



EMPLOYMENT TRIBUNALS

Claimant: Mr E Shelton

Respondent: Cambridge Design Partnership Limited

Heard at: Watford (via video)

On: 30 and 31 July 2024

Before: Employment Judge Russell

Representation

Claimant: Mr O Fuller, Counsel

Respondent: Mr J Feeny, Counsel

RESERVED JUDGMENT

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

REASONS

1. By way of a claim form presented on 14 August 2023 the Claimant complains of unfair dismissal. Early conciliation began on 05 June 2023 and ended on 17 July 2023. By way of a response presented on 05 October 2023 the Respondent defends the Claim.

2. I received a witness statement from the Claimant. For the Respondent, I received witness statements from Mike Beadman, Ben Crundwell, Jeremy (Jez) Clements, and Jenna Blood. All witnesses were questioned on their evidence. I had a digital bundle of 555 pages (including index). Page references below are to the page numbers in the bundle. I considered those pages to which I was directed by the parties. I was assisted by oral submissions of counsel. I was provided with copies of authorities referred to in Mr Feeny's submissions.

3. The hearing took place via video. I was satisfied that the parties were able to participate fully in proceedings. It was not possible in the time available to give judgment. Judgment was therefore reserved.

Issues

4. The issues for me to decide were agreed between the parties. I confirmed these with the parties at the outset of the hearing. They are set out below. The original numbering has been retained.

UNFAIR DISMISSAL

1. What was the reason or principal reason for the Claimant's dismissal? Was it a potentially fair reason? (ERA 1996, s 98(1), (2)). The Respondent relies on the potentially fair reason of redundancy or, in the alternative, a business reorganisation amounting to some other substantial reason.
2. If the Claimant was dismissed by reason of redundancy, with regard to the redundancy process, did the Respondent act reasonably in the circumstances, including its size and administrative resources, in treating redundancy as a sufficient reason for the Claimant's dismissal? (s.98(4), ERA 1996).
3. In particular:
 - a. did the Respondent undertake such consultation with the Claimant as was reasonable?
 - b. if so, was the consultation meaningful?
 - c. was the Respondent's choice of pool reasonable?
 - d. if so, was the Respondent selection from that pool fair?
 - e. did the Respondent adopt fair and objective selection criteria?
 - f. were the criteria fairly and objectively applied?
 - g. did the Respondent make reasonable efforts to redeploy the Claimant?
 - h. did the Respondent follow a fair procedure?
4. The Claimant relies on the following as amounting to unfairness:
 - a. the decision to make the Claimant redundant was made prior to any consultation taking place;
 - b. notwithstanding the two individual consultation meetings which took place, no meaningful consultation was ever had;
 - c. the Claimant was placed in a selection pool which was inappropriate and did not reflect his role within the Respondent;
 - d. the selection and scoring criteria adopted did not fairly assess the Claimant vis-à-vis his colleagues as it did not reflect his skills, performance and achievements during his employment;
 - e. the role of Ben Crundwell within the redundancy process and the broad discretion exercised over the composition of the Electronics Engineers was unsuitable given his working relationship with the Claimant had broken down and the risk of partiality and bias being shown

REMEDY

5. What basic award should be made to the Claimant (s.119, ERA 1996)?
6. Are there any grounds on which the basic award should be reduced, e.g. contributory fault or to take into account a statutory redundancy payment already received? If so, by how much? (s.122, ERA 1996).

7. What compensatory award should be made to the Claimant, taking into account what is just and equitable in all the circumstances having regard to the loss sustained by the Claimant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer? (s.123, ERA 1996) In particular:
- a. what past losses has the Claimant sustained as a result of his dismissal?
 - b. what future losses is the Claimant likely to sustain as a result of his dismissal?
 - c. what amount should be awarded for loss of statutory rights?
 - d. if the dismissal is found to be procedurally unfair, what is the percentage likelihood that the Claimant would have been dismissed fairly in any event, and when would such fair dismissal have taken place? (Polkey v Dayton [1987] IRLR 503)
 - e. should any sums be deducted to reflect payments already received by the Claimant (e.g. a redundancy or an ex gratia payment)?
 - f. does the compensatory award need to be grossed up to take into account the impact of taxation?
 - g. what is the statutory cap on the maximum compensatory award in this case? (s.124, ERA 1996)

Findings

5. My findings, based on the balance of probabilities and relevant to the issues I need to decide, are as follows.

Respondent's business

6. The Respondent is a technology and product design consultancy, which assists clients with engineering projects. It is based in Cambridge with a second office in the US. It was founded in 1996. One of its founders is Mike Beadman. He is the current Managing Director.

7. The Respondent's business is relatively unusual. It operates in a highly technical engineering field. It has been a fully employee-owned company since 2018. It does not operate along conventional hierarchical lines. It is a matrix organisation. Employees have different points of contact or reporting lines depending on the project on which they are engaged. Each employee (or, more precisely, employee owner) has an appraiser (or coach) with whom they have an annual appraisal. Informal feedback is given throughout the year. The Respondent operates an online review system where colleagues can give feedback on each other. Positive feedback about the Claimant had been given on this system by some of his colleagues.

8. The Respondent's work is divided broadly between business functions and engineering capabilities. Business functions are centralised services such as Finance, People and Facilities. Engineering colleagues are assigned to one of thirteen 'capabilities'. A capability is broadly based around disciplines comprised of those with a common skill set or experience. The Respondent's capabilities include Digital & Software, Mechanical Engineering, and Electronics Engineering. Ben Crundwell is head of the Electronics capability. Within each capability there will be different levels of engineers such as juniors, consultants, or seniors depending on experience. The more senior will have a higher fee-rate. Jez Clements is overall Head of Capabilities and a Partner.

9. The client or project fields in which the Respondent operates are split into sub-sectors such as Healthcare, Consumer and Industrial. James Baker was a Partner and sub-sector leader of Industrial [231]. He was Electronics capability lead before Ben Crundwell. There are also deputy sub-sector leaders, business development leaders, and colleagues who do a mixture of the two [280].

Claimant's appointment and role

10. Mike Beadman knew of the Claimant before he joined the Respondent. He admired the Claimant's technical ability and expertise in the field of power electronics. He considered the Claimant to be an excellent educator. The Claimant has close connections with the University of Oxford. He and Mike Beadman are Electronics Engineers by profession. Mike Beadman was involved in the decision to hire the Claimant. On 19 June 2019 the Claimant was sent a job description by James Baker. This was based around discussions between the Claimant and the Respondent about creating a new role to which the Claimant would be appointed [49]. The attached job description is for an 'Energy and Sustainability Business Leader'. The cover email says:

"We discussed your perfect role when you were here and agree with your concept which in overview, we understood as a 50:50 balance between operations and business development. This is a simplification as your version broke the business development into separate tasks and routes from collaborations, developing existing contacts and trialling the Hybrid Research model".

11. This was a new role. The Claimant was not replacing anyone else. There were two parts to the job. One was business development, which the Respondent considered would dominate for the first six months. The second was operations. I find 'operations' is a reference to engineering work. The attached job description makes clear that the post holder would ultimately be responsible for the technical success of Energy and Sustainability projects. The Claimant began working for the Respondent as Energy and Sustainability Business Leader on 01 July 2019.

12. At the time of his appointment, the Claimant had existing relationships with two potential clients, Huawei and Borg Warner. The job description for the role stated that the post-holder would 'lead a dedicated energy and sustainability innovation business stream whilst working closely with other Business Development, leadership and experienced expert project teams' [60]. The intention was for the post-holder to 'strategically and operationally lead' the Energy and Sustainability market sector [60]. The aim was that Energy and Sustainability would initially fall within the work of the Industrial sub sector led by James Baker. In time and when it was financially sustainable, the intention was that it would be pulled out of Industrial and made into its own sub sector. Sub sectors typically have a £300 million annual target. When they achieve that level of growth, they can justifiably run as a stand-alone sub sector.

13. Between 2020 and 2021 the relationship between the Claimant and James Baker declined. Mike Beadman took on responsibility for appraising the Claimant. It was unusual for someone in the Claimant's position within the Respondent to be appraised directly by the Managing Director. Appraisals would normally be conducted by an engineer's home capability lead. There was an email exchange between the Claimant and James Baker in early March 2021 where James Baker

expressed his concerns about their working relationship. He understood that the Claimant was part of the Industrial sub sector and wanted colleagues to be supportive of each other in their working relationships [102].

14. On 08 March 2021 Mike Beadman conducted an appraisal with the Claimant. An email from the Claimant on 08 March 2021 records the meeting as having lasted over two hours [96]. The appraisal included a discussion of how the Claimant and James Baker might work more effectively together. Although the meeting was relatively lengthy, the appraisal report is brief. Not all feedback sections have been completed. The Claimant's sales target in his first year was £300,000. The Claimant's sales for this period were significantly lower than his target. Two objectives were set by Mike Beadman for the following year. These were that 'we have to show real successes out of all the investment both of CDP and yourself in [power and energy]' and that there is a need to build a team 'alongside the conf approach and sales'. 'Conf approach' is a reference to the Claimant's practice of attending conferences to develop sales leads [93]. The appraisal form was signed by the Claimant on 24 April 2021 and by Mike Beadman on 05 May 2021.

15. A further appraisal was held on 16 February 2022 between the Claimant and Mike Beadman. It was noted that the Claimant's attendance at conferences had been impacted by the Covid pandemic. Three objectives were set for the following year. One was 'motor control sales'. No target sales figure is mentioned. The appraisal form notes: 'Would be useful to add in a target here from Denali' [115]. Denali is one of the Respondent's projects. The second was recruitment for robotics work. The third was to locate and contract post doc opportunities (i.e. opportunities for postgraduates following completion of their PhDs).

16. By his own account, Mike Beadman takes a 'hands off' approach to management particularly with senior colleagues. The Claimant and Mike Beadman enjoyed a good working relationship. Each respected the other. The Claimant acknowledged under cross examination that Mike Beadman was protective of him. The lack of sales in energy and sustainability had been discussed at Partners meetings and with the Claimant during appraisals. Jez Clements described Mike Beadman as being notoriously patient to the frustration of some Partners.

17. I find that while the completed appraisal forms were relatively cursory, the discussions in those appraisals covered in more detail those areas noted in the forms. I find that because of the length of meeting noted by the Claimant particularly in respect to the 2021 appraisal. No clear sales targets were recorded because the Claimant's sales to date were still some way off the projected targets but concern over lack of sales was discussed.

18. Over time the Claimant's role migrated to a more technical role. The Claimant accepted that by January 2023 his role was focused more on technical engineering work. He would rarely manage projects but would provide technical input to projects. His job title and job description remained unchanged.

19. The Claimant considered himself to be a sector and capability leader. I do not find this to be the case. The job description is clear that the post holder will lead the development of an Energy and Sustainability market sector. It would fall within the Industrial sub sector initially. It did not achieve the revenue needed to become a sector on its own. The Claimant was not a leader of any of the Respondent's thirteen capabilities.

Redundancy situation

20. Over 2020/2021 and 2021/2022 the Respondent's business revenue grew by 192%. However, due to a combination of factors, the Respondent was facing a difficult financial situation by the summer of 2022. It estimated that it needed to make costs savings in the region of £5 million. Jenna Blood, Head of People, joined the Respondent on 04 April 2022. By July 2022 the Respondent had rescinded a number of job offers made to graduates. It had not had to do this before. By August 2022 Jenna Blood was aware of management conversations around the Respondent's financial performance. Scenario planning for various eventualities began in October 2022. The possibility of redundancies was discussed at a Partners meeting in November 2022. By December 2022 the Partners had concluded that it was unlikely that redundancies could be avoided. The Partners decided to delay informing employees about the possibility of redundancies until after the holiday season.

21. The Respondent had no redundancy policy. This was the first time it had to face making job losses. Jenna Blood, together with a newly established Steering Group, designed the redundancy process. There were 10 individuals on the Steering Group. It included Mike Beadman, Jez Clements, and Jenna Blood. The Steering Group's role included coordinating the redundancy process and acting as an advisory board. It gave each capability lead a savings target and asked them to design a new team structure that would allow those targets to be achieved. The Steering Group had initially asked Ben Crundwell to reduce his team by 21% [349], which he had regarded as too high. There was consultation between the Steering Group and capability leads about the savings to be achieved within their teams. Ultimately the target to be achieved was set by the Steering Group. The Steering Group also acted as a consultative body and considered any counter proposals that employees had so that redundancies could be avoided or reduced. This included a proposal from Ben Crundwell to reduce his working hours.

22. An all staff meeting was held on 17 January 2023 to explain the need to make annual costs savings of £5 million. The initial proposal was to reduce the workforce by approximately 70 FTE roles. The key points made at the meeting were summarised in an email to all employees later that day [275]. A consultation period began that day. Collective consultation was carried out with employee representatives. The Claimant did not speak with those employee representatives. Counter-proposals and cost saving ideas from employees were invited.

23. In the presentation to employees on 17 January 2023 it was explained that certain roles were protected from redundancy. These were commercial roles that the Steering Group had identified as being business critical. These were Partners, Heads of Function, Capability Leads, Functional Team Leads, Market Subsector Leads, Business Developers/Deputy Subsector Leaders. It was also noted that this latter category needed further definition as some employees have hybrid roles [246]. The Claimant had originally used the word 'hybrid' at the time of his appointment to refer to his business development work including hybrid working with universities. In this context the Respondent was using hybrid to mean those employees who have roles that are not purely business development. This included the Claimant's role as it was split between business development and technical engineering work.

24. The Claimant's role was not 100% business development. He was not

placed in the protected category based on business development. He was not a sub sector leader. The Respondent compiled a list of protected sub sectors. 'Energy' is not listed. Industrial, of which Energy formed part, is listed as a sub-sector [231]. The Claimant, in his oral account, said that Mike Beadman told him that 'energy' was still in its 'incubation' phase. I find that this was a reference to what had been the parties' intention at the time of the Claimant's employment, namely that Energy would fall under Industrial until it achieved revenue of around £300 million (as would typically be achieved by other sectors) and could therefore operate as a separate sector. The Claimant had not achieved the revenue targets in 2022.

25. Around 280 counter proposals and suggestions for costs savings were received by the Steering Group who grouped these into common themes before considering them in turn. One proposal was to remove Partners from the protected group. The Steering Group agreed to this. As a result, Partners were put at risk of redundancy. Two Partners' roles were then made redundant. The Industrial sector was closed. Around 20 roles were saved because the Respondent adopted a range of proposals raised by employees.

Selection pool

26. Ben Crundwell shared with the Steering Group an initial structure of how the Electronics capability could look in light of the costs savings he needed to make. In designing the team structure, he considered a range of factors including researching client demands for seniorities of engineers. He sought input from the Steering Group on a few occasions. He asked the Steering Group for guidance on the construction of selection pools. The first version of his plan is dated 20 January 2023 [277]. This had 5 pools. Two pools were based in the US. Colleagues in these pools were not placed at risk. There were 3 UK-based pools: Junior, Consultant and Senior. The UK Senior Electronics Pool (Pool E) then had 6 roles within it. The proposal was to reduce this to 4 [278].

27. Ben Crundwell was aware that the Claimant's role was split between business development and engineering. There were some tensions in the working relationship between Ben Crundwell and the Claimant. Ben Crundwell sought the views of the Steering Group about how to pool the Claimant considering his split role. In his view, the Claimant was part of the Electronics Engineering capability. I find that while the Claimant may have attended other capability meetings, particularly the software capability meetings, insofar as engineers have a 'home' capability, his was Electronics. He was an Electronics Engineer. He regularly attended Electronics Engineering meetings.

28. One option was to place the Claimant in a pool of one. Ben Crundwell was concerned that if the Claimant was placed in a pool of one, his role would be redundant due to the lack of revenue generated from a role where half was comprised of business development. His account was consistent with that of Jenna Blood and Jez Clements who were both part of the Steering Group. They accepted that Ben Crundwell had sought advice on the fairest way of pooling the Claimant. Creating a pool of one was considered by the Respondent to be the least fair option. The Claimant's lack of sales had been discussed at Partners meetings. There were frustrations about the lack of revenue brought in from Energy. The Claimant was an Electronics Engineer by profession. He was well-regarded for his technical skills. In the Respondent's view, the Claimant would be given the best chance to be scored against his future value to the business if he were scored

against other senior Electronics Engineers. His capability was that of a senior Electronics Engineer. Before reaching its decision, an operations member of the Steering Group considered the relevant data including the nature of the projects on which the Claimant had been utilised. Senior engineers could expect to spend 40-50% time on sales and would have line management responsibilities for junior colleagues. The Steering Group considered that the Claimant should be placed in a pool with other senior Electronics Engineers. This was Pool E. The decision to place the Claimant in Pool E was not made in isolation by Ben Crundwell. He consulted the Steering Group and it was the Group who advised him to place the Claimant in Pool E.

29. Ben Crundwell shared the team plan with the Electronics capability at a team meeting on 20 January 2023. The Claimant raised no concerns with Ben Crundwell at this stage. He wrote an email to Mike Beadman on 20 January 2023 having seen the proposed structure to say: *'A curious strategy from Ben...removing the brains from the electronics team. What could possibly go wrong?'* [278].

30. Ben Crundwell prepared an updated team plan. This is dated 21 February 2023. The final Electronics capability proposal was that 1 of 5 members of the UK Senior Electronics team was at risk [393]. The original proposal had been to reduce the senior engineers from 6 to 4 but one had since resigned.

31. On 25 January 2023 Ben Crundwell spotted that the Claimant was not on the group email list for Electronics Engineers, which surprised him. I find that he was surprised because he considered the Claimant to be part of the Electronics team. The mailing list had been set up but IT. The email was in relation to a proposal for colleagues to reduce their working hours voluntarily with the hope of minimising job losses [283].

Selection criteria and scoring

32. During the redundancy process the Respondent maintained a list of FAQs on the staff intranet. This included further details of selection criteria [529A-H], which had already been explained to colleagues at the all-staff meeting together with any mitigating factors that could be considered.

33. There were three measurements for engineer selection. One was appraiser scoring. This measurement was given the highest weighting. Appraiser scoring assessed two components: Performance between 1-15 (15 being the highest) and Skills & Competence between 1-5 (5 being the highest).

34. The second measurement was commercial contribution. This looked at the 2022 financial year and value of sales achieved that year. Credit is given at 100% for proposals where the employee is first author and at 50% where second author. A score of 0-1 is given for sales at less than £300K, 1 where sales are between £300K - £1.5m, and 5 where sales are £1.5m+ [201]. The Claimant had scored 0.

35. The third measurement is utilisation. Utilisation scores were taken from the Respondent's central system in which colleagues recorded their time. The Claimant had 28% utilisation against client projects [330].

36. On 07 February 2023 Mike Beadman was sent a list of his appraisees. He was asked to score those appraisees whose roles had been identified as

potentially at risk [324]. He was given a scoring template on which to record his scores. Mike Beadman scored a couple of the 5 colleagues in Pool E. One of these was the Claimant.

37. Mike Beadman scored the Claimant on 17 February 2023. Performance was scored between 1-15. Descriptors were given for some scores. For example, a score of 3 indicates 'fails to meet requirements/objectives of the role' while a score of 6 'meets some of the requirements/objectives of the role'. A score of 15 is outstanding. A score of 12 is where the requirements/objectives are exceeded. The Claimant considered that he should have scored between 12 and 15 for Performance. He was scored 4 [384]. To justify the score Mike Beadman wrote:

*“Technical work in power and high performance meets requirements
Project Leadership – is far too hands off and remote and has not been
successful
Sales – Power and energy sector and failed to meet any goals set by Ed.”*

38. The second criterion is Skills & Competence. This could be scored between 1 and 5 with 5 being 'Fully competent, multi-skilled and supports others on a regular basis'. The Claimant considered that he should have scored 5. He scored 3 [385]. This is described as 'Competent in most aspects of current role. Requires some supervision against requirements of role'. Against this Mike Beadman had written that the Claimant was 'very competent technically but lacking in PL [project leadership] and sales skills required for the role'.

39. The scoring template sets out a range of mitigating factors that can be taken into consideration. They include low utilisation scores due to working on internal projects rather than client projects, and impact on scales. If there are mitigating factors, a revised score should be given. Against Performance, Mike Beadman considered that there was a possible mitigating factor. He wrote 'Maybe Covid has impacted the sales approach, but recent F2F conferences have still failed to bring in credible leads'. He increased the Claimant's score from 4 to 5 under Performance. No mitigating factors were recorded against Skills & Competence. The score for this remained as 3.

40. The Claimant scored lowest in the pool. The Claimant scored 9.4 overall. The next highest scorers were 14.67, 19.2, and 22.59. The highest was 24.87. Mike Beadman had also scored the person who scored the highest. Mike Beadman accepted under cross examination that the Claimant's score looked low but was satisfied that it was fair. He considered that the Claimant had three main aspects to his role: technical, sales, and project management. While he had regard for the Claimant's technical competence and ability as an educator, he had not delivered on the other aspects of his role.

41. The Respondent's scoring process provided that each appraiser's score had to be moderated twice. The initial moderation was carried out by Ben Crundwell who moderated all members of Pool E. He did not change the Claimant's scores. He read Mike Beadman's comments, looked at the scoring, and verified the scores against the guidance. I found Ben Crundwell's account to be open and straightforward. He accepted that while he found the Claimant to be difficult to work with in terms of teamwork, he thought he was technically strong. He was also clear that if he picked up a trend or noticed something unexpected in scoring, he would have no concerns about reporting this. I accept that Ben Crundwell would have done this. He had previously responded to the Steering

Group's initial targets for his team by challenging the level of savings to be made. He had also taken care to seek the views of the Steering Group about the fairest way to deal with the Claimant. I find that if he had concerns about Mike Beadman's scores, he would have challenged these.

42. Ben Crundwell initially found it surprising that the Claimant had scored so low when compared with others. However, he was satisfied with the explanations given by Mike Beadman. Ben Crundwell was aware that the Claimant had not delivered on his sales targets and considered that he lacked breadth. In his view, Mike Beadman's scores were a fair assessment of the Claimant.

43. Jez Clements completed the third and final moderation. He is a Mechanical Engineer by profession. He had not directly worked with the Claimant. He was aware of his work on robotics and of the fact that he was no longer working with James Baker. The Claimant had been discussed in Partner meetings. He recalled seeing a presentation from the Claimant when he joined the Respondent where he had an initial sales target of £300,000 and the Claimant predicted sales of £300 million by 2025 [68]. He was aware that the Claimant had not delivered on sales in 2022. Jez Clements had moderated other employee scores. In his experience an increase of two points for mitigation was high. The Claimant had his score increased by one point due to the possible impact of Covid-19 on sales. In his view, it did not follow that Covid-19 would negatively affect sales. He was aware of private equity funding keen to invest in research and development. However, he did not alter Mike Beadman's score and accepted the additional point for mitigation. He relied on the expertise of Mike Beadman and Ben Crundwell regarding the Claimant's technical expertise as Electronics engineers. In his moderation, he looked at workbooks and checked that the algorithms were working fairly. He weighed the scores against his own general knowledge as Head of Capabilities about who were regarded as the high performers or otherwise. He carried out the third moderation of all in Pool E and was satisfied that the scoring was fair and consistent.

Individual consultation with Claimant

44. There was a difference in accounts between Ben Crundwell and the Claimant about a discussion that was had about a month before the scoring process. The Claimant says that Ben Crundwell initiated a conversation about voluntary redundancy. Ben Crundwell denies this version of events. He says that he did not invite the Claimant to a meeting. They happened to be in the same room and began chatting about the redundancy situation. He was aware by this point that the Claimant's utilisation and sales were low. He accepted that he was also aware of the strengths of others in the electronics team. He recalled that the Claimant had mentioned the possibility of the University of Oxford paying half his salary for a few months but could not recall the specific details. He did not pass this information about the Oxford proposal on to anyone. I find that a conversation did take place between Ben Crundwell and the Claimant. This was informal and covered alternatives to redundancy. I find that the Claimant was not offered voluntary redundancy by Ben Crundwell and that he was not told, as he alleges, that he would almost certainly be selected for redundancy. I find this for three reasons. First, around the time of this conversation Ben Crundwell was actively seeking the views of the Steering Group as to the fairest way of pooling the Claimant. The accounts of Steering Group members were that Ben Crundwell was keen to ensure that the process was fair and transparent. Second, in neither the Claimant's email to Mike Beadman about Ben Crundwell getting rid of the brains

of the team or in either of the later individual consultation meetings does he mention that he was told by Ben Crundwell that he would almost certainly be made redundant. I find that he would have mentioned this had it been said. Third, Ben Crundwell did not score the Claimant. Mike Beadman scored the Claimant. Ben Crundwell moderated Mike Beadman's scores, which were in turn moderated by Jez Clements. Ben Crundwell was not responsible for the scoring of those in Pool E. On balance, the weight of the evidence supports Ben Crundwell's account of that meeting.

45. On 22 February 2023 32 employees were told that they were potentially at risk including the Claimant. On 23 February 2023 Ben Crundwell emailed the Claimant and others to say that first individual consultation meetings would take place the following week [416]. He was invited to an individual consultation meeting [394]. He was informed of his right to bring a companion. He was sign-posted to the internal vacancies page. He was advised that he could contact the People team if he had any questions. He did not do so.

46. The first individual consultation meeting was held with the Claimant on Teams on 28 February 2023. Ben Crundwell chaired the meeting. Another colleague, Georgia, was in attendance. The meeting was recorded. Ben Crundwell told the Claimant that his provisional score was 9.40 and that this had been given by Mike Beadman [406]. He was informed of the scoring categories and highest possible scores. He was told of the moderation process and that the Steering Group had reviewed his scores. He asked the Claimant whether there were additional mitigating factors that the Steering Group needed to consider. The Claimant did not mention any mitigating factors. He did not mention any internal vacancies that he would like to apply for. He did not say, as he alleged happened, that he had already been informed by Ben Crundwell about a month before that it was likely he would be selected for redundancy.

47. The Claimant was told that he was a few points behind others in the group due to the strength of the pool. He was not given a breakdown of his score this stage. The Claimant asked for the scores of others and for further information as to how his score was reached. He queried why he was in the pool when he considered that he was Energy Sector Leader and Head of the Power Electronics sub-capability group. Ben Crundwell undertook to take the Claimant's questions to the Steering Group.

48. On 03 March 2023 Ben Crundwell sent an email to the Claimant amongst others updating them on the consultation process. He explained that a few mitigations had been raised by colleagues and he had forwarded these to the Steering Group [415]. He had also forwarded on the Claimant's questions to the Steering Group to seek their input, who replied on 03 March 2023. Ben Crundwell sent the Steering Group response to the Claimant [417]. The Steering Group reiterated the likelihood of the Claimant being selected for redundancy as things stood with regards to scores given how the team was ranked and asked him for details of any additional mitigating factors. He was directed to the FAQs for further information about how the selection criteria operated. He was told that the Steering Group did not regard him as a full time Business Development role given the low level of sales in 2022 and that the fairest pool in which to place him was that of the senior electronics engineers, which had been the capability for whom he had done most work in 2022.

49. On 06 March 2023 the Claimant was invited to a second consultation

meeting. The invitation letter informed the Claimant of his right to be accompanied. He was told why he had been pooled with Senior Electronics Engineers. He was told that based on the significantly low level of sales in his area, his role was not deemed a key commercial role that would be protected from redundancy. He was again signposted to the internal vacancies portal [420]. The meeting was intended to be held on 08 March 2023 [429]. The Claimant was attending external interviews at that time. It was rearranged for 13 March 2024 [430].

50. Jenna Blood had prepared a script for those chairing the final consultation meetings. The script had different scenarios based on what was said at the meeting. There is a difference in accounts about what happened at the second consultation meeting. The Claimant attended with Ben Crundwell and Jenna Blood. This was the first time that Jenna Blood had met the Claimant. He asked for the meeting to be recorded. Ben Crundwell agreed to this and uploaded the recording to Sharepoint. Notes were then prepared following the meeting. The Claimant was directed again to the internal vacancies page. He did not mention any vacancies in which he was interested. The Claimant was asked if there was anything he would like to say. Both Jenna Blood and Ben Crundwell recalled that the Claimant was told that now was his chance to speak. The Claimant said that he wanted to get through the scripted version then he would speak at the end. Both Ben Crundwell and Jenna Blood were consistent in their version of events, namely that the Claimant was told that he had the opportunity to raise any further points before the final decision was reached. I find this to be the case because this is clearly recorded in the notes of the meeting where it is written: *“I explained that this was his last opportunity to raise any questions/comments before the decision was made. I explained that if Ed had things to say, then now was the time to say them, but he insisted we continue”*. The Claimant was told that his role was redundant and that his last day was 17 March 2023. He was offered the right to appeal.

51. At the end of the meeting the Claimant said that he was surprised to have been selected and felt that the decision had been made before the meeting. He felt he should have been treated as a wholly business development leader. He felt that he had sales leads that might mature and disputed his scoring as lowest in the pool. He contested the pool in which he had been placed.

52. In his oral account to the Tribunal the Claimant says that he attended the meeting with a manila folder, which contained a counter proposal for alternative employment. This was disputed by Ben Crundwell and Jenna Blood. They were clear that he did not put forward any counter proposals for consideration. In considering which version of events I preferred, I considered that the Claimant had not mentioned the manila folder in evidence before. There is no record in the notes of the meeting (which had been recorded) of a counter proposal. The Claimant denied having been told that he could appeal against the redundancy decision. Under cross examination he said that he *‘can state with a high degree of certainty that he was never offered an appeal’*. He said that the first he heard of his right to appeal was at the Tribunal hearing. The notes from the second consultation meeting record that he was offered a right to appeal. This was also offered in a letter dated 13 March 2023 confirming the termination of the Claimant’s employment [441]. For these reasons, I prefer the Respondent’s recollection of that meeting and find that the Claimant did not raise any counter proposals of suitable alternative employment.

53. The Claimant did not appeal. He sent an email to the Respondent after the

meeting on 13 March 2023 with some points following the meeting [458-9]. One of these was that the future opportunities mentioned seemed of little interest. I find that this was a reference to the sales opportunities that he said were maturing. He said that while he felt the redundancy was dubious, he would accept the outcome. Mike Beadman responded to the Claimant on the points he raised [458].

Alternative employment

54. On 27 January 2023 the Claimant emailed Mike Beadman with a proposal that could cover 50% of his salary for the next 6 months through the funding of research work with the University of Oxford [285]. This proposal was not relayed to the Steering Group by Mike Beadman. In his view, it was a short-term solution that would reduce costs for a short period only.

55. The Respondent had a vacancy for a consultant embedded software engineer. The Respondent considered that the Claimant was an electronics engineer, not a software engineer. The Claimant had been directed to the vacancies portal on a number of occasions and invited to express an interest in any roles. The Claimant did not apply for this role.

Law

56. The Claimant accepted in submissions that the reason for dismissal was redundancy. This is a potentially fair reason under section 98(2) of the Employment Rights Act 1996 (the Act). Where an employer can show a potentially fair reason for dismissal, whether a dismissal is fair or unfair 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 shall be determined in accordance with equity and the substantial merits of the case (section 98(4) of the Act). Guidance on reasonableness in a redundancy dismissal was given in *Williams v Compair Maxam Limited* [1982] ICR 156, including whether objective selection criteria were fairly applied, whether employees were warned and consulted, whether the views of any trade union were sought (if there is one), and whether alternative work was considered.

57. In terms of pooling, I reminded myself that while a Tribunal may scrutinise an employer's rationale for forming selection pools including who should be allocated to pools, it must not substitute its view (*Taymech Limited v Ryan* EAT663/94). So long as an employer's choice of pool falls within the range of reasonable responses available to an employer in the circumstances, the employer will have acted reasonably. As Waite LJ stated in *BA plc v Green* [1995] ICR 1006 (CA), 'in general the employer who sets up a system of selection which can reasonably be described as fair and applies it without any overt sign of conduct which mars its fairness will have done all that the law requires of him'.

58. In *Capita Hartshead Limited v Byard* [2012] IRLR 815 the EAT summarised the principles that apply where there is an issue over the selection of a correct pool of candidates for redundancy:

- (i) It is not for the Tribunal to decide whether it would have thought it fairer to act in some other way. The question is whether dismissal was within the band of reasonable responses;
- (ii) The range of reasonable responses test also applies to the selection of the pool;

- (iii) There is no legal requirement that a pool should be limited to employees doing the same or similar work. The formation of the pool is primarily a matter for the employer. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind to the issue;
- (iv) The Tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if it has “genuinely applied” its mind to the issue of who should be in the pool; and
- (v) Even if the employer has genuinely applied its mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.

59. In *BA plc v Green*, Millett LJ reminded Tribunals that it ‘is not entitled to embark upon a reassessment exercise’ in respect of scoring. What matters is whether the employer can show that the criteria were applied fairly. The Tribunal must not substitute its view of the scores it thinks an employee should receive (*Nicholls v Rockwell Automation Ltd* EAT 0540/11). Documents relating to those employees who were retained are unlikely to be relevant except in exceptional circumstances.

60. Selection criteria should be fair, transparent and objective. The fact that a criterion requires a measure of personal judgement in scoring does not mean that it is necessarily unfair (*Mitchells of Lancaster (Brewers) Ltd v Tattersall* EAT 0605/11). Consultation with employees must be fair and genuine (*R v British Coal Corporation ex parte Price (No. 3)* [1994] IRLR 72).

Conclusions

61. The Claimant was dismissed. He accepts that the reason for his dismissal was redundancy. He accepts that this is a potentially fair reason for the purposes of section 98(2) of the Employment Rights Act 1996.

Issues 3a and 3b: Consultation

62. The Respondent began its initial collective consultation with employees on 17 January 2023. I accept that the consultation was genuine and meaningful. It listened to proposals and suggestions from employees. It acted on these. It changed its initial intention of protecting all Partners from redundancy to including Partners in the pools of those at risk. In consequence, two Partners were made redundant. It accepted alternative suggestions for cost savings. From an initial estimate of 70 roles being at risk, it had reduced the number of those at risk to 32 by February 2023.

63. I do not accept that the Claimant was selected for redundancy prior to any consultation taking place. I reach this conclusion for the following reasons. There was no conversation prior to the scoring exercise in which Ben Crundwell told the Claimant that he was likely to be made redundant. On the contrary, I find that the Respondent maintained an open mind about the possibility of the Claimant remaining with the Respondent. He and Mike Beadman held each other in high regard. The Claimant’s role had initially been shaped around his particular experience and skills. When the Claimant had not delivered on sales targets, his technical expertise was used on projects. The Claimant accepted that Mike Beadman could be protective of him. There were difficult working relationships

between the Claimant and James Baker to the extent that the appraiser was changed. Ben Crundwell also found the Claimant difficult to work with. Mike Beadman assumed the role of the Claimant's appraiser. Based on this evidence, I am not satisfied that there was any pre-determined outcome that the Claimant would be selected for redundancy. The weight of the evidence points to the Claimant being valued by Mike Beadman and given some leeway at times to the frustration of others.

64. The Respondent undertook such consultation with the Claimant as was reasonable in all the circumstances. In addition to the collective updates shared on the staff portal where a range of FAQs were answered and the all-staff meeting on 17 January 2023, the Claimant was consulted, together with others in the Electronics capability, about the future shape of the team before its proposal was finalised. The Claimant did not comment on the proposed structure to Ben Crundwell, who was the capability lead and responsible for designing the future shape of the team. Instead, he wrote a short email to Mike Beadman musing about what could go wrong by losing the brains of the team. I do not accept that this was a serious attempt by the Claimant to engage in consultation or to put forward ideas as to the shape of the team.

65. The Claimant was told of how the pools would be constructed, of the numbers of roles that would be reduced, and how the selection criteria would be applied. This information was shared with the Claimant before he attended an individual consultation meeting. He had been scored in advance of the first consultation meeting. This was a provisional score only. He was invited to bring forward any mitigating factors that might affect his scoring. I find that had he done so, the Respondent would have listened to these. The Respondent, of its own initiative, had already considered the impact of Covid-19 as a possible mitigating factor. I am also satisfied given the entirety of the evidence before me that the Respondent listened to suggestions from employees and acted upon those to reduce the need for job losses. The Claimant did not raise any mitigating factors during the first consultation meeting. Had he done so, I am satisfied that these would have been taken seriously. The Claimant was told the headline score at the first consultation meeting. Ben Crundwell listened to the Claimant's request for information about how others were scored. He took this seriously. He relayed it to the Steering Group and provided a response. He did not inform the Claimant of the breakdown of scores but confirmed that there was a gap between him and the next highest ranked employee in the pool. When the Claimant queried why he was pooled with senior electronics engineers, the Respondent provided an answer to this outside of the consultation meetings.

66. The Claimant was not selected for redundancy until the second consultation meeting. At that meeting the Claimant was given a further opportunity to raise any final points. While I accept that, by that stage, the likelihood was that the Claimant would be redundant because no additional mitigation had been raised up to that point and there was some gap between the Claimant and the next highest scorer, I do not accept that it was entirely inevitable. The Claimant was told clearly at that meeting that if he had anything further to say, now was the time to say it. I am satisfied that this was a genuine invitation to the Claimant to put forward any final points that he wanted to be considered.

67. I accept that the Claimant raised with Mike Beadman the possibility that the University of Oxford might be prepared to fund 50% of his salary for a few months. While Mike Beadman did not forward this proposal to the Steering Group, I do not

accept that this casts doubt on the meaningfulness of the Respondent's consultation with the Claimant. The proposal was for a short-term reduction in the Claimant's salary. It was not a proposal that would lead to long-term or sustained cost reductions. Mike Beadman did consider it but concluded that it was not a feasible proposal in the circumstances.

68. The consultation was reasonable and meaningful. The Claimant was warned he had been provisionally selected for redundancy and was told the basis for that selection. He was given an opportunity to comment on the assessment and to raise any mitigating factors. He was informed of how the selection criteria worked. He was given opportunities by email and in individual meetings to raise any other matters.

Issue 3c: choice of pool

69. The Claimant did not work in a wholly business development role. This was part of his role. It was a part that had not resulted in significant sales. His level of sales was well below the initial sales target set of £300,000. I therefore accept the Respondent's account that his role would not have been in the protected category on account of business development. Having found that the Claimant was neither a capability lead nor a sub sector leader, he would not have been placed in the protected category on these grounds. This issue turns on whether the Respondent's choice of pool was within the range of reasonable responses.

70. I am satisfied that the Respondent properly and fairly addressed its mind to the choice of pool and that it acted within the range of reasonable responses open to it. It considered whether to place the Claimant in a pool of one. It no longer needed a role where half of the role was business development but few sales had been made. In the Respondent's view, placing the Claimant in a pool of one would be to expose him to a higher chance that his role would be redundant than if he were to be considered alongside others of his technical discipline. This was a decision that the Respondent was entitled to reach in the circumstances.

71. The Claimant is an Electronics Engineer. Of all the capabilities in which he could be based, this was his most obvious home discipline. He was senior. He was therefore placed in a pool of senior Electronics Engineers. The roles were largely interchangeable. Not only did the senior engineers share a common disciplinary expertise, senior engineers are also expected to spend a significant proportion of their time on sales, project management, and mentoring junior colleagues. I am satisfied that the Respondent acted within the range of reasonable responses in its decision to pool the Claimant in Pool E.

Issues 3 d, e, f: Fair selection

72. The selection criteria were clear and transparent. Employees were informed of the criteria and how scores would be arrived at during all-staff presentations. The FAQ portal was updated when employees asked questions. This included updates on how factors such as commercial contribution would be assessed. There were three key measures used to select engineers for redundancy. Two focused on the value added to the business in terms of income but they were distinct. The first measure was utilisation. This was an objective measure of the percentage of time on fee earning client projects. The figures were taken directly from timesheets submitted by colleagues. Provisions were in place to mitigate any low utilisation figures due to factors such as working on non-fee earning internal

projects rather than fee-paying client projects. The second measurement was commercial contribution. This was a measure of sales. This was also an objective measure. Every colleague was assessed on the previous year's sales. Mitigation was also in place in respect of this.

73. The third measure was an appraisal of an employee's performance, and skills and competence. This measure is not wholly objective but I am satisfied that the Respondent put in place adequate safeguards to minimise any subjectivity. I reach this conclusion for the following reasons. Descriptors are given against the scoring criteria. It is sufficiently granular to allow an assessor to form a view as to whether, for example, an individual fails to meet the requirements of the role or meets them in part. Guidance is also given on what factors may be considered in mitigation. Moreover, there was evidence upon which an assessment of the Claimant's skills could be made. This included the public feedback portal from which Mike Beadman could form a view that the Claimant was a good educator and objective evidence about revenue. Viewed objectively, the criteria are reasonably chosen considering the Respondent's future needs.

74. The criteria were fairly and objectively applied. The initial appraisal was conducted by Mike Beadman, the Claimant's appraiser. He was the person who was best placed to make an honest and fair assessment of the Claimant's performance and skills. He had conducted his two most recent appraisals. While the record of these is brief, the appraisal meetings were not. He and the Claimant enjoyed a good and respectful working relationship. He was aware of the Claimant's strengths and weaknesses. If anything, there was some frustration amongst the Partners that Mike Beadman may have been too tolerant of the Claimant's lack of commercial contribution given the role that he had been engaged to do. He provided justification for why he had reached the scores given. He considered mitigation. He applied an additional mitigation factor with regards to the Claimant's inability to attend conferences.

75. The Respondent had a robust moderation system in place to ensure that scoring criteria had been applied consistently and with justification. Not only does double moderation guard against any harshness or inconsistency, it also guards against favouritism. The second and third line moderations were carried out by the same persons. I am satisfied that this allowed for sufficient calibration of individual appraiser's scores to ensure that there was consistent application across the board. I am also satisfied that when the Claimant's final scores appeared low, both Mike Beadman and Ben Crundwell weighed these against their own knowledge of the Claimant. Both accepted that this was a fair assessment. Jez Clements, as Head of Capabilities, reassured himself as to the fairness of the scores and rankings based on his oversight of all capabilities and where colleagues might be ranked on performance.

76. While I acknowledge the tensions between Ben Crundwell and the Claimant in their working relationship, I do not accept the Claimant's view that his role in the redundancy process and in shaping the new electronics team structure rendered the process unfair. The Steering Group, which included Mike Beadman, approved Ben Crundwell's team structure. He had to operate within the parameters they set. The Claimant raised no issue with this at the time to Ben Crundwell. With regards to Ben Crundwell's role in the selection process, he is the head of the electronics capability. The selection was to decide who would remain as senior electronics engineers within his team. He did not score the Claimant. His only role in the selection was to moderate Mike Beadman's scores and to hold the consultation

meetings with the Claimant. Moreover, his moderation was checked again by Jez Clements. It is also clear that during the consultation meetings Ben Crundwell listened to the Claimant and undertook to obtain answers to the questions he raised. I conclude that the application of the criteria was fair and objective.

77. The Claimant's selection from the pool was fair. He scored lowest following a systematic scoring. He was a number of points behind the second-lowest scorer. He was given opportunities to provide additional mitigation as to why his score should be reconsidered. He failed to do so. He considered that he had a more difficult task of selling due to working in a new market but mitigation had already been considered for his lack of sales.

Issue 3g: Redeployment

78. The Claimant was told on a number of occasions of the internal vacancies portal and invited to bring to the Respondent's attention any roles for which he would like to be considered. There was a consultant embedded software engineering role available. He did not ask to be considered for this. The Respondent did not consider him for this. In their view, he was an Electronics Engineer and this is a different discipline. I am satisfied that the Claimant was aware of how to access the portal and knew that he could have applied for any suitable alternative roles.

79. I accept that the Claimant raised with Mike Beadman the possibility of the University of Oxford paying half his salary for a few months. I also accept that this was not a feasible solution in circumstances where the Respondent needed to make significant, long-term financial savings.

80. Given my findings of fact on what was said at the second consultation meeting, I do not accept that the Claimant raised any redeployment opportunities at that meeting.

81. The Respondent's efforts to signpost the Claimant to the vacancies portal and to invite his suggestions and mitigations on several occasions throughout the process, including on redeployment, were reasonable.

Issue 3h: Fair procedure

82. The Respondent followed a fair procedure. The Claimant was consulted about the potential for redundancies, he was given written notice of the redundancy consultation meetings and invited to bring along a companion, the second consultation meeting was rearranged at his request, he was given the opportunity to make representations both during and between meetings, and he was offered the right of appeal, which he chose not to exercise.

83. I conclude that the Respondent followed a fair process. It acted reasonably in dismissing the Claimant. The dismissal was substantively and procedurally fair. I therefore dismiss the Claim.

Employment Judge Russell
28 August 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
5 September 2024

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FOR EMPLOYMENT TRIBUNALS

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