scores as part of the consultation process see **Alexander v Bridgen Enterprises Limited [2006] IRLR 422.**

33. The employee must have the opportunity to put forward suggestions for ways to avoid redundancy in his case. There must be the opportunity to consider alternative employment positions.

34. There must be an opportunity for the employee to address any other matters of concern they may have.

35. Defects in a redundancy process can be cured on an appeal if it is sufficiently thorough see **Lloyd v Taylor Woodrow Construction Limited 1999 IRLR 782** and **Taylor v OCS Group Limited 2006 ICR 1602.**

THE POLKEY PRINCIPLE

36. In **Polkey v AE Dayton Services Ltd 1988 ICR 142**, HL, a procedural failure renders a redundancy dismissal unfair under s.98(4) ERA 1996. The question of whether the Claimant would have been dismissed fairly even if a fair procedure had been followed is relevant only to the amount of compensation payable.

37. When considering the application of the Polkey principle it might be open to a Tribunal to find that there was a chance that the employee might have been dismissed by a particular date and/or that no dismissal would have occurred before a particular date because, for example, it would have taken the employer a period of time before it was in a position to dismiss fairly. If the Tribunal decides that the dismissal was 100% certain to have occurred on the same date then no compensation is payable see **Alexander v Bridgen Enterprises Limited [2006] IRLR 422**

FINDINGS OF FACT

38. It is not necessary for the Tribunal to make findings of fact on every disputed factual issue: it is important that the Tribunal makes findings of fact when doing so is necessary for the determination of the claim.

39. Furthermore, many of the facts were not in dispute. Where the Tribunal has had to make a finding of fact which is in dispute then it will be apparent that the Tribunal has done so.

THE CLAIMANT

40. The Claimant commenced employment with the Respondent on 13 December 1999. He was dismissed from his employment on 17 September 2022 and the reason for that dismissal as expressed to him at the time was redundancy. At the time of his dismissal the Claimant was employed by the Respondent as Senior Lecturer and Module Leader in the School of Equine Management and Science. [SEMS]

THE RESPONDENT

41. The Respondent is a university based in Cirencester with over 1,100 students studying agriculture, animal science, business, real estate and rural land management in the UK and further students based in China and Uzbekistan.

42. The Respondent's Director of Human Resources (HR) is Sarah Lower.

THE NEED FOR REDUNDANCIES

43. The Respondent undertook a strategy review process in early 2022 and by 14 February 2022 it shared a discussion paper by email with all its employees. **[65-76]** The strategy emphasised the following:

    a. the importance of academic excellence
    b. the need to address the perceived inequity in employee workloads
    c. that there existed a significant over-capacity in the academic staffing establishment.

REDUNDANCY CONSULTATION

44. It is not disputed that the aim of the discussion paper was to initiate a one-month University-wide consultation. Employees were invited to submit written responses and/or attend one of three open staff forum events which were to be held on 24 February 2022, 1 March 2022 and 9 March 2022.

45. In order to avoid having to make compulsory redundancies the Respondent initiated a voluntary severance scheme for academic staff which opened on 5 April 2022 with a closing date for applications of 22 April 2022. **[77-89]**

46. On 11 April 2022, in order to further its strategic objectives the Respondent published and shared a revised workload allocation model with all employees. **[90-97]** It is not disputed that the model considered formal scheduled teaching, professional responsibilities, professional engagement, scholarly activity and research.

47. The Respondent consulted the relevant trade union about the proposals and procedures before employees had been advised of them. The union was also consulted about the strategy document and the workload allocation model. There were two consultation meetings in May 2022 with the union i.e. on 6 May 2022 and 27 May 2022. I accept the unchallenged evidence of Ms. Lower that during the second meeting there was a discussion at regional union representative level about "*the rationale for redundancy, the proposals for change, ways of avoiding the dismissals, the selection criteria for redundancy, reducing the numbers of employees to be dismissed and mitigating the consequences of the dismissals*." The regional union representative asked for an extension for employees to seek voluntary redundancy which was agreed by the respondent.

48. By an email on 9 May 2022 the Respondent invited all academic staff to a redundancy consultation meeting to be held on the morning of 10 May 2022. **[98]** The Claimant did not attend this meeting. I accept the unchallenged

evidence of Ms. Lower at paragraph 11 of her witness statement as to what was discussed at the meeting. The Claimant accepted he had read and received the information in the invitation letter and the slides which he considered shortly after the meeting. **[100-110]**

THE INDIVIDUAL CONSULTATION PROCESS

49. By an email on 9 May 2022 the Respondent invited the Claimant to an individual consultation meeting to take place on 10 May 2022. On the afternoon of 10 May 2022 the Claimant met with Sarah Lower and the pro-vice chancellor, Neil Ravenscroft. During the meeting the Claimant was informed that the Respondent was considering reducing the number of academic posts in line with its strategy and workload allocation model. The Claimant was informed that his employment and several other roles across the Respondent's workforce were at risk of redundancy. He was told that in SEMS the respondent was looking to reduce the staffing complement by 3 FTEs. He was told that the redundancy consultation period had commenced. The Claimant was informed that there would be an opportunity for a consultation meeting during the consultation period. **[99]**

50. During the meeting that Claimant asked whether it might be possible for SEMS to prepare its own strategic plan to accord with the Respondent's strategy document because it might reduce the need for redundancies or the number of them. **[124]** The alleged response from Neil Ravenscroft was that the situation had "*gone beyond finding alternative ways to improve the financial position of the University and that sadly redundancies are now necessary.*" The Tribunal does not accept that Mr. Ravenscroft uttered the words alleged: those words would be inconsistent with the fact that the Respondent was clearly attempting to avoid making redundancies on the scale of those needed. The Tribunal prefers the evidence of Ms. Lower that the proposal made by the Claimant was welcomed but that he was told that the Respondent could not afford to wait for another twelve months to make the changes it needed. Furthermore, there was a general discussion about the prospects of up-skilling

and training of employees if that could have impacted on the need to make redundancies or the number of them as was the Respondent's policy.

51. The Tribunal finds that the Claimant was given a substantial amount of documentation by Ms. Lower. **[111-112, 113-117, 118, 119-120, 121, 54-61]** The Claimant was also provided with the current job vacancies. The provision of the documentation is evidence of the Respondent attempting to fully engage with the Claimant and to consider alternatives to redundancy and it is wholly inconsistent with the consultation being meaningless or a sham. The Claimant accepted in cross-examination that he had read the documentation provided to him.

52. The Claimant was also told by Ms. Lower that she wanted all those who were potentially affected to contact her to fix a time and a date for personal consultation and that she would fit it in around his availability. In evidence Ms. Lower said that she had undertaken 41 meetings in that week and several employees contacted her and notwithstanding that there were many meetings she met with those who had sought such meetings. The evidence of the Claimant that there was no formal invitation sent to him by Ms. Lower after the meeting is, therefore, correct. However, the Respondent had placed the onus for proposing a time and a date for a meeting on the employee affected by the proposed redundancy.

53. The evidence of Ms. Lower at paragraphs 13-15 of her witness statement is, therefore, accepted by the Tribunal as being accurate.

54. The Claimant did not request a private consultation meeting with Ms. Lower. The explanation of the Claimant that he was waiting for a formal invitation to such a meeting is rejected. The Tribunal rejects the Claimant's contention that in fact he was also too busy to seek to arrange a consultation meeting: by the stage of the consultation period there were no fixed teaching commitments and had he been as busy as he claims then he was better placed to approach

the Respondent to schedule a time when a meeting could take place which was suitable to him.

55. Furthermore, during the consultation period those employees who were potentially affected met to discuss the response to the proposed redundancies: it seems that the Claimant viewed that as a "*more efficient use of our time due to the heavy workload."* As a result of the decision to approach this matter from the perspective of a joint approach to consultation The Tribunal finds that it was decided not to seek an individual consultation.

56. It is not in dispute that there were no further personal consultation meetings.

FURTHER JOINT CONSULTATION

57. There was joint consultation. On 17 May 2022 Dr Hemmings the Head of SEMS made a number of written proposals. **[125-126]** It is noteworthy that he sought to amend the selection criteria on behalf of the SEMS employees. One of the proposals found favour with the Respondent and the criteria were duly amended.

THE SUBMISSION OF THE SELECTION CRITERIA

58. On 20 May 2022 the Respondent provided the Claimant with its Redundancy Selection Matrix and Scoring criteria. The Claimant was required to explain how he met the criteria and he was asked to return his submission by 10 June 2022. **[127-133]**

59. The guidance attached to the document stated that individual scores would be shared with the Claimant. **[131]**

60. The following scoring criteria were used:

a) Qualifications;
b) Teaching and Learning;
c) Breadth and Depth of Experience
d) Research and Knowledge Exchange
e) Workload; and
f) Citizenship.

FURTHER JOINT CONSULTATION

61. On 27 May 2022 Dr Hemmings submitted a paper entitled "*A case for reducing redundancies in the SEMS*." **[134-136]** One of the proposals was to reduce the redundancies to 1.2 FTE.

62. This was not acceptable to the Respondent as it stood and Ms. Lower wrote to Dr Hemmings on 1 June 2022 confirming the decision. **[140-141]** It is of importance that Dr Hemmings was informed that the door was not closed on further discussion because there was an invitation to meet. It is also apparent from the evidence of the Claimant that the SEMS employees met on more than one occasion to discuss their joint strategy.

63. The Claimant believed that at an initial joint consultation meeting Dr Hemmings the Head of SEMS had advanced a case that employees in SEMS would consider reducing their hours to create a reduction of 3.0 FTE. The Claimant was prepared to drop to 0.6 FTE as a last resort although he preferred, of course, to remain as a full time lecturer. Accordingly, he believed in the initial round of negotiations with the Respondent Dr Hemmings would not include his '*bottom-line*' in the proposal.

64. The first proposal was duly rejected by the Respondent and accordingly the Claimant asked Dr Hemmings whether he now thought he should offer the reduction of 0.4 but Dr Hemmings view was that the proposals by SEMS had been completely rejected and there would be no further discussion about it.

65. As part of the consultation process suggestions had been made as to the selection criteria and matrix as indicated above. When cross-examined, the Claimant agreed that notwithstanding his unhappiness with the criteria concerning Teaching and Learning and also Workload ultimately, however, it was a matter for management what those criteria looked like after consultation. He also agreed that the more recent evidence would be of greater importance and that although he did not agree with the criteria he had to produce evidence relevant to those criteria. The Tribunal finds that those concessions were logical and in accordance with common sense.

66. A further response was provided by HR on 6 June 2022 in which it was indicated that only one request from SEMS employees had been made and it was inequitable to accede to the proposals. **[142-143]** The Claimant by that stage had decided that the decision about redundances had already been made. **[139]**

VOLUNTARY REDUNDANCY

67. On 1 June 2022 Ms. Lower wrote to all employees affected by the redundancy proposals inviting them to consider voluntary redundancy and extending the application date to 10 June 2022. **[137]**

THE SCORING OF THE CLAIMANT

68. On 9 June 2022 the Claimant asked Sarah Lower about how much evidence he needed to submit and the Tribunal accepts he was told to be "*concise.*" **[144]**

69. The Claimant submitted his selection matrix to the Respondent on 10 June 2022. **[145-157]** On 14 June 2022 and 16 June 2022 four members of the

Respondent's Executive team met to consider and score the completed matrix forms.

70. The Claimant contends that he was improperly scored on two of the criteria. The first of those he complains about is under Teaching and Learning for which he was given a score of 1. The Tribunal accepts the evidence of the Claimant as to the extent of his teaching experience as set out in paragraphs 20-22 of his witness statement.

71. The second criterion he complains about is the scoring of the Workload criterion. The Claimant was again scored 1.

72. The evidence indicates that the average teaching hours in the university was considered 200 FST per staff per annum, as per the 'Strategy for Change' document. The Claimant contended in evidence that his FST score was 450 not including the International Equine industry module.

73. There is no doubt that the matrix utilised by the Respondent excluded duties for programme management. The Claimant stated that it should have been considered as part of the workload element within his scoring matrix. He also believed that the criteria used for formal scheduled teaching hours was not a fair representation of his workload.

74. In particular, the Claimant complained in his evidence that *"as part of the workload scoring matrix, a core module was excluded which was a compulsory module including some taught sessions and more student contact time than standard modules. Part of this module is assessment preparation and assessment marking and not to include this in the calculation for workload is unjust. important part of this core module was to organise and accompany students on international study trips. These took place over a period of 14 days which understandably have higher FST hours due to the high levels of student contact time. The trip is educational in every aspect and requires presence, preparation and organisation of staff members which constitute*

typically working hours from 8am- 9/10pm for the 14-day period. This is not considering pre-trip administration, assessment writing or tutorials. Considering this, to exclude the module is very inequitable."

75. However, there had already been consultation on the criteria and the criteria had been established with no further challenge.

76. In her witness statement Ms. Lower explained how the Panel had arrived at their scores for both Teaching and Learning and Workload.

77. Also Ms. Lower pointed out that the Claimant had been informed he had to give recent examples to assist in the process**. [127]**

78. It was noted by the selection panel that the Claimant only undertook undergraduate teaching which was a limitation on his expertise. The Panel felt the articles and publications he referenced were not peer to peer reviews and nor was there any evidence from external examiners appraising his teaching ability. It was considered that there was a lack of evidence as to how his own CPD informed his teaching activities.

79. There was some evidence of commercial experience and module development but nothing very recent. The Panel was quite shocked that the Claimant had referenced matters stretching into the distant past. The evidence of academic research was not consistent with being a lecturer in a university seeking academic innovation.

80. The Claimant was not marked '1' because he had exhibited poor performance. The Tribunal accepts the submission of the Respondent's counsel that such an allegation is misconceived because the reason it was marked thus was because the Claimant demonstrated, "*no evidence of a contribution to scholarship or innovation in the curriculum*"

81. The Tribunal finds that the scoring was reasonably applied in accordance with the established selection criteria. Whilst the Claimant might disagree with the criteria the Tribunal finds that it was reasonable to establish the criterion as it did. There can be no proper basis for the challenge to the score applied.

82. As for workload: Ms. Lower was unable to remember the specifics but she indicated the Claimant's formal scheduled teaching hours [FSTs] would have been compared with the written records held on Selcat.

83. Ms. Lower indicated that programme management was not included as a part of FSTs which was consistent with the established scoring criteria. Furthermore, the Selcat system captured everything that was relevant for scoring.

84. The Tribunal finds that the scoring was reasonably applied in accordance with the established selection criteria. Whilst the Claimant might disagree with the criteria the Tribunal finds that it was reasonable to establish the criterion as it did. There can be no proper basis for the challenge to the score applied.

85. Of course, the above rationale had not been explained to the Claimant prior to the termination of his employment.

86. Nevertheless, the Tribunal is satisfied that the selection criteria were reasonably chosen after consultation and that the scoring in the case of the Claimant was reasonably and fairly marked. There is no proper basis for the contention that the Claimant should have been scored differently and in any event the Tribunal should not embark on a minute scrutiny of the scoring much less re-mark the Claimant.

THE DISMISSAL DECISION

87. Having completed their task on 16 and 17 June 2022 Sarah Lower emailed the Claimant and asked for a meeting the following day to discuss the Claimant's role. **[158, 160]** However, even after the scoring had been completed the Respondent was amenable to allowing the Claimant to leave due to voluntary redundancy: the Claimant's voluntary severance quotation was updated notwithstanding the fact that the window for acceptance had closed. **[159]**

88. In her written evidence and in cross-examination Ms. Lower accepted that the Claimant had been informed that prior to any decision being taken about selection for redundancy he would be given an opportunity to challenge his scores. However, that in fact had not been offered to the Claimant or anyone else. The Tribunal notes the explanation given by Ms. Lower as to why that had not occurred: the process of reviewing the matrices had taken longer than planned and there was pressure from "the staff group" to conclude the process by 17 June.

89. However, the Tribunal finds that the failure to provide the scoring of the Claimant to him and to give the Claimant an opportunity to challenge the scoring before a decision was made to terminate his employment was a breach of the Respondent's redundancy procedure.

90. The Respondent has prepared a document setting out the scores of the Claimant and others. **[173]** However, that document was not shared with the Claimant until these proceedings.

91. The outcome meeting was duly held on 17 June 2022. Mr Ravenscroft and Ms Lower were in attendance. At the meeting the Claimant was informed that he had been selected for redundancy. It was not a consultation meeting. **[161-171]**

92. At the meeting Ms. Lower provided the Claimant with the letter terminating his employment. **[171A-171B]**

93. The Tribunal finds that it was suggested during this meeting that if the Claimant wanted to challenge the matrix scores he could do so at the appeal stage. That was a most unsatisfactory and unreasonable way in which to deal with a redundancy process: no reasonable employer would have acted in such a manner.

94. A reasonable employer would have adhered to its own guidance and given the Claimant an opportunity to challenge the scores at the meeting. That would have then meant that the meeting would have been reconvened and it is likely that that could have been undertaken no later than a week after the 17 June meeting. Of course, even had there been an opportunity to challenge the scores at the meeting the Tribunal finds that the outcome would have been no different: the decision to terminate the Claimant's employment would have been taken by 24 June 2022.

95. The Claimant was provided with his scores the following day. **[172]**

PROFESSOR MOORE-COLYER'S REQUEST - 21 JUNE 2023

96. On 21 June 2022 Professor Moore-Colyer submitted a request to reduce her hours to 0.6 FTE. A meeting on 23 June 2022 resulted in agreement to the proposal and on 22 July 2022 HR asked that this part-time role commence from 1 September 2022 so that the financial saving could be used to cover the cost of covering the 0.4 FTE she had relinquished. The Claimant did not advance these facts as a reason for avoiding his redundancy at the time.

THE APPEAL

97. On 27 June 2022 the Claimant lodged an appeal against his dismissal. **[176-177]** It included challenges to his scoring.

98. Prior to the hearing Dr Hemmings submitted a letter of support for the Claimant**. [194-195]** The Appeal Panel was provided with the scoring criteria and selection matrix. **[126-131]**, the Claimant's completed redundancy selection matrix **[135-146]** and his scores. **[172]**

99. The appeal was heard on 27 July 2022 by the Pro-Vice Chancellor Professor McCaffery who was the chair of panel and Simon Costa the Respondent's Treasurer. They were supported by a HR representative. The Claimant attended with Professor Moore-Colyer.

100. The Tribunal has no reason to doubt the accuracy of the appeal notes **[199-201] [202]** The Tribunal accepts the evidence of the Claimant and Professor Moore-Colyer it finds that at the appeal, no one on the appeal panel was able to answer the Claimant's questions about the how the matrix scores were arrived at or the rationale for them. In cross-examination Mr. Costa stated that, "*We had the comfort that on the scoring panel there were 3 out of 4 of the most senior academics plus a non-external non-academic*."

101. The Tribunal accepts the evidence of Mr. Costa and Ms. Lower that after the appeal hearing had concluded and in the absence of the Claimant the members of the Appeal Panel asked Ms. Lower to speak to them.

102. The Tribunal accepts that for about 10 minutes she was asked questions by the members of the Panel *"about the structure and management of the consultation process and the transparency and rigour of scoring"* and she gave evidence about the same.

103. In his witness statement Mr. Costa stated this, "*We also sought assurances that in her view the criteria had been applied fairly and that she was confident in the process followed for the Claimant and the other staff affected by the reorganisation. Sarah Lower confirmed that there was nothing in the grounds of appeal that would cause her to want the University to revisit the original decision to make the Claimant redundancy."* Mr. Costa stated in his evidence that "*on the basis of the above, the Vice-Chancellor and I reached the view that the original decision not to dismiss was based on a sound footing."*

104. In cross-examination Ms. Lower told the Tribunal that she wasn't asked for her opinion as to the reasonableness of the process. However, she was asked why she felt it was a fair process which the Tribunal finds amounts to virtually the same thing.

105. Of course, the Claimant wasn't privy to what was being said by Ms. Lower and he had no opportunity to challenge what she had said to the Appeal Panel.

106. The Tribunal finds as a fact that the Appeal Panel did not give any meaningful consideration as to how the scores of the Selection Panel were arrived at and nor did it properly apply its collective mind to whether or not there was any merit in the Claimant's contentions. Furthermore, the Tribunal finds as a fact that the invitation to Ms. Lower to attend was wholly inappropriate and whilst she might have had important evidence to impart, that evidence should have been provided at a time when the Claimant was present in order for there to be an opportunity to challenge it. Nevertheless, the real mischief at the Appeal stage was the failure to properly consider what had gone before in order to determine its reasonableness. The appeal did not operate to cure the earlier defect in process concerning consultation with the Claimant about his scores.

107. On 1 August 2022 the Vice-Chancellor wrote to the Claimant informing him that his appeal had been unsuccessful. **[208-209]** The letter confirmed the dismissal would take effect on 17 September 2022.

BAD FAITH

108. The tribunal does not accept the contention that those who participated in the redundancy process did so in bad faith. Errors occurred and at the appeal stage the process was wholly inadequate but there is insufficient evidence to justify a finding of bad faith.

ALTERNATIVE EMPLOYMENT

109. It is not in dispute that during his three-month notice period the Claimant was sent weekly notices of roles that were available as potential redeployment opportunities and he was encouraged to contact HR to discuss the opportunities but he did not engage with this process. The Tribunal accepts the unchallenged evidence of Ms. Lower at paragraph 31 of her witness statement. **[174-175,178-184, 186, 188, 192, 196,210-215]**

110. The Claimant contends that the Respondent advertised a position for a lecturer to cover land-based studies including equine. He asserted in evidence that in the detail of the job description, many of his teaching duties were included as a requirement for the role. He believed it was an attempt to fill the skills gap left by his redundancy. However, the Respondent had specified that the job required veterinary experience. The Claimant said, *"I believe this to be a red herring."*

111. The Claimant also rejected the contention that he could have applied for the alternative roles being sent to him.

112. However, Ms. Lower disputed the Claimant's contentions and she pointed out that the Respondent had advertised the role of Senior Lecturer in Animal Health and Welfare, based in the School of Agriculture, Food and Environment. She further asserted that the role was a Grade 10 role and required the post holder to be a qualified vet. The Claimant's role clearly had

no such requirement and was a Grade 9 role. She further added that the new role was a replacement for a professor who had been appointed to a new role of Pro Vice-Chancellor, Academic Planning and Resources. The evidence of Ms. Lower on this matter was unchallenged and, in the circumstances, I reject the contentions about the alternative job roles made by the Claimant as set out above.

CONCLUSIONS

113. Based on the findings of fact set out above the Tribunal concludes that:

a. the Claimant was dismissed for redundancy on 17 September 2022

b. the process was undertaken in good faith by those involved in the process

c. the consultation with the Claimant and the union was appropriate bearing in mind the discussion of 10 May 2022 and within the band of reasonableness until the point at which the Respondent undertook the scoring exercise on 14 and 16 June 2022.

d. the scoring criteria were the subject of adequate consultation and change as a result of the consultation and the Respondent acted reasonably in choosing them

e. the scoring was in accordance with the criteria and it was within a band of reasonableness and, indeed, the Claimant was reasonably scored by the selection panel on 14 and 16 June 2022

f. the Respondent failed to comply with its own redundancy procedure guidance and consult with the Claimant or explain the scoring process to the Claimant from 16 June 2022 until the date of his dismissal on 17 September 2022.

g. in particular, the appeal was not a thorough process examining all that had gone before: indeed it was the opposite of thorough. There was no appropriate scrutiny of the decision-making of the selection panel.

h. by reason of the inadequacy of consultation about the scoring and the appeal process the dismissal was unfair

i. there were adequate and reasonable attempts to avoid redundancies by seeking volunteers and suggesting alternative roles.

j. had the Respondent acted reasonably and instead of meeting with the Claimant to terminate his employment on 17 June 2022 it had met with him to hear his views on the scoring the Tribunal finds that it would have been in a position to have met with him again no later than 24 June 2022 to inform him of the result of the further consultation

k. The Tribunal considers that in light of the fact that the Claimant was in fact reasonably marked and he has failed to adduce any further evidence to justify a change in the scoring that the chance of his dismissal at the point of the later meeting would have been 100%.

114. As a result of the above conclusions and subject to any contributory fault argument the Claimant is entitled to compensation based on the full value of his loss for one week and thereafter no further compensation. The parties are invited to correspond with the Tribunal as to the next steps in these proceedings within 14 days of the date of the sending out of this judgment.

Employment Judge Walters
16th January 2024

Sent to the parties on:
30th January 2024
For the Tribunal Office: