



EMPLOYMENT TRIBUNALS

Claimant: Mrs V Tattersall

Respondent: Control & Skills Authority Limited (formerly Association of Cost Engineers Limited)

Heard at: Birmingham (by CVP) **On:** 12 & 13 May 2025

Before: Employment Judge McGough

Representation

Claimant: Mrs V Tattersall, in person

Respondent: Mrs C McLean, in person

RESERVED JUDGMENT

The Claimant's complaint of unfair dismissal fails and is dismissed.

REASONS

BACKGROUND

- 1 The Claimant was employed by the Respondent as an Administration Assistant. She was dismissed by the Respondent on 26 July 2024. She brought a complaint of unfair dismissal contrary to section 94 of the Employment Rights Act 1996 (ERA).
- 2 The Respondent's position is that the Claimant was fairly dismissed by reason of redundancy.
- 3 Early conciliation started on 21 August 2024 and ended on 27 August 2024. The claim form was presented on 11 September 2024. The Respondent submitted its response on 11 October 2024.

THE HEARING

- 4 The Claimant represented herself and the President of the Respondent, Mrs Christine McLean represented the Respondent. The Respondent had prepared a 193-page bundle of documents for the hearing, which was agreed between the parties (**Bundle**).

- 5 The Respondent informed the Tribunal at the start of the hearing that its name and registered office had changed and these changes had been registered at Companies House. Its name change was registered on 5 November 2024 and its new registered address on 2 April 2025. By consent the name of the Respondent is therefore changed from Association of Cost Engineers Limited to Control & Skills Authority Limited.
- 6 The Tribunal heard evidence from the Claimant and two witnesses for the Claimant: Mrs Helen Jackson (a former employee of the Respondent) and Mr Roger Carter (a former director of the Respondent). The Tribunal also heard evidence from six witnesses for the Respondent: Mrs Christine McLean (the President of the Respondent); Mrs Carolyn Browning (the Respondent's Company Secretary and a director); Mr David Langton (a director of the Respondent); Mrs Elizabeth Sheppard (a HR consultant); Mrs Michelle Banner (a director of the Respondent); and Ms Dawn Rossell (the Respondent's National Operations Manager).
- 7 The Claimant had not prepared a formal witness statement for herself. The Tribunal proposed that the Claimant rely upon the contents of her claim form, the document accompanying the claim form (pages 16 – 18 of the Bundle), and the document entitled "Employment Status – Tribunal Statement" at page 167 of the Bundle. This approach was agreed by the Claimant and the Respondent.
- 8 The Tribunal heard submissions from the Claimant and Mrs McLean on behalf of the Respondent.

THE ISSUES

- 9 The Tribunal decided to deal with the issue of liability first. Therefore the issues to be determined were identified as follows:
- 9.1 What was the reason or principal reason for dismissal? The Respondent says the reason was redundancy.
- 9.2 If the reason was redundancy, did the Respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the Claimant (i.e. was the dismissal fair). The Tribunal will usually decide, in particular, whether:
- (a) the Respondent adequately warned and consulted the Claimant;
 - (b) the Respondent adopted a reasonable selection decision, including its approach to a selection pool;
 - (c) the Respondent took reasonable steps to find the Claimant suitable alternative employment;
 - (d) dismissal was within the range of reasonable responses.
- 10 In terms of remedy, if applicable, the Claimant confirmed that she wished to be reinstated.

FINDINGS OF FACT

- 11 The Respondent is a professional association for people employed in "Project Control" disciplines. Prior to November 2024 it was called The Association of Cost Engineers Limited.

- 12 The Claimant was employed by the Respondent as an Administration Assistant, based in the Respondent's office in Sandbach, Cheshire. She worked 21 hours per week. She had commenced her employment on 3 April 2006.
- 13 The Respondent is a small organisation. Its directors are volunteers, save for one director who is paid for her duties as Company Secretary. At the time of the Claimant's dismissal, the Respondent had two employees – the Claimant and Mrs Helen Jackson. A third employee (Ms Sophie Crew) had recently left her employment with the Respondent. All three employees worked in the Respondent's administrative function.

The Claimant's and Mrs Jackson's roles

- 14 The Claimant and Mrs Jackson's job titles were "Administration Assistant" and they were each based in the Respondent's office in Sandbach. Whilst they had the same job title, normally they carried out separate administrative duties.
- 15 The Claimant focused on the Respondent's membership. She would deal with membership applications and subscriptions and was one of the editors of the Respondent's bi-monthly "journal" sent out to members. She dealt with all membership queries and also facilitated events for members, for example regional webinars and meetings. The Claimant also had other, ad hoc, duties including the administration of the Respondent's corporation tax and dealing with Companies House. Together with the other administration employees, she would help with the organisation of the Respondent's annual conference and attend the conference.
- 16 Mrs Jackson was full time and focussed on financial administration, in effect dealing with the Respondent's accounts and invoicing (although both she and the Claimant had access to the Respondent's bank accounts). Before the introduction of new accounting software, she had carried out these tasks using various excel spreadsheets. Mrs Jackson also carried out duties concerning "The assessment and service centre" (TASC), a sister arm of the Respondent which dealt with vocational qualifications, and also with duties for "end point assessments" (EPA). She would also help with the organisation of the Respondent's annual conference and attend the conference.
- 17 The Claimant and Mrs Jackson would each cover for the other when on annual leave or sick leave. Both the Claimant and Mrs Jackson considered themselves "pigeon-holed" in their day to day roles. However, they each agreed that Mrs Jackson could carry out a material part of the Claimant's work (for example most membership tasks), although she didn't do membership accreditation, download data relating to subscriptions, or do the Companies House work. They also each agreed that the Claimant could do a material part of Mrs Jackson's work. The Claimant explained she had a book-keeping background and so could do the accounts work. She could also carry out the TASC related work but would need training on the EPA work. Both the Claimant and Mrs Jackson estimated it would take a few days to train the other on the elements of the work she could not do.
- 18 The Claimant and Mrs Jackson had each worked for the Respondent for a long time (the Claimant for 18 years, and Mrs Jackson for longer than that) and it was clear from their oral evidence that both of them were very passionate about their work and the Respondent's members.

The period before the redundancy process

- 19 Notwithstanding the Claimant's passion for her work, she explained in oral evidence that she and her colleagues, Mrs Jackson and Ms Clews, were finding work stressful.

- 20 The Claimant explained that there had been long term difficulties concerning communications with directors. The Tribunal accepts the Claimant's evidence on this point. In appraisals held in March 2019, August 2020, March 2022 and April 2023 the Claimant raised concerns about communication between the directors and the administrative staff (pages 125 – 129 and 133 – 139 of the Bundle). The first two of these appraisals were "collective" appraisals involving Mrs Jackson and Ms Clews as well as the Claimant. There was a recurring theme in the appraisal documentation, whereby the office staff were asking for better communications with and instructions from the directors.
- 21 The Claimant felt under pressure in the period shortly before the redundancy process. This was because her work on subscriptions was taking a long time due to having to use an out of date database and she also needed to prioritise supporting the annual conference preparations. Mrs Jackson similarly felt stressed. She explained in evidence that this was because she was having to use some antiquated systems which were time consuming, in particular the Respondent's data base. She felt she was being criticised for not doing tasks quickly enough despite doing her best with the systems and equipment she had. Both the Claimant and Mrs Jackson acknowledged that there were some new systems being put in place (for example a new finance system – see below) but they felt that this did not resolve all of the problems they were encountering.
- 22 The Respondent had been introducing some modernisations to its systems in 2023 and 2024, to make the administration work more efficient. Examples included streamlining application processes and the introduction of new finance software, for which Mrs Jackson had received training.
- 23 From early June 2024, the Claimant, Mrs Jackson and Ms Clews were all absent from work due to ill health. Mrs Jackson could not recall the exact date she called in sick, but thought it might have been Monday 3 June as she had just returned from holiday. Her fit note is dated from 5 June 2024. The Claimant and Ms Clews both contacted the Respondent via WhatsApp on 5 June 2024 to explain they were going home as they felt unwell (page 119 of the Bundle). The Claimant obtained a fit note from her doctor starting from 12 June 2024.
- 24 From 5 June 2024 onwards, this meant that all of the Respondent's employees were off sick. Mrs McLean and Mrs Browning took over required administrative work in the absence of the administrative staff. They were carrying out various administrative duties, remotely, on a daily basis. Mrs McLean explained, which is accepted by the Tribunal, that as they did this work they got to understand in some detail what the work entailed and how long various tasks took. Mrs McLean explained in oral evidence and Mrs Browning explained in her witness statement (page 184 of the Bundle), which is accepted by the Tribunal, that it became apparent to them that there was not enough day to day work to support the size of the administration team (at that time, one full time employee, Mrs Jackson, and two part-time employees, Ms Clews and the Claimant). From 10 June 2024 onwards, they started a "workload tracker" setting out in detail the various administrative tasks undertaken by the team and the estimated time the tasks took each week (or over the course of a year, for more ad hoc tasks) – page 104 of the Bundle.
- 25 On 12 June 2024 the issue was raised at a board meeting of the Respondent's directors (page 58 of the Bundle). Given the observations by Mrs McLean and Mrs Browning about workload and a drop in operational revenue, the board decided to commence a redundancy process to adjust the headcount to a level that more accurately reflected the workload at that time. The board decided to start the process in the week commencing 24 June 2024.

- 26 On 13 June 2024 the Respondent received a resignation letter from Ms Clewes and her employment ended on 27 June 2024. Mrs Browning explains in her witness statement, which is accepted by the Tribunal, that the Respondent considered that there was only enough workload to justify one administrative role, and on that basis the Respondent continued with the planned redundancy process.

The redundancy process

- 27 The Respondent wrote to the Claimant and Mrs Jackson on 28 June 2024 explaining that their roles were at risk of redundancy because the Respondent required less administration support due to “increasing implementation of automated systems and reduced workload”. The letter informed the Claimant that she had been pooled with the other Administrative Assistant and that one role may be made redundant. The Claimant was invited to a consultation meeting (by audio call) on 4 July 2024 and a subsequent meeting on 15 July 2024, with a final decision to be made on 18 July 2024. The letter is at page 59 of the Bundle.
- 28 Mrs McLean chaired the Claimant’s first consultation meeting on 4 July 2024. An external HR consultant, Mrs Sheppard, also attended the meeting. Mrs Sheppard is Mrs McLean’s sister. Mrs Sheppard explained in her evidence that she attended the consultation meetings only to take notes because no other directors were available to do so, and that she was not involved in any decision making or the scoring process. The Tribunal accepts Mrs Sheppard’s evidence on this point.
- 29 In the meeting Mrs McLean explained the reasons for the proposed redundancy. She also explained that the Respondent was asking for any input from the Claimant, including if she could think of any ways to avoid the proposed redundancy. The Claimant did not agree that only one role was required for all the administrative work and she went on to explain how stressed she was about the process. Mrs McLean went into more detail about the consultation process, explaining that the Respondent was in the process of producing a scoring matrix that would be completed by the next meeting and provided to the Claimant so that the scores could be discussed with the Claimant. Mrs McLean outlined that the scoring matrix was likely to include job knowledge, job performance and behaviours and that the Claimant would have the opportunity to challenge anything in the scoring she didn’t agree with. Mrs McLean also explained that the Respondent wanted to take the Claimant’s views on board before coming to a decision.
- 30 The Claimant informed Mrs McLean that she was floored by the process and felt that the Respondent had already made its decision. The Claimant was upset in the meeting and towards the end she asked if she could leave the meeting and said that she just wanted to be contacted on 18 July when the decision had been made. The original notes of the meeting are at pages 60 to 62 of the Bundle. When these notes were sent to the Claimant she asked for them to be updated with a number of points (page 65 of the Bundle) and those updated notes of the meeting are at pages 66 to 69 of the Bundle.
- 31 When sending the updated meeting notes to the Claimant by email on 7 July 2024, Mrs McLean explained that, notwithstanding the Claimant stating she did not intend to attend the second consultation meeting on 15 July, she would like the Claimant to continue to engage in the consultation process to ensure her views were considered during the process. She went on to say that the Claimant could change her mind at any time and attend the meeting arranged for 15 July. As with the first meeting, the Claimant was told she could be accompanied at the meeting by a work colleague or a trade union representative.

- 32 On 15 July 2024, the Claimant informed Mrs McLean by WhatsApp message that she would not be able to attend that day's consultation meeting due to anxiety, stress and depression. The Claimant felt that attending the meeting would exacerbate her health problems. Mrs McLean responded by saying she would reschedule the meeting for 23 July because she wanted the Claimant to have every opportunity to engage in the process. She also explained that the outcome meeting would be rescheduled for 29 July (pages 70 to 72 of the Bundle).
- 33 During the period between the two consultation meetings, the scoring matrix was compiled and completed for the Claimant and Mrs Jackson. Mrs McLean explained in her oral evidence, which is accepted by the Tribunal, that she decided on the selection criteria by doing some research on the internet for best practice and joining a call with an external HR company which provided general advice on how to conduct a redundancy process. Mrs McLean accepted in her oral evidence that she had not consulted with the Claimant on the criteria in advance of the scoring process. She explained that the Claimant had mentioned that workplace attendance would have been fairer, and the Claimant also raises this point in her claim form (page 17 of the Bundle). Mrs McLean explained that the Respondent wanted to retain the person who scored higher in areas covered by the scoring matrix. The criteria in the matrix completed by Mrs McLean were technical capability, administration skills, quality of work, communication skills, attitude / flexibility / willingness, productivity / efficiency, and "extra effort".
- 34 Mrs McLean completed the initial scores for the Claimant and Mrs Jackson and then sent them to Mrs Browning and Mr Langton for their review and comments on the criteria and the scores. She based her scoring assessment on the Claimant and Mrs Jackson's work over the previous 12 months. Mrs Browning and Mr Langton reviewed the criteria and the scores for the Claimant and Mrs Jackson. Mrs Browning was the Claimant's line manager at the time. She considered the scores and accompanying comments in the scoring matrix to be factual and a balanced and fair assessment of the Claimant. Mr Langton also agreed the scoring and the comments in the matrix. The completed scoring matrix is at pages 79 – 81 of the Bundle.
- 35 Mrs McLean chaired the second consultation meeting on 23 July 2024 with Mrs Sheppard in attendance to take notes. The Claimant attended the meeting accompanied by her husband, Mr Nick Tattersall. The meeting was held via video call.
- 36 At the start of the meeting Mrs McLean asked if the Claimant had any questions and whether she had any ideas for new roles that could avoid the redundancy. The Claimant continued to express her view that she could not see how one person could do the work. Mrs McLean explained that she considered it could be done by one person, and that all of the work minus the financials was currently being done by a temporary worker working a maximum of 25 – 30 hours per week, whilst the Claimant and Mrs Jackson were on sick leave. There was further discussion about holiday cover and lone working.
- 37 Mrs McLean went on to give the Claimant a copy of the scoring matrix, with her completed scores. She explained that the scores had been completed by herself, Mrs Browning and Mr Langton. She asked the Claimant to come back to her if she didn't agree with any of the scoring before then running through the scoring matrix and the comments.
- 38 There were seven selection criteria and the Claimant had scored 3 out of 5 for four of the criteria. A score of 3 meant "performed" for performance-related criteria and "demonstrates" for behaviour-related criteria. According to the scoring matrix, "performed" meant "all or most of the individual's required results achieved", and

“demonstrates” meant “demonstrates the behaviour expected for that role well”. The Claimant scored 2 out of 5 for three of the criteria. A score of 2 meant “under performed” and “sometimes demonstrates”. “Under performed” meant “the majority of the individual’s required results achieved” and “sometimes demonstrates” meant “partially demonstrates the behaviour expected for that role. Attempts to address any lack of ability and is motivated”. The Claimant’s total score was 18. (Pages 80 and 81 of the Bundle.) Mrs Jackson’s score (according to her scoring matrix, disclosed by the Respondent during the hearing) was 20.

- 39 The Claimant did not agree with the scores or the comments in the matrix and there was a discussion between the Claimant and Mrs McLean about a number of the comments and examples given in the scoring matrix. The Claimant also raised a questions about: (1) previous discussions with directors about hiring more staff; (2) the timing and method of sending subscription emails; and (3) payments for attending the Respondent’s annual conference. The Claimant said she considered the redundancy process to be a sham. In her oral evidence the Claimant explained she felt the scoring was inappropriate because she had had very positive appraisals in the past (the last being April 2023) and had never been approached by the directors to say she was not performing.
- 40 Towards the end of the meeting, Mrs McLean agreed to come back to the Claimant on the points that she could not answer in the meeting. She also explained that she would send the Claimant a copy of the scoring matrix and meeting notes after the meeting. The Claimant reiterated that the Respondent did not understand what the Administration Assistants do in the office and that she did not understand how only one person could do the work. She also explained again that she was finding the process very difficult. Notes of the meeting are at pages 75 - 78 of the Bundle.
- 41 Mrs McLean sent the Claimant a copy of the meeting notes and the scoring matrix by email later that day. In her email she responded to the Claimant’s outstanding questions outlined in paragraph 39 above. The Claimant replied on 24 July responding to each of those points. She did not make any further comments about her scores. When the Tribunal asked her why she did not raise any further points about her scores at this stage, the Claimant said she felt the decision had already been made. Mrs McLean responded to the Claimant the same day, addressing each of the points the Claimant had made. (Pages 82 – 85 of the Bundle.)

The Claimant’s dismissal

- 42 The third and final consultation meeting was held on 26 July 2024 by video call. The meeting was chaired by Mrs McLean, with Mrs Sheppard in attendance to take notes. The Claimant attended the meeting unaccompanied. Mrs McLean ran through the consultation process up to that point and the rationale for the proposed redundancy. She then confirmed to the Claimant that she had been selected for redundancy and that she would be paid in lieu of her notice period so her employment would terminate that day. There was a short discussion about the Claimant’s accrued untaken holiday and other administrative arrangements. Mrs McLean reminded the Claimant that she had a right to appeal the decision to one of the other directors, Mrs Banner, within 5 working days. In her oral evidence, which is accepted by the Tribunal, the Claimant explained that she found the meeting very distressing and needed to use her asthma inhaler towards the end of the meeting. Notes of the meeting are at pages 87 – 89 of the Bundle.
- 43 Mrs McLean wrote to the Claimant on 26 July 2024 confirming the dismissal, setting out her redundancy payment and other termination-related payments.
- 44 On 29 July 2024, the Claimant emailed Mrs Banner explaining that she intended to file a grievance against the Respondent’s board of directors. She asked for a

copy of the grievance policy. In her email she stated that she understood that her grievance would not impact her redundancy but she wanted to prevent others from such experiences, and that she had experienced bullying, belittlement and a sense of worthlessness from the Respondent. Mrs Banner replied on 30 July asking the Claimant to provide some more information about her allegations so that they could be investigated. The Claimant replied on 31 July 2024 outlining two allegations unconnected to the redundancy process (work related stress experienced in 2020 and 2023) and the remainder of her response related to the conduct of the redundancy process. She re-iterated that she considered the process to be a sham. She also said she would provide information about other allegations relating to breaches of her contract. The Claimant described this email as “an initial summary” and said that she had a detailed diary of issues which she would share with Mrs Banner at a later date. See pages 101 – 103 of the Bundle.

- 45 Mrs Banner responded to confirm the Respondent was taking the Claimant's grievance seriously and asked for a copy of the diary of issues she mentioned in her previous email so that a thorough investigation could be conducted. The Claimant emailed Mrs Banner on 30 August asking for another copy of that reply to her email of 31 July, as she had deleted it. Mrs Banner responded on 3 September 2024 with a copy of the email. See page 101 of the Bundle. The Claimant responded the same day to explain she was struggling with anxiety after the redundancy process. She did not mention her grievance or provide any of the further information requested by Mrs Banner. The grievance did not proceed any further.
- 46 Mrs Jackson did not return to work after the conclusion of the redundancy process. She explained in oral evidence, which the Tribunal accepts, that she was suffering from stress and that she did not want to return to work if it meant she would be a lone worker. Mrs Jackson suffers from labyrinthitis (which can severely impact balance) and she was worried about falling or becoming ill while at work on her own. Mrs Jackson could not recall her exact termination date, but according to the Respondent this was 30 September 2024.
- 47 The Respondent later recruited a part time “Social Media / Administration Assistant” to work 20 hours per week. The new Assistant started work for the Respondent on 3 December 2024. The new Assistant carries out the tasks previously undertaken by the Claimant and Mrs Jackson (event organising, telephone and reception work, processing application, qualification and accreditation queries, financial administration including sales and purchasing queries, bank reconciliation and credit control, managing mailing lists, scheduling meetings) together with social media work (pages 192 and 193 of the Bundle).

THE RELEVANT LAW

- 48 An employee has the right not to be unfairly dismissed by their employer. Sections 94 and 98 ERA, provide:
- 94 *The right*
An employee has the right not to be unfairly dismissed by his/her employer.
- 98 *General*
- (1) *In determining whether the dismissal of an employee is fair or unfair it is for the employer to show-*
- (a) *the reason (or if more than one, the principal reason) for the dismissal;*
and

- (b) *that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*
- (2) *A reason falls within this subsection if it—*
 - ...
 - (c) *is that the employee was redundant, or*
 - ...
- (4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the 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.*

49 If a dismissal is asserted to be on the grounds of redundancy, the employer must show that the employee was in fact redundant under section 139(1) ERA. The relevant section here is section 139(1)(b), namely:

139 Redundancy

- (1) *For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—*
 - ...
 - (b) *the fact that the requirements of that business—*
 - (i) *for employees to carry out work of a particular kind, or*
 - (ii) *for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.*
 - ...
- (6) *In subsection (1) "cease" and "diminish" mean cease and diminish either permanently or temporarily and for whatever reason.*

50 In determining whether a dismissal is on the grounds of redundancy, a Tribunal must decide (as set out in Safeway Stores plc v Burrell [1997] IRLR 200, which was approved by the House of Lords in Murray & another v Foyle Meats Ltd (Northern Ireland) [1999] IRLR 562):

- 50.1 Was the employee dismissed?
- 50.2 If so, had the requirements of the employer's business for the employee's work of a particular kind ceased or diminished or were they expected to cease or diminish?
- 50.3 If so, was the dismissal of the employee caused wholly or mainly by the cessation or the diminution?

Only if the answer to all three stages is yes, will there be a redundancy dismissal.

- 51 A diminishing need for employees can arise where the work of a particular kind has diminished, but also where the work has not diminished but fewer employees are needed to do the work.
- 52 Reference in s139 ERA to "work of a particular kind" means the requirements of the business for employees to do work of a particular kind, rather than work for which a particular employee was employed. That is, the focus is on the role, not the individual employee(s). See Murray & another v Foyle Meats Ltd (Northern Ireland), above.
- 53 "Work of a particular kind" means work which is distinguished from other work of the same general kind by requiring special aptitudes, skills or knowledge". It is the skills required for the work that are to be considered – Amos v Max-Arc Ltd [1973] ICR 46.
- 54 A Tribunal will not look behind the employer's decision or require it to justify how or why the diminished requirement has arisen, provided it is genuinely the reason for the dismissal – Moon v Homeworthy Furniture (Northern) Ltd [1976] IRLR 298.
- 55 In determining the question of reasonableness it is not for the Tribunal to impose its standards and decide whether the employer should have behaved differently. Instead, it has to ask whether "the dismissal lay within the range of conduct which a reasonable employer could have adopted" as set out in the case of Iceland Frozen Foods v Jones [1982] IRLR 439.
- 56 Among the relevant factors that a reasonable employer may expect to consider in a redundancy context are:
- 56.1 Whether the selection criteria are objectively chosen and fairly applied;
- 56.2 Whether the employees were warned and consulted about the redundancy;
- 56.3 Whether any alternative work was available.
- (See Williams v Compare Maxam Limited 1982 ICR 156.)
- 57 The leading case on reasonableness is Polkey v AE Dayton Services Ltd 1988 IRLR 503, in which the House of Lords held that an employer will normally not act reasonably, and a dismissal will therefore be unfair, unless it:
- 57.1 Warns and consults about the proposed redundancy;
- 57.2 Adopts a fair basis on which to select for redundancy; and
- 57.3 Takes such steps as may be reasonable to avoid or minimize redundancy by deployment within its own organisation (that is, consider suitable alternative employment).
- 58 The size and administrative resources of the employer will be relevant to the question of reasonableness and could affect the nature and degree of formality of any consultation. However, it does not excuse a small employer from failing to consult at all.
- 59 The "range of reasonable responses" test applies not only to the actual decision to dismiss, but also to the procedure adopted by the employer in putting the dismissal into effect - Sainsburys Supermarkets Ltd v Hitt [2003] IRLR 23.

- 60 The reasonable response test applies to the "pool" from which the redundancies are to be drawn - Hendy Banks City Print Limited v Fairbrother and others EAT 0691/04.
- 61 There is no legal requirement that a selection pool should be limited to employees doing the same or similar work and employers may be expected to include in the pool those employees whose work is interchangeable. Ultimately, the question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind to the problem – Taymech v Ryan EAT 663/94.
- 62 Fair consultation will involve: consultation while proposals are at a formative stage; adequate information on which to respond; adequate time in which to respond; and conscientious consideration of the response to the consultation – R v British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price [1994] IRLR 72.
- 63 Tribunals must not put themselves in the position of the employer and consider what they themselves would have done in the circumstances. A Tribunal must not decide what it would have done if it had been management, but whether the employer acted reasonably. A decision must not be reached by a process of the Tribunal substituting itself for the employer and forming an opinion of what it would have done had it been the employer (see Grundy (Teddington) Ltd v Willis 1976 ICR 323, QBD; and HSBC Bank plc (formerly Midland Bank plc) v Madden 2000 ICR 1283, CA).
- 64 Whilst Tribunals should consider whether selection criteria were applied fairly, it is not appropriate for a Tribunal to scrutinise the actual scoring unless there had been bad faith or obvious error – Dabson v David Cover and Sons Ltd EAT 0374/10.
- 65 The absence of an appeal does not of itself make a redundancy dismissal unfair. If the original selection for redundancy was in accordance with a fair procedure, the absence of an appeal is not fatal to an employer's defence. However, it is one of the factors to be considered in determining fairness and whether the employer's approach fell within the 'band of reasonable responses' (see Gwynedd Council v Barratt 2021 EWCA Civ 1322).

CONCLUSIONS

- 66 The Tribunal found the Claimant and all witnesses who appeared on behalf of the Claimant and the Respondent to be credible witnesses who were truthful in their evidence to the Tribunal.
- 67 The Claimant and Mrs Jackson were clearly very passionate and proud of their work for the Respondent and, despite stresses at times, had enjoyed their jobs. Perhaps understandably, given how they felt about their work and how long they had been employed by the Respondent, the Claimant and Mrs Jackson found the redundancy process very difficult and very stressful.
- 68 From the evidence before the Tribunal there appears to have been a breakdown in communications and relations, over time, between the Respondent's directors on the one hand and the administrative staff on the other. The various appraisals between 2019 and 2023 showed that the Claimant and her colleagues wanted more communication from the Respondent's directors, and there were differences between those parties about whether improved communication was forthcoming. There were also clear differences between the Claimant and the Respondent about the amount of administrative work to be done (or at least the amount of time

it took to do that work) and therefore whether the redundancy process was genuine and fair.

What was the reason or principal reason for dismissal

- 69 The first issue the Tribunal is required to decide is whether the reason or principal reason for the Claimant's dismissal was redundancy, and therefore a potentially fair reason in accordance with section 98(1) and (2) ERA.
- 70 The first part of this issue is whether the requirements of the Respondent for employees to carry out work of a particular kind had ceased or diminished or were expected to cease or diminish. The Tribunal concludes on the facts found above that this has been established. The Respondent had taken steps to modernise its systems and, after analysing the tasks carried out by the team, considered that the work carried out by its administrative team could be absorbed into one role, as outlined at paragraphs 22 to 26 above. As set out in Murray & another v Foyle Meats Ltd (Northern Ireland) (paragraph 52 above), work of a particular kind means the requirement of the business to do work of a particular kind, rather than work for which a particular employee was employed.
- 71 The second part of this issue is whether the Claimant was dismissed wholly or mainly because of the diminution in the requirements for administrative work. The Tribunal's concludes that this was the case. The Respondent reasonably considered that less time was required to carry out the various administrative tasks undertaken by the three (and later, two) Administration Assistants and decided that the tasks could be absorbed into one Administration Assistant role. (Paragraphs 24 to 26 above.)
- 72 As set out in Moon v Homeworthy Furniture (Northern) Ltd (paragraph 54 above), the Tribunal need not look behind an employer's decision or require it to justify how or why the diminished requirement has arisen, provided it is genuinely the reason for the dismissal. Furthermore, it is the Respondent that has the discretion to determine how it wishes to organize the work carried out by its employees. It is not for the Tribunal to substitute its view on the best way to do this.
- 73 The Tribunal finds that the test in Safeway Stores plc v Burrell (paragraph 50 above) is satisfied and therefore that the reason for the Claimant's dismissal was redundancy.

Was the dismissal fair

- 74 The second issue the Tribunal is to decide is whether the Claimant's dismissal was fair or unfair pursuant to section 98(4) ERA. When considering this question, the Tribunal must determine whether the Claimant's dismissal was within the range of conduct that a reasonable employer could have adopted (Iceland Frozen Foods v Jones, paragraph 55 above), often referred to as the "band of reasonable responses".
- 75 In particular, the Tribunal must decide whether the Respondent: (a) warned and consulted about the proposed redundancy; (b) adopted a fair basis on which to select for redundancy; and (c) took reasonable steps to avoid or minimize redundancy by finding suitable alternative employment. (Polkey v AE Dayton Services Ltd, paragraph 57 above.) Each of these is dealt with in turn below.

(a) Did the Respondent adequately warn and consult the Claimant?

- 76 The Tribunal's findings of fact show that the Respondent warned the Claimant that her role was at risk of redundancy in the letter dated 28 June 2024. The

Respondent then carried out a consultation process which consisted of three consultation meetings with the Claimant on 4 July, 23 July and 26 July 2024. The Claimant was accompanied by her husband at the second meeting. The Tribunal is satisfied that these meetings took place while the redundancy proposal was at a formative stage and that the Respondent gave the Claimant adequate information about its proposals (that is, the reason for the reduction in work and the proposal that only one Administration Assistant was required to carry out that work).

77 The Respondent did not directly consult with the Claimant about the selection criteria that it used and it did not give the Claimant details about her scores in advance of the meeting in which they were to be discussed (the second consultation meeting on 23 July 2024). It is good practice to do so. However, the selection criteria that were used (pages 79 – 81 of the Bundle) were fair and reasonable and the Claimant was given the opportunity during the second consultation meeting and the period between that meeting and the third consultation meeting (when she communicated with the Respondent about other points, but not specifically her scores) to comment on and challenge her scores.

78 For the reasons set out above, the Tribunal concludes that the Respondent adequately warned and consulted the Claimant about the proposed redundancy and that its conduct in this regard was within the band of reasonable responses.

(b) Did the Respondent adopt a reasonable selection decision

79 The Claimant and Mrs Jackson were pooled together as part of the selection process. The Claimant questioned why she was put at risk of redundancy or selected from the pool, given that her core responsibilities remained. She submitted in the hearing that her scores were implausible given her previous positive appraisals and “unblemished record”.

The selection pool

80 The Claimant and Mrs Jackson accepted in their evidence that they could each carry out the majority of the other’s role and would only require a few days’ training to get up to speed with the remainder (paragraph 17 above). On that basis, the Tribunal finds that parts of the Claimant’s and Mrs Jackson’s work were similar and, to the extent that they weren’t similar, they were interchangeable. Applying Taymech v Ryan (paragraph 61 above), the Tribunal concludes that the Respondent genuinely applied its mind to the pool for selection and that, in placing the Claimant and Mrs Jackson together in a pool for selection, the Respondent acted reasonably and within the range of reasonable responses. Indeed, it may have been unreasonable if the Respondent had *not* pooled the Claimant and Mrs Jackson together.

The Claimant's scores

81 The Respondent had based the scores on performance in the last 12 months, a period which was not covered by previous appraisals (see paragraphs 20 and 34 above). The Claimant scored 3/5 in four of the seven selection criteria and 2/5 in the remaining three criteria. Taking into account the meanings of a score of 3/5 and 2/5 (paragraph 38 above), the Respondent submitted this meant that for the majority of the criteria the Claimant was, in essence, assessed as “doing the job”. The Tribunal accepts the Respondent’s submission on this point. Applying Dabson v David Cover and Sons Ltd EAT 0374/10 (paragraph 64 above), it is not for the Tribunal to scrutinise the actual scoring unless there had been bad faith or obvious error. Taking into account the meaning of the scores, the fact they related to the previous 12 months, and the fact that the Claimant and Mrs Jackson’s scores were

very close (paragraph 38 above), the Tribunal concludes that the Respondent acted reasonably in its application of the scoring criteria.

(c) Did the Respondent take reasonable steps to avoid or minimize redundancy by finding suitable alternative employment

82 The Respondent asked the Claimant for her input on alternative roles and other ways of avoiding the redundancy (paragraphs 29 and 36 above). The Claimant did not put forward any alternatives although, given the size of the Respondent's organisation, that is not surprising. The Respondent submitted that, given it only had two employees, it was unlikely that any alternative employment would be found and the Tribunal accepts the Respondent's submission on this point.

Appeal

83 The Claimant contacted the Respondent only a few days after her dismissal explaining that she intended to raise a grievance. When asked for more information by Mrs Banner, the majority of the Claimant's response related to the conduct of the redundancy process. This was not treated as an appeal by the Respondent, but the Respondent confirmed to the Claimant that it would investigate her grievance and asked for the additional information that the Claimant had referred to in her correspondence (paragraphs 44 and 45 above). The additional information was not forthcoming from the Claimant and so the grievance went no further.

84 Applying the principles of Gwynedd Council v Barratt (paragraph 65 above), the Tribunal concludes that failure to hear the Claimant's grievance (which could be understood to be an appeal, given its substance) does not make the dismissal unfair, on the basis that: (1) the Claimant did not provide the additional information requested by the Respondent in order investigate the issues she raised; and (2) the Respondent had otherwise acted within the band of reasonable responses in respect of the redundancy process and in respect of its decision to dismiss the claimant on the grounds of redundancy.

85 Considering all of the above, the Tribunal finds that the Claimant was fairly dismissed on the grounds of redundancy and her claim for unfair dismissal is dismissed.

Employment Judge **McGough**

Approved on 27 May 2025

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