Case No: 3306138/2023

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Ms J. Klos	**v**	Amazon UK Services Ltd

Heard at: Watford (by CVP) **On:** 24, 25 and 30 January 2024

Before: Employment Judge Hunt

Appearances:
For the Claimant: in person
For the Respondent: Ms V. Brown (counsel)

JUDGMENT having been sent to the parties on 13 March 2024 and reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided.

REASONS

Introduction

1. The Claimant was employed by the Respondent from 7 May 2017 until 16 April 2023. She was employed as a Warehouse Operative at the Respondent's Hemel Hempstead warehouse, known as a "Fulfillment Centre". She worked night shifts from 18:15 to 4:45.

2. The Claimant was dismissed upon the Respondent's decision to close its Hemel Hempstead Fulfillment Centre with a promise of pay in lieu of notice and pay for any accrued but untaken holiday.

3. The Claimant filed her claim on 12 June 2023, after consultation with ACAS. The Claimant raised several complaints:

    a. unfair dismissal;
    b. failure to pay statutory redundancy pay;
    c. failure to pay "enhanced" redundancy pay;
    d. failure to make a payment in lieu of notice;
    e. failure to pay her for accrued but untaken annual leave; and
    f. stress, for which the Claimant sought compensation.

4. At the start of the hearing, I was told that the Claimant's complaints relating to notice pay and unpaid annual leave had been resolved and were not being pursued. I therefore dismissed those claims on withdrawal. The Respondent's application to strike out those parts of the claim therefore fell

away and did not need to be determined.

5. In light of the evidence presented by the Claimant, and her having ticked the box on her claim form seeking a recommendation, I asked her whether she was also bringing a claim to have suffered discrimination. The Claimant stated that she was aware of the applicable legislation and was not claiming to be disabled or making any claim under the Equality Act 2010. She explained that she had ticked the box seeking a recommendation in error.

6. I explained that the claim for compensation for stress could not be pursued before me as I have no jurisdiction to award any damages for stress.

7. Accordingly, the only claims for me to determine were for unfair dismissal, statutory redundancy pay, and “enhanced” redundancy pay.

8. In considering these claims, I referred to a 263-page bundle of documents plus written statements and oral evidence from the Claimant and five witnesses called by the Respondent (all current or former employees). I am very grateful to all the witnesses for the information they provided to the Tribunal. I am also very grateful both to the Claimant and to the Respondent’s counsel for their assistance and helpful submissions.

9. The hearing of this claim took place remotely over three days. On each day, the Claimant was assisted by an interpreter. The Claimant had a good grasp of English but was understandably more comfortable having the opportunity to give and hear evidence and submissions in her native language – Polish. The interpreter was not the same on each day and, on day 2, the Claimant expressed some frustration at the quality of the interpretation. It is fair to say that the interpreter on the first day of the hearing was exceptionally gifted, and her internet connection was excellent. On the second day, the interpreter was a little more hesitant at times and his internet connection was less reliable. Nevertheless, I was satisfied that the interpretation was perfectly adequate and did not affect the Claimant’s ability to fully understand and participate in the hearing. For the most part, this was clear from witnessing the proceedings. I ensured this was the case for the totality of the hearing by allowing for proper pauses whenever the interpreter’s connection was interrupted, by allowing the Claimant the opportunity to clarify statements with the interpreter on the relatively few occasions when it was required, and by inviting the Claimant to raise any particular issues of concern with me. The Claimant highlighted a limited number of instances when she was not certain that what she had wished to say had been properly or fully interpreted. I explained to her what I had understood in relation to each issue raised, and she confirmed that I had fully grasped what she had meant to say on each point. The interpreter noted the exchange and explained that he was trying his best and was confident that he hadn’t misled me or the Claimant at any point. I invited the Claimant to raise any further issues as they arose, but none did.

10. In a similar vein, the Claimant wished to stress that in her relations with the Respondent during and after her employment she had to communicate in English and was not always comfortable and confident doing so. I understood

her concern and have been alert throughout my deliberations not to place too much weight on individual words or phrases used in emails or recorded in meeting notes/transcripts, which may not be accurate reflections of the facts or the Claimant's state of mind at any given time.

11. At the end of the hearing, I upheld all the claims and found that the appropriate remedy was a sum equivalent to the "enhanced" redundancy pay to which the Claimant would have been entitled. I asked the parties to seek to agree a figure for this sum or to provide written submissions on the issues in dispute. They could not agree a figure so provided written submissions. I considered those submissions in making my decision on the appropriate financial award, the reasons for which I will include at the end of this document. It was not necessary to order a further hearing in relation to remedy.

The Facts

12. The Respondent is a large employer, forming part of a multinational enterprise. It has operations all around the country performing different functions. One type of facility it operates is known as a Fulfillment Centre. The Claimant worked at such a facility in Hemel Hempstead. Of relevance to this claim, the Respondent operates a separate Fulfillment Centre in Dunstable. They are not identical operations but perform similar functions.

13. The Respondent also operates other types of warehouse in different locations. Two of particular relevance to this claim are located in Wembley. One is known as "DHA1", which is referred to as a "delivery station" or "sortation station". The other is known as "ULO6", which is an "Amazon Fresh" warehouse, involved in the preparation and delivery of fresh produce. A third site that I will also refer to, located in Hayes, is known as "DXN1". I understand that this was also a "sortation station", but its precise function is unimportant.

14. The Claimant's home was in Harrow and she went to work by car.

15. The parties signed a contract of employment, a copy of which was provided from page 42 of the bundle. The most relevant parts are as follows. Section 4 is entitled "Place of Work" and states:

> "Your normal place of work will be located in the Fulfillment Centre currently located in Hemel Hempstead Distribution Centre, Boundary Way, Hemel Hempstead, Hertfordshire, HP2 7UJ."

16. I will not copy out clause 4.2 but it provides for a level of flexibility from the Claimant with regard to her normal place of work to accommodate business needs. It makes specific refence to Fulfillment Centres operating within a 30-mile radius of each other including the Hemel Hempstead and Dunstable Fulfillment Centres (the former being referred to as "LTN2", the latter as "LTN4"). Clause 4.3 is as follows:

> "You agree that it is a fundamental condition of your employment that the company has the right at its absolute discretion to change your normal place of work to any of its LTN1, LTN2 or LTN4 Fulfillment Centres or any place of work of Amazon

> within a 30 mile radius of your home at any time (whether temporarily or permanently and whether during peak or non-peak periods of the year) as business conditions require. You agree that each of LTN1, LTN2 and LTN4 Fulfillment Centres are within a reasonable daily travelling distance of your current home address".

17. Section 19 is entitled "Termination of Employment". Clause 19.2 is as follows:

> "The company reserves the right to pay you basic salary in lieu of notice. You shall not be entitled to any pay in lieu of the holiday you would have received during your notice period".

18. There is no reference in section 19, or indeed in the following section 20 ("Benefits"), to redundancy situations.

19. During her employment, the Claimant developed some physical health conditions, mostly relating to her knee or lower back. They were addressed over time by the Respondent with the input of Occupational Health specialists, initially through temporary informal adjustments to the Claimant's work practices. The Claimant was not especially satisfied with her treatment over time by the Respondent in this respect. Upon a change in management, apparently in late 2021 or early 2022, the Claimant negotiated a position handling "inbound" rather than "outbound" products. The new position was less physically demanding, involving less walking and bending down. The Claimant sought the opinion of an orthopedic specialist in June 2022, who conducted an MRI scan on her knee. A copy of the letter from the surgeon outlining his diagnosis was at page 95 of the bundle. In summary, he had noted some degeneration of the Claimant's knee due to a form of developing arthritis. He gave a recommendation to avoid excessive walking.

20. At some point in or before January 2023 the Respondent determined that it may close its Hemel Hempstead Fulfillment Centre. It undertook a consultation exercise with its employees, informing them of the potential closure and that some employees might be made redundant, although it hoped that all employees could be found alternative roles in the business elsewhere. It became clear that the Respondent's "default" preference was to redeploy staff employed at LTN2 in Hemel Hempstead to LTN4, the Dunstable Fulfillment Centre, no doubt because the sites were relatively close and conducted similar operations. However, the Respondent was prepared to consider alternative options, and several employees in fact took up employment elsewhere within the business.

21. The consultation exercise proceeded in two stages. Firstly, there was a series of collective meetings between the Respondent and elected employee representatives, including the Claimant. Secondly, starting after the collective consultation commenced, individual consultations took place. There was some overlap between the two.

22. The first formal notification of the collective consultation process was sent to the Claimant by email dated 25 January 2023, a copy of which is included at page 103 of the bundle.

23. At page 104 of the bundle, that email includes a statement relating to redundancy pay. It read as follows:

> "Any employee who is, following consultation on an individual basis, made redundant will, on termination of their employment, receive any statutory redundancy pay to which they are entitled and any outstanding contractual payments. Any such employee will also be offered an enhanced redundancy payment (inclusive of the statutory redundancy payment), subject to signing a settlement agreement, which will be calculated based on tenure and annual salary. The enhanced payment will be offered to all impacted employees, regardless of their tenure".

24. At the hearing few comments and no particular complaints were made about the collective consultation process. The bundle contained various minutes of the meetings that took place. As far as I can tell from those minutes, the collective consultation appears to have been conducted in a relatively open, transparent and thorough manner. Certain elements could have been improved, which I will address later on, but there was nothing unreasonable about the process overall. Indeed, the Respondent appears to have engaged in the process in good faith, actively seeking the views of its employees before making any final decisions and responding appropriately to all issues raised.

25. Similarly, no concerns were raised about the start of the individual consultation process, which appeared reasonable to me. A copy of the Claimant's invitation to an initial meeting is at page 127 of the bundle. It was dated 17 February 2023 and invited the Claimant to a meeting on 20 February 2023. That meeting went ahead and a copy of the notes of that meeting are included from page 130 of the bundle. The meeting notes made clear that a final decision to close the site had been reached on 15 February 2023, which information was to be passed on to employees.

26. At page 131 of the bundle, towards the middle of the page, a summary of the meeting recorded as follows:

> "The AA [reference to the Claimant] would not like to move to LTN4 [the Dunstable Fulfillment Centre] and would rather move to a site closer to their home. Travel time would be 2 hours one way during traffic. As they would have to travel from Harrow they would rather move to a site closer then there".

27. A similar summary is made on the next page. It is also clear that the Claimant rejected a site visit of LTN4, for the obvious reason that she did not wish to work there. In a summary of her preferences, the note states "*London sites*". The Respondent was made expressly aware at this point that the Claimant was due to go on holiday shortly afterwards until 26 March.

28. At the end of the document, there is a fuller description of the exchange between the Claimant and the Respondent's representative, which reflects the summary above. It also shows that there was some discussion about the precise sites in London that the Claimant would be keen to investigate further, notably sites in Wembley, as follows ("RL" was the Respondent representative and "JK" the Claimant):

> "RL - so you would move to LTN4?
>
> JK – no a closer location, any other location in London is better, but in dunstable no.

> RL – any specific sites that you are aware of?
>
> JK - I know there are logistics and sortation but I am not sure if I am able to do everything
>
> RL – we can look at the FC map to see potential sites
>
> JK – I would have to go and look at the closer sites and look at the work
>
> RL – so you wouldn't be interested in moving to LTN4
>
> JK – no I wouldn't want to move to LTN4 as it would take 2 hours in the afternoon, its already 40 minutes from London so I would prefer a closer site.
>
> JK - Want to know what a delivery station is like and what they do?
>
> JK – I would like to move to one in Wembley
>
> RL – When would the earliest day be you can return?
>
> JK - I go on extended leave and return 26th march and not sure on whether I should go here or the new FC".

29. The Wembley sites under consideration were the sites I have referred to previously – DHA1 (a delivery/sortation station) and ULO6 (Amazon Fresh warehouse).

30. Specific follow up questions were asked at that meeting and they were recorded as follows:

> "Would it be possible to arrange a site tour to A delivery station nearer to me to see the work they do
>
> Would like to know if they are taking people in the delivery stations.
>
> Will I come back from holiday or will I have to go directly to the new site?"

31. There was a further collective consultation meeting two days later, on 22 February, the notes of which start on page 135 of the bundle. It was clear from the questions asked by the attendees that travel to Dunstable and the distance involved was an issue for some employees, principally for those dependent on public transport. It also became clear that the Respondent now believed it could not easily redeploy some employees and considered them redundant. These were employees working in the IT department, who would all be offered favourable redundancy packages (these employees were of a different grade to the Claimant). Similarly, the Respondent had concerns about the number of grade "T3" employees, which I understood to be management and/or administrative staff (again a different grade to the Claimant), likely to be redeployed. These employees would be offered voluntary redundancy settlements.

32. There was a further collective consultation meeting on 1 March. The notes of that meeting begin at page 141 of the bundle. It was clear that many uncertainties remained, for instance available shift patterns at LTN4 in Dunstable, transport options and the nature of precise offers that were being

made to employees. At pages 142-143, the notes confirm that offers had not yet been made, and the answer to the issue "*Some clarity around when people can get information on their offers?*" was "*to take away*".

33. There was specific reference at the meeting to travel for employees based in Harrow. In a response to a question about travel distance, the answer was:

> "It is the same for our associates in Harrow, we are not telling them it is LTN4 or bust, for associates in other places it is to work with individuals to understand... I know the understand the human element as well, that's why it comes down to individual situations".

34. In response to a specific query about what "suitable" means in the context of alternative roles, the Respondent's representative is recorded as saying:

> "We are working with LTN4 to ensure we are aligned on what it means, it is a grey legal term. We will do all we can to attend to people's individual situations as best we can".

35. On 10 March, the Claimant was invited to a second individual consultation. The invitation letter is at page 147 of the bundle. In that letter the Respondent confirms in writing that, after all avenues of investigation had been exhausted, the Hemel Hempstead site would close.

36. The meeting went ahead over the phone due to the Claimant being on annual leave. The meeting took place on 14 March. Again, a record of the meeting was made and was included in the bundle from page 150 onwards. There was still uncertainty about the alternative roles that might be available to the Claimant. The question "*Would like to know if they are taking people in the delivery stations*" was answered by "*We are still awaiting response from AZML regarding vacancies*". The answer to the question "*Would it be possible to arrange a site tour to a delivery station nearer to me to see the work they do*" was "*There are currently tours being reviewed for DS* [delivery stations]*, however we can share a video on a delivery station it may not be the exact one you prefer but would give you in to their processes* [sic]".

37. During the meeting, the ULO6 Amazon Fresh site had been discussed. The Claimant asked for more details about the work and whether the available role(s) would include "picking". No answer was given. The Claimant was given shift patterns and timings and was told that she would get an answer to her question at the next individual consultation. The meeting report noted the Claimant's mobility issues. It recorded that she "*can not pick*" and that an "*OH*" (Occupational Health) referral would be made to ensure any redeployment to a different site would be suitable. The "next steps" section of the report indicated that a further individual consultation meeting was required.

38. The next day, on 15 March, there was a further collective consultation meeting. The Claimant was not in attendance as she was on leave. It remained clear that there were still many uncertainties about the site closure and redeployment, including whether roles at delivery stations would be available (page 155). It appears many employees were expressing considerable frustration about the uncertainty and delay in receiving clarity about their options.

39. The Claimant's planned third, formal, individual consultation meeting never in fact materialised. The Respondent never arranged it. However, the Claimant did have some informal discussions with various representatives of the Respondent, at various times after her return from leave in late March (she mentioned two such occasions in her post-dismissal grievance meeting (see page 173 of the bundle)). On one of those occasions, she discussed working practices in sortation stations and Amazon Fresh with a manager. On the other, she was asked for an update on her redeployment preferences. It appears that further informal exchanges may also have taken place over "Chime", which I understand is a form of digital platform with meeting and chat functionalities. At the hearing, the manager who conducted the Claimant's second individual consultation meeting recalled having had at least one informal discussion with the Claimant after her return from leave, notably concerning the Amazon Fresh site ULO6. He stated that he had been undertaking many meetings at that point. He met with colleagues seeking redeployment so as to try to ensure they were offered their preferred positions. He also met with the Respondent's human resources department for updates on available positions across the business and to ask for colleague preferences to be actioned. As the site closure was rapidly approaching, the manager clearly had to act quickly on all fronts and was under considerable time pressure. As far as the Claimant was concerned, matters did not really progress until 11 April, shortly before the site closure planned for 16 April. The nature and content of the informal discussions that took place prior to 11 April are of considerable significance and I will make findings of fact as to their substance (precise dates are not important). I make these findings on the balance of probabilities, based on the witness statements, oral evidence and on the written records included in the bundle. I found the Claimant's own account as expressed in her post-dismissal grievance meeting especially helpful (pages 171-177 of the bundle), as well as in her appeal against the grievance outcome (pages 185-192).

40. On her return from leave in late March, the Claimant was given some general information about available roles at the sites she had shown interest in – notably ULO6 (Amazon Fresh) and DHA1 in Wembley, and also DXN1 in Hayes (which I understood to be a delivery/sortation station similar to DHA1). This included being shown videos of the sort of work involved at each site, some informal discussion about it, and being given shift patterns and pay scales. The Respondent made clear that the Claimant could take up employment at any of these sites if she wished. However, the Claimant expressed doubts and concerns about redeployment to all of them. In relation to DXN1, she was concerned about the length of her commute to the site (in Hayes) and about the sort of work she would likely be doing there that she felt would not be compatible with her health conditions. As to DHA1, in addition to similar concerns about the nature of the work, the pay during day shifts would be less than what she currently earned and insufficient. The timings of the night shift at that location differed considerably to those at her current workplace and were unsuitable for her. As to ULO6, she was concerned that a role at Amazon Fresh would involve picking in refrigerated warehouses, the combination of which would be especially difficult for her due to her health conditions. The Claimant did not firmly refuse redeployment to any of these alternative sites, however. Instead, she consistently requested more information about what the specific roles at each site involved and guarantees as to the sort of work she would be required to do. She wished to

be able to properly assess whether the roles would be suitable for her, and to explore if there were any specific tasks she would prefer and others that she would be unable to conduct. Due to her dissatisfaction at how her health conditions were first addressed by the Respondent, the Claimant had little faith they would be fully considered in a new workplace, even after further Occupational Health assessments. She was generally wary of the quality and impartiality of the Occupational Health specialists, wishing to rely instead on the opinion of her surgeon who she believed had greater experience and superior qualifications. The roles the Claimant had discussed informally with her managers appeared to her to involve a lot of tasks she was uncomfortable with, including significant amounts of walking, picking and lifting, hence why she was not keen to accept without further information. The Claimant had also been in contact with colleagues who moved to the Wembley sites, and their experiences did not provide her with much reassurance. She believed that Occupational Health recommendations concerning some of them had not been passed on to their new workplace or had been disregarded.

41. The Claimant neither received any firm or detailed responses to her questions, for instance precise or written job descriptions, nor a detailed explanation of how the Respondent proposed to progress any Occupational Health assessment. One of the main reasons she did not get the responses she was after was because none of the managers had detailed knowledge of the sites and specific roles under consideration. In relation to the Occupational Health process, the Claimant only received clarity about that on questioning of the Respondent's first witness at the hearing. The Respondent's evidence was that the Claimant would have needed to accept a position in a new workplace first, at which point an Occupational Health referral could be made to professionals associated to the site in question. The Respondent submitted that it might have been possible to delay the Claimant's start date at her new workplace pending that Occupational Health assessment. This had not been made clear to the Claimant. As she never accepted an alternative deployment, no Occupational Health referral was made.

42. As it is important to my conclusions on the unfair dismissal claim, I need to make a finding as to what type of jobs were available to the Claimant at ULO6, DXN1 and DHA1. I find, on the balance of probabilities, that all of the roles were likely to include a significant element of "picking" or other physical work the Claimant was not willing to take on. This is because these are precisely the sort of roles that appear in the videos of each operation and of which the managers were broadly aware. They are also the sort of role that was offered to the Claimant's redeployed colleagues. It seems to me this was the type of work that was most readily available and all that was on offer. Ultimately, all the information available to the Claimant led her to believe the roles would be unlikely to suit her, which reflects what they involved, and that is precisely why she was reluctant to accept them.

43. On 11 April, the Claimant's position began to be clarified. There is also considerable uncertainty about exactly what happened and the precise sequence of events over 11 and 12 April. On the balance of probabilities, I find as follows.

44. At the end of her shift on 11 April, the Claimant approached her manager to

explain that she had still heard nothing further in relation to her redeployment and needed an update. The site was due to close in the following days. The parties briefly discussed roles at the Wembley sites once again, but the *status quo* remained – the Respondent wished to know if the Claimant wanted to move to one of the Wembley sites; the Claimant would not agree to redeployment without a detailed description of what the work involved or guarantees that her health conditions would be accommodated to her satisfaction. The Respondent reacted, no doubt in part motivated by the need to have a swift resolution, by reverting to its "default" position, deciding to redeploy the Claimant to the LTN4 site in Dunstable. The Claimant received notice of that decision by letter sent by email on 12 April (pages 157-158). The letter stated that it was "*as agreed*". The Claimant responded on the same day to say that that had not been agreed and that "*On meetings we were talking about transfer to Wembley or Amazon Fresh in London*" (page 165). The Claimant immediately returned to her workplace to seek a meeting as she was disappointed by the offer.

45. The only contemporaneous written record of the substance of the meeting that took place on 12 April is a single paragraph at the bottom of page 153 of the bundle. It is rather unclear, reflecting the last-minute and rushed nature of how the meeting went ahead. What I find is likely to have happened is that the Respondent's representatives outlined the process to that point, explaining their understanding that the Claimant had refused redeployment to any other site and accordingly the Respondent had determined to redeploy her to LTN4 in Dunstable. The representatives explained that if the Claimant refused the offer, she would be dismissed without redundancy pay because the Respondent considered this a suitable alternative role for her.

46. This outcome was repeated in an email sent to the Claimant the next day, stating that, as the offer of a role in Wembley had been refused, she had been redeployed to LTN4 in Dunstable. The Respondent repeated that failure to take up that new position would result in the Claimant's dismissal on grounds of redundancy, without redundancy pay.

47. An email exchange took place over the following days with the Claimant explaining the upset at how she felt she had been treated and referring again to the lack of information she had received about alternative roles. In one email, at page 162 of the bundle, she wrote as follows:

> "I did not receive any offer that met my expectations and was suitable for me due to a knee problem that the company had known about for almost a year. I refused to work at Wembley because of the very hard working hours: 23:45-10:15 (and a 32-hour contract for day shifts with a salary of around 1500 is too low in London). Also, due to my knee injury limitations (caused by picking for over 4 years and the company's negligence in this matter), would not allow me to work at the sortation center. I have not received any official confirmation that I will be transferred there and that there will be a suitable job for me despite my limitations".

48. She also raised the issue of the redundancy settlement she had been aware of since January, highlighting that she had not received any further information about that.

49. A grievance process was then pursued, and detailed notes of a meeting were taken (starting at page 171 of the bundle). As explained above, the notes of

the meeting and the subsequent appeal letter provide, in my judgment, the most detailed and accurate contemporaneous account of relevant events.

50. The Respondent confirmed that site tours of various locations had been offered to employees due to be redeployed. The Claimant had missed out due to her annual leave (page 173). When challenged about why she had not been more proactive about her redeployment, the Claimant explained her view that it was for the Respondent to reach out to her, especially as she was expecting to be called to a third individual consultation meeting. The Claimant is recorded as stating:

> "In my opinion in these kind of situations it's management who should come and speak with me, it's their job. I asked about few things before my hol and did not get a response after I returned".

51. At page 175 of the bundle, there is a record of an exchange about the redundancy offer made in January (JK is the Claimant and KL the person hearing the grievance):

> "On consultation meeting, they said everyone who cannot go will get redundancy pay
>
> KL was this captured in the meeting notes ?
>
> JK yes. If I'd know that if I refuse to move to Dunstable and not get redundancy. But nobody told me…
>
> KL have the script been read aloud to you though ?
>
> JK it was on Wed on my last working shift".

52. After being informed that she did not qualify for a redundancy payment, having been offered a suitable alternative role, the Claimant appealed. She states that, according to her personal research and experience, the journey to Dunstable does not take 40 minutes as suggested by the Respondent unless in the middle of the night. At the time she heads to work, around 17:00 in order to arrive in time for her 18:15 shift, it is rush hour and typically took 40 to 50 minutes to reach the Hemel Hempstead site. She was clear that it would take a lot longer to travel further away to Dunstable. The Claimant had stated two hours in her exchanges with the Respondent. At the hearing, she said that she had tried the journey out and it had taken her one and a half hours at rush hour.

53. At page 187 of the bundle the Claimant wrote in relation to the alternative roles she had discussed with the Respondent:

> "...based on the video I watched, I could not agree to work there, due to the risk of my health becoming worse. How I mentioned before: on the first meeting I asked the manager for confirmation that my health situation allows me to work in both places, but I did [not] get that answer (and after the second one, as well) I have not received enough information about the alternative jobs to understand what I will be doing and how it will be different from my current job".

54. Nothing tangible resulted from the grievance or appeal process. As to the Claimant's redundancy, it was confirmed in a letter and a payment in lieu of

notice was made to the Claimant in accordance with her contract.

55. At the hearing, on questioning from me, the Respondent confirmed that 89 employees of around 500 involved in the site closure had been paid enhanced redundancy pay. 24 who were dismissed for redundancy had not, including the Claimant; the other 23 were in a similar situation to her. The Respondent had determined that it had offered each of these individuals suitable alternative employment which was unreasonable to turn down, failing the statutory test for entitlement to a redundancy payment, and no redundancy payments were made. It was not clear how many of the employees granted redundancy payments were of the same grade as the Claimant. However, the Claimant was aware that the number included at least some employees of the same grade as her, which was accepted by the Respondent.

56. At the conclusion of the hearing, I asked the Respondent for details of its formula for calculating enhanced redundancy pay. I was informed it was the higher of the following, as relevant to the Claimant:

    a. "*Average weekly salary [multiplied by] 3 weeks per year of service (average calculated as last 12 weeks) capped at 20 years* +"; and

    b. "*If the above calculation does not meet Pivot payment (19 weeks) the severance payment will be increased to match*".

57. There being no basis for doubting this was the formula used, I accept the result of this formula reflects what the Claimant would have been offered by way of enhanced redundancy pay if the Respondent accepted that she qualified for a payment.

Issues and Law

58. As to the issues for me to determine and the law for me to apply, I am grateful to the parties for providing a helpful summary.

59. I will address each claim in turn.

<u>Unfair dismissal</u>

60. As to the law that is applicable to this claim, it is relatively straightforward. S.94 of the Employment Rights Act 1996 (the "Act") provides a right for an employee not to be unfairly dismissed. S.98 of the Act provides the framework within which that right is to be assessed. In accordance with s.98(1) of the Act, the first issue for me to determine is the reason for dismissal. S.98(4) addresses the fairness of the dismissal as follows:

> "Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether dismissal is fair or unfair (having regard to the reason shown by the employer)-
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits

of the case".

61. In this case, I find that the question of fairness is best considered in two respects: firstly, the fairness of the redundancy process in general terms and, secondly, the fairness of the Claimant's treatment within that process. I will deal with those issues in turn.

62. In relation to the remedies for unfair dismissal, s.112 of the Act requires me to explain the options of reinstatement or re-engagement. If neither is ordered, an award of compensation is to be made. In accordance with s.118 of the Act, that compensation shall consist of a basic award and a compensatory award. The basic award is detailed in s.119 of the Act, and in accordance with s.122(4) of the Act:

> "... shall be reduced or further reduced by the amount of -
> > (a) any redundancy payment awarded by the tribunal under Part XI in respect of the same dismissal, or
> > (b) any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy (whether in pursuance of Part XI or otherwise)".

63. The compensatory award is described in s.123 of the Act as:

> "(1) ... such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.
>
> (2) ...
>
> (3) The loss referred to in subsection (1) shall be taken to include in respect of any loss of -
> > (a) any entitlement or potential entitlement to a payment on account of dismissal by reason of redundancy (whether in pursuance of Part XI or otherwise), or
> > (b) any expectation of such a payment,
>
> only the loss referable to the amount (if any) by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 122) in respect of the same dismissal".

<u>Statutory redundancy pay</u>

64. Provisions relating to redundancy payments are laid down in Part XI of the Act. S.135 of the Act provides an employee's general right to a redundancy payment if dismissed by reason of redundancy.

65. S.139 of the Act describes redundancy as including situations in which an employer "*has ceased ... to carry on [its] business in the place where the employee was so employed*".

66. In accordance with s.141 of the Act:

> "(2) Where subsection (3) is satisfied, the employee is not entitled to a redundancy payment if he unreasonably refuses the offer [of re-engagement].

> (3) This subsection is satisfied where-
> (a) ...
> (b) those provisions of the contract as renewed, or of the new contract, would differ from the corresponding provisions of the previous contract but the offer constitutes an offer of suitable employment in relation to the employee".

67. The issues for me are accordingly (1) whether the Respondent made an offer to the Claimant that was suitable for her (the fact that an offer was made is not in dispute), and (2) whether the Claimant unreasonably refused that offer.

"Enhanced" redundancy pay

68. As to the final issue, at the hearing the parties discussed whether this could be a claim under Part II of the Act, being a claim for an unauthorised deduction from wages. Alternatively, a claim of breach of contract. Considering the definition of "wages" in s.27 of the Act, it must be the latter. S.27 states:

> "27 Meaning of "wages" etc.
>
> (1) In this Part "wages", in relation to a worker, means any sums payable to the worker in connection with his employment, including—
> ….
> but excluding any payments within subsection (2).
>
> (2) Those payments are—
> ….
> (d) any payment referable to the worker's redundancy".

69. The issue would be the same in any event – whether the Claimant was entitled to a redundancy payment in excess of statutory redundancy pay.

Conclusions on Liability

70. I will deal with each claim in turn.

Unfair dismissal

71. The first issue I need to address is the reason for dismissal. The Claimant in her claim form indicated that the reason may have been due to her knee problems and "*the fact that the company wanted to get rid of an employee with limited opportunities, and the fact that I was an employee representative in the company*". The point was not actively pursued at the hearing, and I neither heard nor read any evidence suggesting the reason was anything but redundancy. In fact, the evidence indicated clearly that the reason for dismissal was redundancy, due to the closure of the Claimant's usual place of work. I am therefore satisfied that the primary reason for dismissal was redundancy.

72. The main issue for me to decide is whether the Claimant's dismissal was fair or unfair taking account of all the circumstances.

73. In general terms, I find that the Respondent conducted a reasonable redeployment and redundancy exercise. Certain elements of the process

could have been improved. Putting aside the Claimant's case, during the collective consultation process employees were still lacking clarity and expressing frustration with the uncertainty around shift patterns and exact transfer options and conditions well into March (less than a month before the site closure). In the immediate run-up to the site closure in late March and early April, managers were still undertaking many meetings concerning redeployment. This may well have been stressful for many employees, including managers. Nevertheless, my role is only to establish whether the process overall was reasonable and I find it was. It was an exercise involving several hundred employees, many of whom will have had different objectives and preferences. The Respondent seems to have considered these in showing flexibility as to individual redeployment decisions, despite time pressures. The final decision to close the site was only made on 15 February, around two months before operations were to cease. Some would consider more notice to be preferable, but the Respondent may believe otherwise and/or have had valid reasons for the timing of its decisions. In any event, the timing was not unreasonable, considering that the entire consultation process since January had been predicated on closure being likely. Employees were therefore clearly "on notice" of the potential closure around three months before the event, after which point they would benefit from notice pay if dismissed. Accordingly, they had some time to explore alternative employment (whether with the Respondent or elsewhere). Although not truly relevant to my decision, ultimately, most employees were either redeployed to alternative sites or offered enhanced redundancy settlements prior to site closure. Only 24 employees ended up neither redeployed nor with a redundancy payment. Of those I do not know whether the 23 others besides the Claimant were satisfied or not with that outcome; some may have been. There was no suggestion that any employee's immediate status remained undecided by the time of the site closure (albeit some may have pursued appeals or were only trialling new positions).

74. Furthermore, in general terms, it was perfectly reasonable in my view for the Respondent to have a "default" preference for redeployment, in this case relocation to LTN4 in Dunstable. That workplace was relatively close to LTN2 in Hemel Hempstead and conducted similar operations. It was reasonable, and indeed good industrial relations practice, to be open to considering alternative redeployment taking account of individual circumstances. Indeed, for an employer of the size and sophistication of the Respondent, it would in my view have been unreasonable not to consider such alternatives. The Respondent recognised in particular that certain employees, for example those living in Harrow for whom Dunstable was considerably further than Hemel Hempstead, may need particular attention. The individual consultation process was designed to ensure each employee's views and preferences were considered. It appears they were, with several employees being redeployed elsewhere than LTN4. In fact, the Claimant herself had that option, albeit she didn't exercise it for reasons I have explained above.

75. So, as far as the overall redundancy process is concerned, I am satisfied that it was fair. But was the Claimant's treatment within that process fair? That is the crux to this claim. Up to the later stages of the Claimant's individual consultation I conclude the Respondent's actions were reasonable and fair. The Claimant indicated at the earliest opportunity that redeployment to LTN4 in Dunstable was unsuitable for her. The parties discussed alternative

workplaces closer to her home. They were ultimately narrowed down to three: DXN1 in Hayes and two sites in Wembley – ULO6 and DHA1. As Hayes remained a significant distance away, greatest focus was on the Wembley sites.

76. Due to concerns about her health, the Claimant asked for a detailed description of the work and tasks she would be expected to undertake at each location. This was a perfectly reasonable request and she explained why she was asking. A specific request concerned whether the work would involve "picking", and the Claimant explained that she would not be keen to do that. The Respondent accepted this was a reasonable request, committed to providing an answer at a further individual consultation and to arranging an Occupational Health assessment. Thus far, matters had proceeded fairly in my view.

77. However, the Claimant was neither invited to a further consultation nor given a clear answer. Certain essential information was passed on, such as shift times and pay scales. The Claimant was given some general information on the available roles in Wembley and Hayes by way of generic video presentation and informal discussion. However, this did not answer her question about what exactly she would be expected to do and whether that included a significant amount of "picking". Essentially, what the Claimant wanted was a detailed job description, preferably in writing. She wanted the opportunity to assess whether any role would be suitable for her considering her health conditions, and preferably to have some record to rely on if asked to do other tasks that she cannot comfortably undertake. There is nothing unreasonable about that request, and the Respondent didn't suggest otherwise. It had committed to providing at least information about the extent of "picking" involved.

78. Not only did the Claimant not receive any detailed job description, but she was also never given the opportunity of a site visit, having been on pre-arranged leave when they took place. The Respondent was aware of her leave as the Claimant mentioned it at every individual consultation and was already on leave by the time of her second consultation. No separate arrangements were made for her despite this.

79. The Respondent's position was that the Claimant's health conditions would be considered through an Occupational Health assessment. That may be so, and presumably reasonable adjustments to the Claimant's working conditions might have been considered if appropriate. However, the Claimant not claiming to be disabled, those adjustments would not be mandatory, and would be focused on enabling the Claimant to perform the tasks she was given. If those tasks were wholly unsuitable for her in the first place, the Claimant understandably would not have accepted the job. She had already had experience of this situation, and of the sort of adjustments that might be offered to her after assessment. She had not found them satisfactory in the past. The only "adjustment" that had genuinely worked for her was when she was placed on "inbound" duties. This took some time to achieve and doesn't seem to have been directly related to an Occupational Health recommendation. This time around, the Claimant wanted clarity around her duties in advance so as not to see history repeat itself.

80. I appreciate the Respondent retains an element of control over what tasks it expects of its employees on any given day and may well make changes according to business need. However, it seems clear that, in Hemel Hempstead at least, employees were typically assigned to a type of task – "inbound" or "outbound" product handling for instance – and experience a good degree of continuity. Working practices may or may not be the same in other workplaces. This is exactly the sort of information the Claimant wanted to know. She wanted clarity about the part of the operation to which she would be assigned, what exactly she would be expected to do there, and the extent of variability. This is not a peculiar or onerous request. A short document explaining the different roles at each workplace, and the duties they typically entail, may well already exist. If not, the Respondent had several weeks within which to produce one. It is not for me to dictate whether the Respondent should have done so; this is just an example of what it could have done to ensure it was treating the Claimant fairly. In my judgment, before it could reasonably consider the Claimant redundant, the Respondent had to investigate alternative employment with her, besides that on offer in Dunstable. In this case, reasonable investigation included supplying the Claimant with some form of detailed job description(s) for the available roles in Wembley and Hayes and providing answers to reasonable questions that she asked, for instance as to the extent of "picking" involved. This did not happen, so I conclude the investigation was not reasonable and the Claimant's dismissal was unfair on that basis.

81. By extension, in circumstances where a job description had not been provided, it was also unreasonable and distinctly unfair to have given the Claimant a last-minute ultimatum to accept the offer of a job in Wembley that was unclear, one in Dunstable or dismissal. The Respondent's failure to provide timely information, and the time pressure that generated, was not of the Claimant's making. Yet she was the one to suffer the consequences. I accept that there comes a point in any redundancy process where firm decisions need to be taken, and sometimes employees will have to make difficult decisions on far from ideal options. Not every ultimatum will therefore be unreasonable. However, in the circumstances of this case, it clearly was.

82. As to the issue of the Occupational Health assessment, it is also not for me to dictate to the Respondent how to conduct its business. I was told that its policy was to require employees such as the Claimant to accept an offer of redeployment first, before being referred for site-specific assessment. The Claimant would have preferred to have the assessment prior to committing to a new job. No doubt there are several ways of arranging such assessments, no doubt each with its own advantages. I am satisfied the Respondent's policy is reasonable. It allows for an assessment by a specialist with knowledge of the specific workplace and duties, without the need to potentially undertake numerous assessments for different potential roles. I was told it would have been possible to undertake the assessment prior to commencing any duties in the new workplace. Reasonable as that policy may be, it was not reasonable to fail to clearly explain it to the Claimant, especially as it was without doubt an important issue to her. This was another failure in the investigation of alternative roles with the Claimant, supporting my conclusion that her dismissal was unfair.

83. It is important to stress that I do not find the Respondent had to create any specific role for the Claimant or re-organise its existing operations to any significant degree to accommodate her. All that fairness required in this case was for the Respondent to conduct a reasonable investigation into alternative employment opportunities besides those in Dunstable before concluding that the Claimant was redundant. That investigation included providing the Claimant with details of other jobs the parties had identified as available and potentially suitable in different parts of the business. It may well have been that they all involved "picking" or similar tasks (indeed, I have found it likely that they did). If so, it would have been sufficient for the Respondent to confirm that. It offered an Occupational Health assessment, so the precise tasks could have been tailored to an extent, but at least the Claimant would have had clarity about her options in good time to allow her to make considered decisions. If, in light of this information, she found all alternatives to be unsuitable and refused them, then dismissal for redundancy would plainly have been fair.

Statutory redundancy pay

84. As to the claim for statutory redundancy pay, the issues for me to determine are quite narrow: (1) whether the offer of employment at LTN4 in Dunstable was suitable for the Claimant; and (2) whether it was unreasonable for her to refuse it. If the offer was not suitable, and/or was reasonably refused, the Claimant would be entitled to a redundancy payment in accordance with Part XI of the Act.

85. In relation to the first issue, I am satisfied that the Claimant was offered suitable alternative employment by the Respondent. LTN4 in Dunstable was a Fulfillment Centre performing similar functions to LTN2 in Hemel Hempstead. The precise tasks and roles may not have been identical but would have been substantially similar. The sites were relatively close, being separated by around 10-15 miles.

86. The second issue I need to address is whether it was unreasonable for the Claimant to have refused the offer. The main reason she refused was the extra travel time involved. She made this very clear from the outset and was not alone amongst colleagues in having this concern, especially from those whose homes were in Harrow.

87. There was some discussion at the hearing about the additional time the journey to Dunstable would take. I need not dwell on it. On any measure, the Claimant's commute would have increased. Even under good traffic conditions, it would likely have increased by perhaps 10-15 minutes each way. In reality, considering the time at which the Claimant's night shift starts – around 18:15 – traffic and congestion would likely make the commute considerably longer. In addition, the Claimant was not an experienced driver and didn't want the additional stress that a longer drive in busy conditions would generate.

88. Just as importantly, after a long night shift, an additional 10-15 minutes of

travel home in the early hours can have a very considerable and disproportionately large impact. In the Claimant's case, she lived in shared accommodation and needed to get home and to sleep as swiftly as possible before housemates awoke and went about their business.

89. The Respondent offered no compensation for the additional travel time, whether shorter working hours or expenses for fuel.

90. It is not unreasonable for an employee to consider that there is a limit to how far they are willing to travel to work. There could be various and numerous legitimate reasons for that. It is difficult to assess where that limit lies, and different people may well have radically different convictions and expectations in that regard. In this case, I note that the Respondent had itself identified that a transfer to Dunstable might be more challenging for employees with homes in Harrow. This reflects the implication in clause 4.3 of its employment contract that it does not expect employees to travel further than 30 miles to work. The Claimant's commute to Dunstable would have been close to that arbitrary threshold. Indeed, the Respondent didn't question the Claimant's immediate rejection of a transfer to Dunstable due to the distance involved. Instead, it understood her concern and sought to find a suitable position for her closer to home in Wembley.

91. It is also relevant to consider that, as far as the Claimant was concerned, she had not exhausted her investigations into alternative employment options in Wembley. She was still hoping for further information about those options and had no intention of making final decisions until then. It seems that offers of work in Wembley were still available right up until her dismissal, and there is no obvious reason why the Claimant should accept a position she did not want whilst she was still waiting for responses to reasonable questions about other roles she would have preferred. The Respondent's failure to provide those responses meant that the parties were under severe time pressure around 11 April to make a decision. This led it to give the Claimant a last-minute ultimatum between accepting a job she did not know enough about, redeployment to Dunstable or dismissal. In these circumstances, although it may have been objectively "suitable", the offer was not reasonable, and it was certainly not unreasonable for the Claimant to refuse it.

92. Taking all of these considerations together, it is clear to me that it was not unreasonable for the Claimant to have refused the offer of redeployment to LTN4 in Dunstable.

93. The Respondent raised the issue of the Claimant's employment contract and notably the mobility clause 4.3. This states that employees will accept redeployment to LTN4 in Dunstable. It also provides that the employee agrees that it is within a reasonable travelling distance from their "current home". However, this was not a clause that the Respondent purported to rely on at any point in the redundancy process. It chose to pursue a potential redundancy process rather than a contractual workplace transfer, indicating it was doing so intentionally – "*best practice has required [the Respondent] to treat the matter as a formal redundancy situation*" (page 127 of the bundle). There may well have been very sound legal and business reasons for doing

so; I need not provide a view. Suffice to note that, in the circumstances, I find there was nothing unreasonable about that choice. It is likely that, in the circumstances of this case, for the purposes of s.139 of the Act, the reason for dismissal would have been taken to be redundancy in any event. In those circumstances a contractual mobility clause may have some relevance to but is not determinative of the reasonableness of refusing an offer of alterative employment.

94. In this case, as to the relevance of the contractual transfer provisions, not only does the clause not refer to site closures and had never been relied on as far as the Claimant was concerned, including up to her dismissal letter, but it was not enforced in relation to 89 of her colleagues (at least some of whom shared the same grade as the Claimant). Her dismissal was specifically based on redundancy, not for example for misconduct for failure to follow a reasonable instruction about her workplace or failure to attend any new workplace. The contractual mobility clause therefore simply does not apply in this case and I place very limited weight on it in determining the reasonableness of the Claimant's refusal. A helpful analysis is that the Respondent clearly waived its right to rely on the contractual mobility clause in the context of the site closure as it chose or felt compelled instead to pursue a redundancy process.

95. As to the "agreement" that LTN4 is within a reasonable travelling distance from her "current home", this is clearly part of the same clause so the same considerations apply. However, I will refer to it separately as the Respondent submits that it undermines the Claimant's argument that travelling to Dunstable would take too long. I am not convinced that it is a genuinely enforceable contractual term; it seems rather better described as a declaration of company policy included within the clause. The reference to "current home" is unclear and the Claimant had moved several times since signing the contract. At its highest, the statement reflects that on 2 May 2017 the Claimant may have believed Dunstable to have been within a reasonable travelling distance of her then home. I note however that she was committing to a job in Hemel Hempstead, which was her designated workplace, and likely had not considered working elsewhere. She had not even started work at that point. Even if she had genuinely believed the statement in 2017, by the time she faced a possible transfer 6 years later she had clearly changed her mind. I do not accept that the existence of this statement prevents the Claimant from reconsidering the matter or refusing redeployment to Dunstable, or that it somehow restricts the Tribunal's consideration of reasonableness in applying s.141(2) of the Act. In any event, strictly speaking, the Claimant's main concern in this case was not distance but time.

96. Be all that as it may, my finding on the reasonableness of refusing the offer was based on a combination of factors, not simply the distance between Harrow and Dunstable. Within that assessment, I took account of distance and placed some weight on that consideration (I would have done so regardless of the mobility clause). Overall, I concluded that the Claimant did not unreasonably refuse the offer.

97. Accordingly, her claim is well-founded and the Claimant is entitled to a

statutory redundancy payment.

<u>“Enhanced” redundancy pay</u>

98. As to the final claim for enhanced redundancy pay, the issue I need to determine is whether there was any contractual entitlement to a payment in excess of statutory redundancy pay.

99. No express clause in the parties’ employment contract addresses redundancy. Neither party submitted that the Respondent has any general policies that address redundancy; certainly no policy sufficient to amount to any implied term that enhanced redundancy pay would be payable in any given case.

100. Nevertheless, terms around redundancy are important in any employment contract, especially where an employer operates numerous sites that are subject to change and whose functions may evolve over time. From the outset of the consultation process, reflecting the importance of such terms, the Respondent made it unequivocally clear that it would pay enhanced redundancy pay to any employees dismissed for redundancy. This position was laid down in a formal email sent directly to the Claimant. I have quoted it above, but as it is at the heart of this issue, I will repeat its contents:

> “Any employee who is, following consultation on an individual basis, made redundant will, on termination of their employment, receive any statutory redundancy pay to which they are entitled and any outstanding contractual payments. Any such employee will also be offered an enhanced redundancy payment (inclusive of the statutory redundancy payment), subject to signing a settlement agreement, which will be calculated based on tenure and annual salary. The enhanced payment will be offered to all impacted employees, regardless of their tenure”.

101. The only conditions to receiving an enhanced redundancy payment were (1) entitlement to statutory redundancy pay, and (2) signature of a settlement agreement. The redundancy payment would be calculated in accordance with a formula based on tenure and annual salary. As it turns out and as outlined above, the formula was not in fact based on annual salary, but on average weekly pay over the 12 weeks leading up to dismissal. This is not an important distinction in my judgment. It was clear that the Respondent would apply an objective formula in calculating redundancy pay, and that was in truth all that it committed to. It retained discretion as to exactly what formula it would apply and the precise basis of each component factor (length of tenure and pay). It could be argued, and I would accept, that the factors would need to be reasonably chosen, and lead to a result greater than statutory redundancy pay, but those considerations are plainly satisfied in this case. That the Respondent chose to use a calculation of weekly pay based on a 12-week average, rather than annual basis, does not render its formula unreasonable.

102. There are several ways of analysing the statement from a legal perspective. All lead to the same outcome in my view. It could be considered a policy that was incorporated by implication into the parties’ employment contract. Alternatively, a variation to the contract or a collateral agreement, the consideration for which (if required) was continued dutiful service until site

closure and the diligent and committed undertaking of additional tasks associated with that process, in the Claimant's case accepting a role as employee representative for instance. A further alternative view is that the statement would give rise to a promissory estoppel preventing the Respondent from resiling from it. I heard no submissions on, nor is it clear to me on its face, that this Tribunal has jurisdiction to decide matters of estoppel within the ambit of s.3 of the Employment Tribunals Act 1996 and article 3 of the Employment Tribunals (Extension of Jurisdiction) Order 1994, so I rely only on my conclusions in respect of breach of contract. Nevertheless, the principles of estoppel support those conclusions (all of which equally support my finding the statement was of contractual effect). The statement was clear and unequivocal. It was sent directly to the Claimant with the intention of being relied on. It provided reassurance to the Claimant (and the workforce generally) that they would be properly supported during the site closure, including by way of financial settlement if redeployment were ultimately not to prove practicable. The Claimant did in fact rely on the statement, in exactly the way it was intended – a "fallback" option if all redeployment options failed. She diligently performed her duties up until the site closure, in the knowledge of potential settlement. She specifically cited the statement in her grievance appeal after dismissal, making clear that she had expected a redundancy payment. Indeed the Respondent considered itself bound by the statement and made enhanced redundancy payments to all of the Claimant's colleagues who it considered satisfied the criteria.

103. In fairness to the Respondent, its position did not appear to me to be that it didn't consider itself bound by the statement. Rather it believed its conditions were not satisfied, principally because it did not accept that the Claimant was entitled to a statutory redundancy payment. However, I find both that the Respondent was bound by the statement and that the Claimant was entitled to benefit from it.

104. As to the second condition, the Claimant did not sign a settlement agreement. That is true, but only because the Respondent, erroneously, did not consider the first condition satisfied so never offered the Claimant a settlement. As I have found she was entitled to a statutory redundancy payment, the Respondent was bound to at least offer her the chance to consider a settlement agreement. Such an agreement would likely have stipulated that no claims could be brought by the Claimant against the Respondent relating to the redundancy process. Much of what has occurred since the Claimant's dismissal, including bringing her claim before this Tribunal, cannot now be "undone" so the offer of such an agreement now for further consideration is unlikely to be of any real benefit to either party. It is clear to me that justice in this case would be properly served by ordering the Respondent to make the payment that it would have offered to the Claimant had it accepted her entitlement to statutory redundancy pay. This in my judgment is the appropriate remedy in damages for the Respondent's breach of contract. Although it isn't entirely clear what the Claimant would have done had she been made an offer, on balance I conclude that she would have accepted, so this is the position she would have been in had the offer been made. Even if she had not, instead choosing to pursue a claim for unfair dismissal, it would have made no practical difference. Having found that claim well-founded I

would have awarded her the same sum by way of compensatory award, taking account of s.123(3) of the Act (in fact, I would also have considered it the proper equitable remedy that I would have awarded pursuant to an estoppel).

105. Accordingly, this claim also succeeds, and the Claimant is entitled to an enhanced redundancy settlement.

Conclusions on Remedy

106. I ordered the Defendant to pay the Claimant £11,226.72. This is the sum the Claimant would have received had she been offered and accepted enhanced redundancy pay from the Respondent.

107. In accordance with the Respondent's formula, as far as the Claimant was concerned, she would have been awarded the higher of (a) 15 times her weekly pay (3 weeks x 5 years' service = 15 weeks) or (b) 19 weeks' pay. Clearly 19 weeks' pay is more advantageous. It also greatly exceeds the Claimant's statutory redundancy entitlement, amounting to 5 weeks' pay.

108. The Respondent calculated the Claimant's average weekly pay for the twelve weeks preceding her dismissal to be £590.88. £590.88 x 19 weeks = £11,226.72. The Claimant considered that her average weekly pay was greater, on the basis of her P60, which recorded her annual income. However, the Respondent's formula for calculating enhanced redundancy pay was clearly predicated on the average weekly income over the 12-week period leading up to dismissal. By my own calculations, on the basis of the payslips with which I was provided, the average weekly pay amounted to £583.78. This is very similar to the Respondent's figure, which was slightly higher. On the basis that the Respondent submits the Claimant's average weekly pay was greater, and no doubt has access to more complete records than I, I accepted the Respondent's figure.

109. The Respondent's offer of redundancy pay was clearly stated to be inclusive of any statutory entitlement, so the Claimant is not entitled to any additional sum.

110. The Claimant sought interest on this award, but I do not have the power to award interest in respect of claims for breach of contract. The Claimant also sought compensation for the delayed receipt of her redundancy pay, but I can only consider ordering an additional amount on account of financial loss sustained by the Claimant (such as overdraft or loan interest or charges). I was presented with no evidence of any such loss. I note also that on dismissal the Claimant was given a payment in lieu of notice that was likely to assist with immediate financial obligations.

111. As to the successful claim for unfair dismissal, I explained the orders available to the Claimant, albeit determining from the outset that reinstatement would not be practicable on the basis the Claimant's place of work had now closed. The Claimant decided not to pursue re-engagement, which I would not have ordered in any event. This is because I have found as

a fact that, even had she been given the detailed job description(s) she sought, alongside fuller information about the Respondent's Occupational Health assessment process, she would not have accepted the alternative employment on offer. The failure to provide this information was the basis on which I concluded that the Claimant's dismissal was unfair. Accordingly, ordering re-engagement would be to place the Claimant into a role that she had already refused previously, and one in which she was unlikely to be satisfied. It would neither be just nor appropriate for me to do so.

112. For similar reasons, as I have found the Claimant would not have accepted any alternative role on offer, she has suffered no loss due to her dismissal, apart from in relation to redundancy pay. It would not therefore be just and equitable to make any further award for unfair dismissal. I note that, in accordance with s.122(4) of the Act, the basic award for unfair dismissal has been extinguished by the entitlement to statutory redundancy pay.

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Employment Judge Hunt

Date: 20 May 2024

Judgment sent to the parties on
31 May 2024

For the Tribunal office

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/