EMPLOYMENT TRIBUNALS

Claimant: Carol Soulsby

Respondent: DPD Group Limited

Heard at: Birmingham **On:** 17,18 and 19 March 2025

Before: Employment Judge Wedderspoon
Members : Mr. J. Sharma
Mrs. K. Ahmad

Appearances
For the claimant: Mrs. Katie Hodson, Legal Adviser
For the respondent: Mr. Paul Bownes, Solicitor

JUDGMENT

1. The claim of unfair dismissal is well founded and succeeds.

2. The Tribunal determined that a reasonable employer would have consulted adequately with the claimant and this would have taken an 4 additional weeks.

3. The claimant would have been dismissed fairly after four additional weeks.

4. The Tribunal awards the claimant the sum of 4 weeks' pay calculated at £3,606.96.

5. The claim of age discrimination is not well founded and is dismissed.

REASONS

1. Oral judgment was given on 19 March 2025. These are the written reasons requested by the claimant.

2. By claim form dated 8 December 2023 the claimant brought complaints of unfair dismissal and direct age discrimination. The claimant entered ACAS conciliation on 27 October 2023 and obtained an ACAS certificate on 8 November 2023.

3. The Tribunal was provided with a bundle of documentation 185 pages. The Tribunal heard from the claimant and two witnesses from the respondent namely

Stephanie Hines, People Business Partner and Darren Wilson, Associate Director Transport and Fleet.

Issues

4. The issues to be determined by the Tribunal were set out in the order of Judge Kight dated 22 April 2024 as follows :-

(1)**Time limits**

4.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 28 July 2023 may not have been brought in time.

4.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

4.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

4.2.2 If not, was there conduct extending over a period?

4.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

4.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

4.2.4.1 Why were the complaints not made to the Tribunal in time?

4.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

4.3 Unfair dismissal

3.3.1What was the reason or principal reason for dismissal? The respondent says the reason was redundancy or some other substantial reason.

3.3.2 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. The Tribunal will usually decide, in particular, whether:

3.3.2.1The respondent adequately warned and consulted the claimant;

3.3.2.2.The respondent adopted a reasonable selection decision, including its approach to a selection pool;

3.3.2.3The respondent took reasonable steps to find the claimant suitable alternative employment;

3.3.2.4Dismissal was within the range of reasonable responses.

4.4 Remedy for unfair dismissal

4.4.1 Does the claimant wish to be reinstated to their previous employment?

4.4.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

4.4.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

4.4.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

4.4.5 What should the terms of the re-engagement order be?

4.4.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

4.4.7 What financial losses has the dismissal caused the claimant?

4.4.8 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

4.4.9 If not, for what period of loss should the claimant be compensated?

4.4.10 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

4.4.11 If so, should the claimant's compensation be reduced? By how much?

4.4.12 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

4.4.13 Did the respondent or the claimant unreasonably fail to comply with it ?

4.4.14 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

4.4.15 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?

4.4.16 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

4.4.17 Does the statutory cap of fifty-two weeks' pay or [£105,707] apply?

3.4.18What basic award is payable to the claimant, if any

(4)**Direct age discrimination (Equality Act 2010 section 13)**

4.1The claimant's age group is 63/64 and she compares her treatment with people who were significantly younger than her at the material time;

4.2Did the respondent do the following things:

(1)Making the decision to move the claimant to the Stoke branch in June 2022 when there was a intention by the respondent to wind the branch down for closure;

(2)Telling the claimant she was sent to improve performance at the Stoke branch but intentionally not providing the resources to enable her to do so;

(3)Not including any other customer service managers in the pool for selection for redundancy;

(4)Dismissing the claimant for redundancy;

(5)Not responding to the claimant's appeal point regarding the pool for selection

4.2 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

The claimant says she was treated worse than Ms. Sam Hogkins

4.3 If so, was it because of age?

4.4 The respondent does not rely on the defence of objective justification.

(4) **Remedy for discrimination**

4.1Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

4.2What financial losses has the discrimination caused the claimant?

4.3Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

4.4If not, for what period of loss should the claimant be compensated?

4.5What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.6Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

4.7Should interest be awarded? How much?

Facts

5. The claimant commenced employment with the respondent on 30 November 2015 as an Operations Manager. Later she was appointed to a National Customer Services Manager for the network depot customer services team. There were approximately 40 depots which had small teams of two to three customer service staff. There were two dedicated customer service centres for the respondent, Smethwick and Stoke. Her employment ended on 31 July 2023.

6. Pursuant to the claimant's contract of employment (page 51) the claimant's normal place of work was identified as "DPD Stoke depot". However the company reserved the contractual right to change the location providing such requirement was both reasonable and practical.

7. The claimant was initially based at the Stoke depot.

8. In October 2020 the Director of Customer Service, requested the claimant to move to the Smethwick branch as the previous Customer Services Manager and the Head of Customer Services had left the business without notice and due to the claimant's proven track record in terms of leadership and performance results it was felt that she was suitable for the role. The claimant's reports were a team of 10 team leaders and 100 or more advisers. Five direct reports with varying job titles reported to Dan Turner, Associate Director.

9. There were two other customer services managers at Smethwick; Simon Collier, CSM – Resources who ran a team of 12 and Liz Collier (Customer services manager outsourcing partners) who also ran a team of 12. Liz Collier had previously worked at Stoke as CSM.

10. Sam Hodgkins was the CSM at Stoke and she was responsible for a team of 4 managers and 35 advisers. Sam's team, was smaller than the claimant's team and she was paid less than the claimant as she was on a lower pay grade.

11. In September 2021 Sam Hodgkins was moved onto the same grade as the claimant with comparable pay and benefits despite no growth to her team or branch performance.

12. The claimant was successful at Smethwick and it was the most successful branch. The claimant intended to work there until November 2025 when she turned 66 years and completed 10 years' service.

13. In June 2022 Shelley Parfett Head of Customer Services informed the claimant she was moving her to the Stoke branch and the Customer Services Manager Sam Hodgkins would take over at Smethwick. The claimant was not happy with this move and was informed that it was to help to improve the performance of the Stoke Branch which was struggling. The claimant was told that Sam's move was to support her development. Sam had applied for her role at Stoke as a promotion. However it was known that Sam wanted to move to Smethwick because of the travelling time.

14. Stoke was much smaller than Smethwick with four team leaders and 35 advisers. The claimant was suspicious that the respondent intended to close Stoke but Shelley Parfett informed the claimant it was for Sam's development and to improve performance at Stoke and the claimant did not raise these suspicions formally.

15. By letter dated 30 July 2022 (page 62) the claimant's move was confirmed effective from 1 August 2022. The claimant did not consider that she had a choice so she signed the letter to confirm her agreement and had previously been transferred from Stoke to Smethwick. The respondent made clear to the claimant that her contract of employment (page 51) stated that the respondent had the right to change the location, where the requirement was both reasonable and practical.

16. Under cross examination the claimant accepted that she was moved by reason of her managerial capability both from Stoke to Smethwick and from Smethwick to Stoke. She signed the document at page 62 dated 30 July 2022 to accept the change to her terms and conditions and she did so on the basis that she was told by the respondent that this was included in her contract of employment and the respondent was entitled to do so. She did not raise a complaint or grievance at this stage. She did not raise any suggestion that she believed she was being discriminated against because of her age.

17. Prior to the claimant's arrival at the Stoke depot there was difficulty with recruitment and retention (see page 125 to 126). However this was not unusual for any of the depots under the respondent's control. Three people left Stoke depot and were replaced by three people (see page 138).

18. The claimant worked hard to improve the Stoke branch but was told she was not allowed to hire new staff to replace people who left. If anyone left, new staff were recruited and placed at Smethwick instead of Stoke. Smethwick was still recruiting and even temporary staff hired for Christmas were all sent there instead of Stoke (See page 75 and 76). The claimant did not think she had been given a fair chance to improve the Stoke depot (page 77).

19. In January 2023 the agency workers at Smethwick were given fixed term contracts after 12 weeks. In Stoke they had to leave after 12 weeks. The claimant suspected the respondent was moving the operation back to Smethwick. The Stoke branch was shrinking and Smethwick was expanding.

20. There was a business-wide recruitment freeze implemented in January 2023 for non-business critical roles. Gaps in the Stoke team could not be filled so that the headcount halved from 2021 to 2023. During the 18 months leading up to mid-2023 there had been 56 leavers (page 63). The recruitment issues and unfilled roles at Stoke caused problems for other sites as work had to be picked up and covered.

21. There was no sign of the recruitment freeze being lifted, action had to be taken to enable the business to run effectively. Shelley Parfett prepared a business case to address problems in the business which included closing the customer service function at the Stoke site (see pages 64-5). Stephanie Hines's role was to challenge Miss. Parfett to ensure that the business case was factual and could be supported by evidence and that the business could substantiate the requirement to put roles at risk of redundancy and commence consultation.

22. An announcement was made to the claimant individually on 13 June 2023 prior to a formal announcement which took place at a briefing on 15 June 2023 (pages 66 to 68) to outline to employees, the respondent's business case to close Stoke and that the claimant along with 17 others had been provisionally selected for redundancy. At Stoke branch the claimant was the only CSM. The respondent made this decision based on the establishment rule and stoke was the establishment so that as it was the place of work closing it was the only location which would be impacted. As a result it was decided by the respondent not to pool anybody from Smethwick.

23. The respondent's business case (page 64-65) stated that staff numbers at Stoke had decreased from 35 to 18 between September 2021 to date so that the branch was no longer viable. The claimant's case is that the drop off in staff was a result of the respondent refusing to permit the claimant from hiring new people and the agency staff fixed term appointments being terminated. The business case said there were 56 leavers in Stoke over the previous 18 months. The business case at pages 64 to 65 states that the full time equivalent staff based at Stoke had reduced to 18 full-time equivalents which is a 51% reduction in headcount. There were 56 leavers in Stoke in the last 18 months and seven in the last six months. The respondent was outsourcing work of 4 full time equivalents from Stoke to either CCS Smethwick or ECHOU as there is not the capacity for this work to be managed within Stoke. There was a recruitment freeze across the business. The present headcount based at Stoke did not support the efficient running of a contract centre environment, attraction and retention of specialist staff was both time-consuming due to the lack of candidates and costly due to turnover or having to rely upon temporary resource. The management structure was presently disproportionately aligned to the present headcount of specialists. However simply reducing the number of management the respondent felt would not resolve the issue as it does not allow flexibility to cover the shifts required adequately. The respondent stated at present it did not have the flexibility to efficiently cover all queues in cases of sickness and any other absences which causes additional work in reallocation of work to either Smethwick or outsourced providers at short notice. They proposed to close CCS at Stoke; the work from CCS Stoke will move to outsourcing partners ECHO U and that work would move to Capita India. It was determined that there was a provisional selection of redundancy for one customer service manager at Stoke namely the claimant; two team managers at Stoke; 14

customer service specialists and one contact insight specialist; this affected 18 roles. The respondent intended to enter into a period of individual consultation with affected employees.

24. In a letter to the claimant dated 15 June 2023 (page 60-70) the respondent invited the claimant to an individual consultation meeting on Tuesday 20 June 2023 to explain the reasons for putting the claimant's role at risk and give the claimant an opportunity to raise any questions she may have; discuss and explore ways of avoiding or reducing the risk of redundancy and reach agreement if possible; provide an opportunity for the claimant to make suggestions or proposals as well as raising any other concerns or questions; consider possible suitable alternative employment within the organisation and identify needs during the process and provide any necessary support or assistance. The claimant was informed about her right of accompaniment.

25. On 20 June 2023 the claimant attended an individual consultation meeting with Ms. Shelley Parfett and Ms. Hines (see page 74 to 97). The claimant had received the business case at that stage and read it. The claimant asked for a breakdown of the 56 people who had left Stoke over the past 18 months. The claimant raised the issue that she was not permitted to employ agency staff and they were moved to Smethwick. The claimant did not accept Shelley's point there was a problem with retention of staff at Stoke. The claimant complained she was not given a fair chance to improve Stoke. The claimant asked if she had any suggestions to avoid redundancies. The claimant said *"I understand my role is completely redundant; too top heavy*". The claimant suggested running Stoke as a satellite team. Shelley disputed the claimant's contention that the respondent always wanted everything under one roof. The claimant also raised that she was swapped with Sam because of her age. The claimant agreed that it was her feeling but there was nothing else to support that. Ms. Parfett (who had made the decision to move the claimant) said it had nothing to do with the claimant's age; the move was because Stoke was not running as it should be. There was no dispute in evidence that Stoke was not running as it should be at the time the claimant was requested to move there in 2022.

26. In the course of the individual consultation meeting, Ms. Parfett confirmed that enquiries were made about lifting the recruitment freeze but this was not possible (page 83). The claimant raised she had been asked to turn sites around (page 93) and Shelley specifically denied that the decision had anything to do with the claimant's age noting the claimant had previously been moved because of her expertise and ability to turn things round page 94.

27. Following the meeting the claimant was provided by the respondent with two job descriptions page 98 namely an account specialist consultation diamond team and team manager roles. The claimant considered these were not suitable and chose not to apply for them. The roles were at lower grades and less salary than the claimant's present role.

28. Miss Hines sent an update to the claimant after all initial consultation meetings had taken place; noting there would be a short period during which various suggestions raised within the meetings would be reviewed and considered (see page 100). Miss. Hines also ask the claimant whether she was interested in any alternative roles and emailed all those at risk including the claimant regarding

the closing date for expressions of interest in any alternative roles (page 101). Kind sentence other e-mail to the at risk individuals a week later with further information about roles which had not been included in an earlier vacancy list (page 102).

29. By letter dated 7 July 2023 (page 104 to 105) the claimant was invited to a second individual consultation meeting. The invitation letter stated that "as advised at the first individual consultation meeting no final decisions have been taken in relation to your future employment and we would be consulting with you in relation to its proposal to provisionally place your role at risk of redundancy". The respondent stated that it had discussed with the claimant the business case and the reason for putting her job at risk including providing her with a copy of the announcement made on 15 June 2023 which set out the business case in full and provided the claimant with an opportunity to ask any questions and discuss the ways of avoiding and or reducing the risk of redundancy including providing an opportunity for you to make suggestions or proposals as well as raising any other concerns or questions. It stated it had considered possible suitable alternative employment within the organisation and identified the claimant's needs during the process and provide her with any necessary support or assistance. The claimant was invited to attend a second individual consultation on Wednesday 12 July 2023 to discuss proposals in more detail. The claimant was informed of her right of accompaniment. Miss. Hines send another e-mail to the at risk group of individuals providing further vacancies (page 102).

30. On 12 July 2023 (pages 112-122) the second consultation meeting took place. The respondent had pre-prepared a script for the meeting (page 108- 111) and Ms. Parfett provided responses to the claimant's previous suggestions. In the course of this meeting Shelley Parfett outlined the suggestions put forward by employees namely a pickup office model in terms of management line namely one team manager and one supervisor to a team of 18; keeping the team in Stoke and running it as a satellite office; giving skill over work for the other lines rather than doing specifically the local work; centralising the whole process and attributed work to people based on call volumes and queues therefore location of the people was irrelevant. The respondent stated it had considered the suggestions but believed them to be not possible.

31. First the respondent explained it could not change the present structure of Smethwick because the headcount was aligned appropriately to teams and queues and this is meeting our business requirements. Further it was stated that they did not have queues or teams that match the size of the full time equivalent at Stoke which would allow the respondent to swap the local work from Stoke and move other queues permanently for Stoke. There respondent also looked at whether they could move work in house from Echo Capita India. However this was also not an option. In addition they also needed to ensure the respondent was adhering to contractual obligations in play with those outsource providers. The respondent also considered the overflow/spill overwork was available which could be moved to Stoke. They analysed the overtime that they had been using in Smethwick for the last three months to provide them with a realistic overview of spillover work which was highlighted that on average we have 190 hours of overtime a week which would equate to five full-time equivalents. The pattern of

overtime in this period showed four weeks during the period of no overtime was offered as the work was not required. There is no consistency in the spillover work; in the spillover work we would be able to provide not only nor could guarantee that there will be regular sustained guaranteed work to retain this reduce full time equivalent. 5 full-time equivalents are unable to cover the full shift rotation which would still be required and five full-time equivalent is below the number of specialist ratio for one team manager to manage. Therefore none of the suggestions presented have overcome the issues the respondent presented in the business case on 15 June. The respondent stated it had been unable to find a way to avoid making the claimant's role redundant or identify any alternative employment. The respondent confirmed that the claimant's position would terminate for the reasons of redundancy on the 31 July 2023.

32. The claimant requested in the meeting (page 114) that she required a copy of the brief; "there was an awful lot of data". She continued to challenge the business case and asked for a breakdown of those who have left DPD and the explanations of the quality of service measures and asked her to come back with this information; see page 115 and 116. The claimant raised her point that the redundancy was orchestrated. The claimant expected to get more information namely the brief, a breakdown of who had left and explanations of the quality service measures but the claimant was told she was to be terminated on 31 July 2023.

33. The claimant received correspondence from the respondent pages 125 about recruitment at Stoke and provided details about benefits (page 129-130) but not the brief she had asked about on 12 July 2023 where she continued to challenge the business case and her suggestion of an orchestrated move to Stoke.

34. The respondent did not consult on pooling in the context if had determined to use the one establishment rule. However the claimant did not in fact raise it during her consultation meetings. In her evidence to the Tribunal Stephanie Hines stated she advised that if the respondent determined to use the one establishment as a basis of selection for redundancy and confine the process to Stoke, the respondent has to be consistent across all roles at Stoke.

35. By letter dated18 July 2023 (page 131-2) the claimant was informed that she was being made redundant. The respondent stated having now fully exhausted all avenues to avoid making the claimant's role redundant and being unable to find any other suitable vacancies within DPD "it is with regret that I write to formally confirm that redundancy is now the only available option. Accordingly this letter confirms the payments that you will receive and the date of your termination of employment for the reason of redundancy". The claimant's employment would terminate on Monday 31 July 2023 by reason of redundancy. The claimant was offered a right of appeal against this decision.

36. On 23 July 2023 (page 133-4) the claimant appealed the decision. The claimant stated reviewing the business case the closure of the Stoke site the key elements to reasoning behind the closures are : challenges of recruitment; disproportionate management structure versus headcount and inability to provide cover over workload. The claimant stated prior to her start date at Stoke on 1 August 2022 the recruitment of Stoke was in essence like for like leavers versus new. In July 2022 there were two new starters and by mid- August 3 new

starters to replace 5 levers. Normal recruitment processes were followed and appointments were made. The claimant stated there was no further investment in Stoke and any loss of headcount was then transferred to Smethwick's vacancies. The claimant therefore dismissed the business case concerning recruitment challenges. Further the claimant stated she was not authorised to flex temporary headcount for peak as the roles for Stoke would again align to Smethwick. She stated she was advised in her first consultation that two Stoke team managers Sammy and Lisa had aired their concerns to Shelley via e-mail regarding the challenges they encountered when recruiting into Stoke. However the claimant stated she did not find that to be the case to date and have not had sight of the emails. There is nothing of substance with regard to specific challenges encountered; they're just general comments about the recruitment experience and nothing exceptional and mirror recruitment she had had at other businesses.

37. Further the claimant stated there was a concerted effort to remove her purposely to the Customer Services Manager role to Stoke despite her objections to the move on several occasions. She was instructed to move 1 August 2022; at this point the management versus headcount was already disproportionate. No action was taken prior to 1 August 2022. The claimant stated her colleague Sam Hodgkins was younger in years than herself and she took up the Smethwick role on 1 August; a role which she had held since October 2020. The move for the claimant meant her going from managing 18 managers and about 100 customer service staff in Smethwick to a team of two team managers and 28 customer service staff. The claimant described this as a demotion in terms of responsibility, self- worth and status. The claimant stated she was informed the reasoning about the relocation was that it was for Sam's development. The claimant was to turn around the underperforming site at Stoke. The claimant said she became aware that the intentional plan to bring CCS all under one roof in Smethwick so that Stoke site deteriorated with subsequent job losses as the recruitment freeze was invoked in January 2023 across all CCS sites. These challenges are across all campaigns and are not solely a Stoke issue. In the selection of redundancy, the criteria was not applied to both the CSM's in Stoke and Smethwick. The claimant stated they were doing the same jobs in different locations which we have both worked at previously. The decision to only select myself for being at risk of redundancy was discriminatory based on age. The claimant stated that in her opinion that was ageism, discrimination which was behind her redundancy.

38. On 3 August 2023 (page 135-146) the appeal hearing took place. Darren Wilson heard the appeal. The claimant stated she believed the whole scenario had been orchestrated. She described that in September 2021 at Smethwick as the customer services manager she had ten team leaders and approximately 100 advisers. She described a lower grade CSM (Sam) promoted to the same level as the claimant. The claimant described they had leavers at Stoke but the headcount was transferred to Smethwick so that the headcount was going down at Stoke. There was a recruitment freeze in January 2023 across the business. Some had been running Stoke for approximately 3 years. The claimant endorsed why other CSM's were not considered for Stoke and told that they did different jobs to Sam and the claimant and inquired why Liz herself (who was a CSM at Smethwick before) was not looked at.

39. In the course of the appeal hearing the claimant did not expressly refer to "pooling". She had referred in her grounds of appeal at page 134 that the selection of redundancy the criteria was not applied to both CSMs in Stoke and Smethwick. At the hearing Mr. Wilson asked the claimant to outline her appeal. He did not seek to clarify whether the claimant continued to suggest that both herself and Sam should have been considered for redundancy as they were in the same jobs albeit at different sites. Mr. Wilson's view is that it was up to the claimant as an employee making an appeal to highlight her grounds of appeal in the meeting and not for him to check what points she was making. Towards the end of the appeal meeting the claimant discussed her view that she was the victim of age discrimination and that was why she was moved to stoke. In the course of the hearing the claimant noted that her role was redundant and did not exist at that point so there was no job for her to be reinstated to see page 143. Mr. Wilson clarified with the claimant about the claimant's opinion there had always been a plan to close the Stoke function because the respondent had shut a number of depots in January 2023. Mr Wilson's opinion it did not make sense why Stoke would not have been closed at the same time if the respondent had a plan to always close Stoke.

40. On 10 August 2023 the claimant's appeal was rejected. Mr. Wilson stated there was no evidence to suggest that the claimant's move to Stoke depot was orchestrated in order to make her redundant when the site closed. He stated that the decision was unfounded that a closure being planned so far in advance "given I sit in the office next to Dan ..we're both associate directors.. I would have known about this at the time." During the appeal the claimant questioned the business case and the reasons behind the planned closure. He stated he can see that these are points the claimant raised previously and indeed received answers from Stephanie Hines and Shelley. He said it is my belief that a fair process was followed in your redundancy was not pre planned. The business case in my opinion was robust. In regards to age being a factor in the redundancy decision he stated "I can find no reason why this would play a part in the closure of the department as this process affected many other people of varying ages". The claimant stated she believed Dan Turner thinks she should be retiring. He had no evidence that supports this; "as I've stated this was not an individual redundancy. In my opinion the business would not seek to make a whole department redundant in order to remove one person. He stated the announcement of risk of redundancy on DPD's inclusion day was a coincidence and not intentional. He understood it was perceived as insensitive.

41. Under cross examination Mr. Wilson's evidence is that he had not heard anything "through the walls" and "sat next to Dan so didn't hear anything about discrimination", that is why he believed discrimination did not play a part. He said age did not play any part. He said the business case made sense to him. His evidence was that being employed for the respondent for 30 years no one gets moved to be made redundant. However, both Shelley and Dan had left the business by this stage.

The Law

42. Section 94 of the Employment Rights Act 1996 establishes that an employee has the right not to be unfairly dismissed by his employer and section 98 deals with fairness. By virtue of section 98(2)(c) of the ERA, redundancy is a

potentially fair reason for dismissal and section 98 (4) requires that an employer relying upon a potentially fair reason acts reasonably in treating that reason as sufficient for dismissal determined in accordance with equity and the substantial merits of the case.

43. Section 139 of the Employment Rights Act defines redundancy as including the fact that the requirements of that business for employees to carry out work of a particular kind in the place where the employee was employed by the employer has ceased or diminished or are expected to cease or diminish.

44. In the case of **Williams v Compare Maxim 1982 ICR 156** the EAT lay down guidelines that a reasonable employer is expected to follow. The suggested factors include whether employees were warned in good time; whether employees were consulted about redundancy and to be meaningful any such consultation ought to have taken place before any final decision on redundancy is taken; whether any recognised trade unions views were sought; were there any selection criteria were objectively chosen and fairly applied; with alternatives to redundancy were reasonably considered and where the reasonable consideration was given the ability of alternative work.

45. In the recent case of **Valimulla v Al-Khair Foundation (2023) EAT 131** HHJ Tucker held relying upon the case of **Taymech v Ryan (1994)** the employer has to genuinely apply his mind to the problem of selecting the pool from which the person to be selected for redundancy. The Tribunal has an obligation to scrutinise whether the employer has applied the statutory requirement when selecting the pool of employees from whom the employer will select who is to be made redundant. The EAT here noted that the respondent had not consulted with the claimant about the pool for selection and the Tribunal had failed to consider whether choosing a pool of one was a reasonable approach in the particular case. The case concerned a redundancy situation affecting the respondent nationally.

46. In the case of **Lomond Motors Limited v Clark** Lady Smith stated whether an employer has selected a correct pool of candidates who are candidates for redundancy or that it is not the function of the Tribunal to decide whether they would have thought it fair to act in some other way the question is whether the dismissal lay within the range of conduct which is a reasonable employer would have adopted; the courts are recognising that the reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn; there is no legal requirement that a pool should be limited to employees doing the same or similar work. 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. The employment tribunal is entitled if not obliged to consider with care and scrutinise carefully the reasoning of the employer to determine it has genuinely applied his mind to the issue of who should be in the pool from consideration for redundancy and that even if the employer has genuinely applied his 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.

47. Pursuant to section 13 (1) of the Equality Act 2010 an employer directly discriminates against an employee if it treats her less favourably because of a protected characteristic than it treats or would treat others. By Section 5 of the Equality Act the protected characteristics include age.

48. The claimant must prove on the balance of probabilities facts from which the Tribunal could conclude in the absence of an adequate explanation that the respondent has committed an act of unlawful discrimination "the first stage". This means the claimant must show facts from which the Tribunal could conclude that :-

    (a)the claimant was subjected to a detriment. Detriment is something which a reasonable employee would consider to be to her detriment see **Ministry of Defence v Jeremiah 1980 ICR 13.** An unjustified sense of grievance cannot amount to a detriment see the case of **St Helens Metropolitan Borough Council v Derbyshire 2007 ICR 841.**

    (b)In being subjected to a detriment the claimant was treated less favourably than a real or hypothetical comparator was or would have been treated. There must be no material differences between the circumstances of the claimant and the comparator other than the protected characteristic section 23 of the Equality Act

    (c)an effective cause of the difference in treatment was the protected characteristic **O'Neill v Governors of St Thomas More Roman Catholic voluntary Aided upper school and another (1997) ICR 33.**

49. At the first stage the Tribunal should consider all the primary facts not just those advanced by the claimant; the Tribunal should assume that there is no adequate explanation **Hewage v Grampian health board 2012 ICR 1054**. "could conclude" means a reasonable tribunal could properly conclude from all this evidence before it **Madarssay Nomura international PLC 2007 ICR 867.**

50. There does not have to be positive evidence that the difference in treatment is the prohibited ground in order to establish a prima facie case see the case of **Network Rail infrastructure limited V Griffiths-Henry UKEAT/0642/05.**

51. The decision that the tribunal could conclude that there was discrimination may rely on the drawing of inferences from primary facts.

52. If the burden of proof shifts the respondent must show that it did not commit those acts or that the treatment was not on the prohibited ground.

53. In every case the tribunal should consider the totality of the primary facts and examine indicators from the surrounding circumstances and the previous history see **King v Great Britain China centre (1992) ICR 516**. The question is a fundamentally simple one of asking why the employer acted as he did (see **Laing v Manchester City Council 2006 ICR 1519**).

54. In the complaint of direct age discrimination it is open to the respondent to show that the treatment was a proportionate means of achieving a legitimate aim see section 13 (2) of the Equality Act 2010.

Submissions

55. The respondent relied upon the case of **Lomond Motors Limited v Clark (UKEATS/0019/09)** and in particular paragraph 25; Lady Smith considered the relevance of a mobility clause and stated that where there is a genuine redundancy at the place where an employee in fact works it is not rendered any less genuine by reason of the existence of the mobility clause which could have enabled the employer to send the employee elsewhere to work. Lady Smith noted that the point is rather that there is a cessation or diminution of business at the place where the employee is working at the relevant time and thus the potentially fair reason is established (**Bass Leisure Limited v Thomas 1994 IRLR 104**) Lady Smith stated "put shortly it is a matter of looking at the circumstances where the employee was in fact working. A mobility clause is not indicative of no genuine redundancy. The respondent's approach in the appeal was to extend that reasoning so as to submit that similarly a mobility clause is not relevant to an assessment of whether or not in selecting his pool an employer has acted within the band of reasonableness and I can accept that there is considerable force in that submission particularly in the circumstances of the present case. I have in mind the circumstances that the claimant had moved to work at Stirling to do E work early in 2007 well over a year prior to his dismissal that he had done so on the basis that the arrangement was open-ended one ie without a termination date having been fixed and that there was no finding in fact that either party intended that he returned to work in Glasgow or Ayr. At paragraph 36 Lady Smith stated when considering the reasonableness of the determination of a redundancy pool it is not a question of considering what historically the position was nor is it a matter of considering what at some indefinite future day the position might be it is a matter of examining what actually is the position at the time of the redundancy". At paragraph 38 it was stated *"employers are to be afforded a good measure of flexibility in the determination of the pool and a finding that their judgement was unreasonable must be based on a sound rationale."*

56. In **Zeff v Lewis Day Transport UKEAT/0418/10** the respondent referred us to the comments of Mr. Justice Langstaff at paragraphs 46-48 and in particular "the identification of the pool being for the employer to assert and a tribunal to assess was that it was reasonable for the employer to treat each desk as a separate pool or be it adding the words so far as this was relevant.. What they were saying was that the roles for which the requirements of the business had ceased or diminished applying the statutory definition agency with the roles of the controllers. It was their presence that made the chauffeur desk the chauffeur desk. They were the people to be considered for potential redundancy; they were all dismissed: hence the tribunals conclusion there were no vacancies here and there strong observation that it would be a fiction to argue that they were."

57. In **Family Mosaic Housing Association v Badmos (UKEAT/0042/13)** HHJ Eady as she was then relied upon the case of **Taymech v Ryan** noting there is no legal requirement that a pool should be limited to employees doing the same or similar work. 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.

Further the case of Capita Hartshead Limited v Byard (UKEAT/0445/11) it was stated that "*the employment tribunal is entitled if not obliged to consider with care and scrutinised carefully the reasoning of the employer to determine if he has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy and that even if the employer has genuinely applied his 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.*" The EAT in that case noted the Tribunal was right to test and scrutinise the respondents thinking. It was wrong to then substitute its own view as to what would have been the appropriate course.

58. In the case of **Concentrix CVG Intelligent Contact Limited v Obi (2023) ICR 1** HHJ Auerbach considered late claims and prejudice and in particular where a relevant witness had left the respondent's employment sometime after the claim was issued. At paragraph 79 it was stated "where it appears that forensic difficulties face the respondent which they would not have to face or deal with if time were not to be extended then that is a relevant consideration and the tribunal will err if it fails to consider it and to place it in the balance".

59. In **Worcestershire Health and Care NHS Trust v Allen (2024) EAT 40** HHJ Tayler considered continuing acts at paragraph 31 stating for there to be conduct extending over a period there must have been ongoing discriminatory conduct. It is not enough the incidents are linked and that later events would not have occurred but for the earlier events there must be something in the conduct that involves continuing discrimination. In Hendricks, Mummery J refer to the possibility that the commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the service were treated less favourably. He referred to an ongoing situation or a continuing state of affairs that was discriminatory."

60. The respondent submitted that any alleged discriminatory acts prior to 28 July may be out of time. It was submitted that there were five direct age discrimination complaints. The criticism of not responding to the pool point was in fact the only point within time and actually was not a point put to Mr. Wilson in cross examination; he was not asked in the course of the hearing if he was motivated by age by not considering any point about the pooling. He denied he discriminated; this was unchallenged evidence.

61. In respect of dismissing the claimant for redundancy as an act of discrimination; the relevant date is 18 July; the decision takes effect at the date of termination namely the end of July.

62. The respondent submitted that the claimant had not made out a prima facie claim for direct age discrimiantion; at the Stoke depot all 17 at risk; no evidence about the ages of others. It is accepted the work ceased at Stoke and there was a redundancy situation. Sam Hodgkins was not an appropriate comparator because there were material differences; she worked at a different place of work and there was a need for work at a particular location. Other Customer Services staff at Stoke were treated in the same manner regardless of their age. There can be no basis for a direct age discrimination allegation for dismissal.

63. The respondent submitted that other allegations were out of time. The pooling for the redundancy was taken prior to the decision to dismiss 18 July. The allegation about making a decision to move the claimant to Stoke is out of time; the claimant was moved in August 2022. The claimant has now changed her claim blaming Dan Turner (this was not pleaded or raised before). Dan and Shelley are not available as witnesses for the respondent. In the circumstances there would be forensic prejudice to the respondent against granting an extension of time. For events dating back to 2022 there is no explanation for why extension granted or why not challenged at the time.

64. The claimant was fairly dismissed. The respondent acted reasonably and there is no dispute that section 139 is satisfied; where a depot is closing. The claimant was adequately warned and consulted with the respondent. It considered the options but none were viable. There was no suggestion to the respondent in cross examination that the options/alternatives were not properly reviewed and considered. In fact the respondent's case was not challenged. The business did not need customers services at Stoke and there was no suitable alternative employment. Within the process the claimant accepted her role was redundant. Pooling is a decision for the respondent. It was considered and it accepted the advice for a consistent approach taken across the site; that can not be said to be unreasonable or unfair. If there was a procedural flaw the respondent will rely upon Polkey and say it would have made no difference.

65. The claimant submitted the claimant was dismissed unfairly. The claimant agreed there was a genuine redundancy but submitted it was substantively and procedurally unfair. The fact that there is one site closing does not mean the respondent can limit the pool to a single site. The claimant relied upon the case of **Taymech** submitting that dismissing without considering the pool means a redundancy is likely to be unfair. Further it was submitted that in the case of **Capita** the employer did not genuinely employ its mind to the pool so that the dismissal fell outside the range of reasonable responses. Similarly the respondent did not turn its mind to the pool. In respect of the **Highland Fish Farmers v Thorburn case (EAT/1094/94)** the Tribunal found the employer acted unreasonably by treating employees working at different sites as separate groups for the purpose of redundancy selection. It was submitted that the claimant and Ms. Hodgkins had identical duties and their jobs were interchangeable. The respondent chose not to pool the claimant with Ms. Hodgkins. The claimant was highly regarded. Ms. Parfett moved the claimant to a different site due to her expertise. It was submitted that if the claimant had been, pooled with Ms. Hodgkins the claimant could have remained in the business.

66. The claimant acknowledged that the role was redundant but disputes her selection was fair. It would have been reasonable and fair to pool with Ms. Hodgkins as consideration their roles were interchangeable with the same job functions.

67. In respect of the consultation process; **Polkey** requires both warning and consultation. Adequate information should be provided and an employers must conscientiously consider alternatives. Here there was no discussion about her selection and no mention about pooling. Miss Hines chose to close the Stoke office. The claimant did raise age discrimination but Miss. Hines and Miss Parfett

did not investigate this. The respondent pre-determined the second meeting reading from a script. The respondent said it had addressed the claimant's suggestions and told her she was dismissed. The claimant was informed about the business case in one meeting. Consultation should be a two way process. The process was procedurally unfair.

68. The claimant submitted that there were two key points which were discriminatory; failure to include the claimant in the pool was discriminatory. Mr. Wilson should have checked with the claimant whether she was making a point about the pool. He did not carry out any investigation. He did not uphold the appeal because he felt the business case made sense. He failed to address the appeal adequately which undermines the process.

69. The claimant's claim of direct age discrimination is that based on the fact she was aged 64 years. Her comparator is aged in her late 30s; the decision to transfer and swap her; the failure to provide resources; the exclusion of her comparator from the pool and the conduct of the appeal. **Igen v Wong**; the Tribunal can infer age discrimination from the pattern of events and circumstances. Hodgkins was moved to a successful site. The claimant was not given support to improve the Stoke depot and not pooled with Hodgkins. The claimant was valued for her expertise. There was no need to follow the establishment rule; the respondent could widen the pool and offered no reasonable explanation for this pooling. The respondent failed to consult about the pool with the claimant and had they done so the claimant could have raised pooling with Hodgkins. The claimant raised age discrimination at first meeting but this was discounted. The claimant attended a second meeting not given time to engage further specifically failure to consider unfairness and discrimination. Mr. Wilson does not clarify the point. Mr. Wilson should have asked the claimant if she wanted to pursue this. The claimant believes her move to Stoke depot was a discriminatory decision. He carried out no independent investigation and did not uphold the appeal as the business case made sense to him. The claimant submitted that the pattern of unreasonable decisions suggested the claimant's dismissal was motivated by discrimination. The claimant submitted that the case of **The Mayor and Burgesses of London Borough of Tower Hamlets v Mr. J Wooster UKEAT/0441/08** takes account of an employer failing to consider alternatives and has not provided an adequate explanation for failing to pool Ms. Hodgkins. In the circumstances that the claimant had a stellar performance at the respondent and Ms. Hodgkins had a poorer performance, if included both in the pool the claimant could have been retained.

70. It was submitted that there was a continuing act of discrimination namely the transfer of the claimant and selection for redundancy was a deliberate strategy. There was also a failure to deal with her appeal. The Tribunal was invited to find in the claimant's favour that her move to Stoke including the appeal amounted to an unfair and discriminatory dismissal.

Credibility

71. The Tribunal found the claimant to be a credible witness who was very competent at her job.

72. The Tribunal found Stephanie Hines to be a credible witness but her knowledge of the business and her evidence was limited to the time she was employed by the respondent (from February 2023).

73. The Tribunal found Mr. Wilson to be a credible witness but a witness who tended to rely upon his knowledge of individuals rather than completing an independent analysis of the information provided to him by the claimant.

Conclusions

74. The claimant was a competent employee who had been transferred from the Stoke depot by the respondent in 2020 as a troubleshooter at the Smethwick branch. The claimant's managerial abilities meant that she was able to significantly improve Smethwick so that it became a high performing depot.

75. The Stoke site was failing. It was much smaller than Smethwick. The customer services manager, Sam had a longer period of service with the respondent but was not successfully managing the Stoke depot. The respondent determined to move the claimant in an attempt to improve the performance of Stoke and thereby transfer Sam to Smethwick. The respondent had the contractual right to transfer employees. The claimant was unhappy about the move but did not raise a grievance or complain that this transfer was anything to do with her age. The claimant accepted that the respondent had a contractual entitlement to move her.

76. Following the claimant's transfer to Stoke she was not permitted to increase staffing. There was a corporate decision made to impose a recruitment freeze. This meant the claimant was unable to grow the business of Stoke and increase its performance in the way she would have liked. However it was evident from the email dated 12 July 2023 (page 124) that the claimant's efforts improved Stoke. It is stated *"the stoke team performed very well and provided the care and attention to the integrated DPD local customers very well and in a man of very close and sometimes better to have customer services is conducted in the DPD local franchise sites."*

77. Although the Tribunal has not heard any direct evidence from Shelly Parfett who made the decision to transfer the claimant from Smethwick to Stoke, the Tribunal heard evidence from Ms. Hines, HR adviser and the Tribunal took into account the following (i) the contractual entitlement of the respondent to move employees see page 51 (ii)the historical move of the claimant from Stoke to Smethwick page 60 (iii)the claimant's own evidence that she was moved from Stoke to Smethwick in 2021 due to her managerial capabilities and need for the respondent to improve Smethwick and (iv)she was moved to Smethwick to Stoke because of her managerial capabilities (evidence provided in cross examination by the claimant) (v) the claimant's evidence at the first consultation meeting that it's a feeling she had (nothing else) she was moved to Stoke because of her age. On the balance of probabilities the Tribunal determined that the respondent moved the claimant from Smethwick to Stoke in order to improve its performance and there was insufficient evidence from the claimant (namely it

"was a feeling" it was because of age) to establish that a prima facie case that the transfer was an act of age discrimination.

78. There is no dispute between the parties by the summer of 2023 that there was a redundancy situation in accordance with section 139 of the ERA at the Stoke site namely that the redundancy arose from a reduction in the need for that specific work to be done at the particular location at Stoke. The claimant conceded in her consultation meetings that the team was too top heavy. The respondent determined in June 2023 via a business case that it was not sustainable to continue to use Stoke Depot and determined to close it.

79. The Tribunal must determine whether the particular dismissal of the claimant for redundancy was fair or unfair and must consider all the circumstances including the size and administrative resources of the employer and the substantive merits of the case. The question to be answered is ultimately whether the employer treated the potentially fair reason as a sufficient reason for dismissing the particular employee concerned in the particular circumstances of the case. In redundancy cases employers are afforded a wide discretion in respect of business decisions which may lead to a redundancy situation. However the law requires that employers do not act arbitrarily in making these decisions insofar as they may lead to dismissal of staff. Decisions which may lead to redundancies require consultation between employers and employees and to adhere to basic principles of fairness.

80. Stephanie Hines, HR advised that if the respondent determined to close the site it should consistently apply an establishment based pool. The Tribunal determined that the respondent gave consideration to applying an establishment based pool so that it did not consider any other employees in other sites not based at Stoke. This decision affected about 17 employees at the Stoke site of varying ages. The Tribunal finds that the respondent did adequately apply its mind to the issue of pooling having concluded that it was using a one establishment based rule. A reasonable employer having determined to close a site and consider the establishment rule only was a decision which fell into the band of reasonable responses for it to only consider employees at the Stoke site for redundancy. It is not the role of the Tribunal to dictate to an employer how it determines to run its business. Employers are afforded a wide discretion in respect of business decisions which may lead to dismissal of staff. The Tribunal's role is limited to considering whether a reasonable employer would have made this decision and in the context of fairness whether the employer had acted arbitrarily. The respondent's decision of adopting a one establishment rule placed all the employees at Stoke alone at risk of redundancy.

81. The issue of pooling was not discussed with the claimant. However the claimant did not directly refer to it either. The respondent held two consultation meetings with the claimant. At the first meeting on 12 June 2023 the claimant was informed about the closure of Stoke and that her role was at risk of redundancy. She was invited to provide any alternative suggestions to avoid redundancies. The claimant suggested that Stoke be used as a satellite site. The claimant raised in this meeting that she did not know why people think that she was linked to Stoke; she was swapped with Sam and the issue of age being a reason as to why she was moved to Stoke. This was disputed by Shelly Parfett who had made the decision to move the claimant to Stoke.

82. The Tribunal rejected the suggestion that the employer had predetermined before moving the claimant to Stoke, to wind down the business at Stoke. The evidence presented to the Tribunal is that Shelley wanted to make Stoke better (see the matters above taken into account). The Tribunal gleaned this from the claimant's oral evidence and what she was told in 2022 by Shelley and the employment history of the claimant of effectively being a troubleshooter in the past when she was sent from Stoke to Smethwick. The claimant had been transferred initially from Stoke to Smethwick to do the same thing and improve performance at Smethwick some two years before and had done so very successfully. Although the claimant was unhappy to transfer from Smethwick to Stoke, she accepted the transfer as shown by her acceptance of her terms and conditions dated 1 August 2022 (see page 62). The claimant did not raise a complaint or grievance or suggest at the relevant time that the decision to transfer her had anything to do with her age.

83. The claimant did improve Stoke as evidenced in the email referred to at page 124. The Tribunal finds that the claimant was sent to improve the Stoke depot. The Tribunal rejected the assertion that the claimant was moved to Stoke to orchestrate her removal some 12 months later. The Tribunal relies upon the factors above which led to its conclusion that on the balance of probabilities the respondent did want Stoke's performance to improve hence transferring the claimant as a troubleshooter there.

84. The Tribunal was not satisfied that the consultation in this case was adequate. Consultation must be meaningful. The Tribunal notes that it must not substitute its view for that of the respondent but consider whether the process adopted was within the band of reasonable responses. Following the briefing on 15 June and meeting on 21 June 2023, the respondent invited the claimant to a second meeting to inform her that her suggestion of a satellite centre was not workable. Although the claimant did not expressly raise concerns about "pooling", at the first meeting the claimant did say she did not know why people think that she was linked to Stoke; she was swapped with Sam and the issue of age being a reason as to why she was moved to Stoke and expressly asked for more information at page 114 noting she was being given a lot of data and she could not take it all in. There was no discussion by the respondent with the claimant at the first or second meeting about the pooling or the explanation that it had determined that as the site was closed down it would be using a one establishment rule and did not consider any other employees outside the Stoke site including Sam Hodgkins who was now at Smethwick.

85. The Tribunal determined that a reasonable employer having formed the view that it would apply a one establishment rule because of reasons of consistency should have discussed this with the claimant. The respondent's rationale was not shared with the claimant.

86. The claimant raised this point in her letter of appeal at page 133-4 namely that there was a concerted effort to move her purposely to the CSM role in Stoke; Sam was younger than her and at page 134 "finally with regard to the selection for redundancy the criteria was not applied to both the CSMs in Stoke and Smethwick, we do the same jobs in different location which we have both worked at previously". Mr. Wilson did not deal with this point because he said the claimant did not raise it at the appeal hearing.

87. The Tribunal concluded that the claimant's dismissal was procedurally unfair because the claimant was not consulted as to the pool and further had not been provided with the further information she raised at the first and second meeting nor given inadequate time to consider the information to engage in meaningful consultation prior to the conclusion of the respondent to terminate the claimant's employment.

88. As set out above, the Tribunal finds that the respondent did apply its mind to the pool determining to use "the one establishment rule" considering this was appropriate where the site was closing and the Tribunal determined that this fell within the reasonable bands test. As set out in **Lomond Motors Limited** at paragraph 38 it was stated *"employers are to be afforded a good measure of flexibility in the determination of the pool and a finding that their judgement was unreasonable must be based on a sound rationale."*

89. The Tribunal does not find that a failure to pool the claimant with Sam Hodgkins at Smethwick meant it acted unreasonably. An employer has flexibility in the determination of a pool; here the respondent determined to close one site. The Tribunal notes the reliance on the case of **Valimulla**. However that case has a significantly different factual context to the present case. **Valimulla** concerned a nationwide redundancy process where the Tribunal had <u>not</u> found that the redundancy arose from a reduction in the need for that specific work to be done at the particular location. The present respondent employer was concerned with the closure of one depot only affecting about 17 employees. Here the redundancy arose from a reduction in the need for that specific work to be done at the particular location, Stoke.

90. However the failure to discuss this with the claimant was procedurally unfair. The appeal document included this point and Mr. Wilson failed to elucidate this point raised in the course of the appeal hearing with the claimant.

91. The Tribunal determined if the respondent had acted as a reasonable employer and provided the further information to the claimant requested and discussed the pooling point with the claimant in a consultation meeting it would have made no difference to the ultimate decision to dismiss; the Tribunal finds that it is likely on the balance of probabilities that it would have continued to consider to apply the one establishment rule in the context of closing the Stoke depot and for consistency following HR advice to apply this rule across the site but the process would have been prolonged for a further 4 weeks. The Tribunal determines that it would still have used the one establishment rule and dismissed the claimant fairly 4 weeks later.

92. The claimant is entitled to four weeks' pay.

93. The Tribunal now deals with the age discrimination claim.

<u>Direct age discrimination</u>

(1) <u>Making the decision to move the claimant to the Stoke branch in June 2022 when there was an intention by the respondent to wind the branch down for closure;</u>

For the reasons set out the Tribunal do not find that this allegation was made out on the facts. The evidence set out above was that the claimant had significant managerial capability and had historically been moved from Stoke to Smethwick to improve that depot's performance. The Tribunal did not accept there was a pre-determined intention when moving the claimant to the Stoke depot from Smethwick to wind the Stoke branch down for closure. The claimant did actually improve the Stoke despite her criticisms about the lack of resources as indicated in the email at page 124. The claimant did not complain formally about the move at the time nor did she suggest it was anything to do with her age. The claimant conceded in her evidence she had been moved before from Stoke to Smethwick to improve performance. In any event the Tribunal determined that this allegation was out of time and the Tribunal do not consider it is just and equitable to extend time. The Tribunal takes into account the forensic prejudice of the respondent in that Ms. Parfett was no longer in the business (see Concentrix CVG); there was no explanation as to why the claimant failed to formalise her complaints or bring a claim about this issue and the claimant was bringing other complaints to the Tribunal.

(2)Telling the claimant she was sent to improve performance at the Stoke branch but intentionally not providing the resources to enable her to do so;

The Tribunal did not find this allegation made out on the facts. Historically the claimant (and she accepted in her evidence) had been sent from Stoke to Smethwick to improve performance which she did very successfully. The claimant's move from Smethwick to Stoke was within this context; namely that the claimant was capable of turning a depot around. There was no dispute at the time of her move in August 2022 that the Stoke depot was failing. The Tribunal did not find the allegation that there was deceit about the reason to move the claimant to Stoke made out on the facts or that there was a deliberate attempt to thwart the claimant in her efforts to improve Stoke. The claimant did actually improve the Stoke depot short term despite her criticisms about the lack of resources as indicated in the email at page 124. The claimant asserted that she was intentionally not provided with resources to enable her to do so but this was only an assertion and was inconsistent with her initial success at Stoke whilst improving the depot. A recruitment freeze was then introduced; this was a corporate decision and the Tribunal finds no evidence that this was based on the claimant's age. The Tribunal rejected this allegation.

(3) Not including any other customer service managers in the pool for selection for redundancy;

The respondent having taken HR advice and so to apply consistency across the Stoke depot, decided to use the one establishment rule; considering only the Stoke depot and its employees based there. The Respondent having determined to use the one establishment rule applied this consistently across the establishment of Stoke and therefore included only employees at Stoke. This approach meant that 17 employees of the respondent including the claimant were affected by that decision with varying ages. The Tribunal did not find that the decision to act consistently across the Stoke depot by choosing to use one establishment so not pooling the claimant with another depot raised a prima facie case. The Tribunal determined this decision had nothing to do with the

claimant's age; it was a corporate decision to treat one establishment on its own. This claim is not well founded and is dismissed.

(4) Dismissing the claimant for redundancy;

The claimant's case before the Tribunal was that there was a strategy some 12 months before the redundancy process to move her to Stoke; allow a younger person take on her role at Smethwick and it was a design to remove her from the business. The Tribunal was not satisfied that the claimant established her case that there was a strategy to remove her from the business. As set out above the claimant had been a troubleshooter before when she was moved from Stoke to work at Smethwick and she succeeded in turning that depot around. The claimant accepted in cross examination that she had been moved before to effectively trouble shoot. The respondent determined to use a one establishment rule and apply that equally across the customer service team at the Stoke depot. The Tribunal has determined that this was a permissible approach for a reasonable employer to take. Another employer may have adopted a different approach to a redundancy situation it faced but that is not to say that this respondent acted unreasonably by adopting the one establishment approach. There is no dispute between the parties that on closing the Stoke site there was a genuine redundancy situation pursuant to section 139 of the Employment Rights Act 1996 namely a reduction in the needs of employees to conduct particular work at the depot. The Tribunal found that the claimant was dismissed because the whole Stoke site was closing. The claimant was working at Stoke for over 12 months at the time of the redundancy. During this time there was a recruitment freeze and despite the claimant's valiant efforts ultimately the preservation of the Stoke depot became unsustainable. For consistency the respondent determined that it would use the whole establishment rule. The Tribunal does not find that this was because of the claimant's age or tainted by age discrimination. The Tribunal was not satisfied that the claimant's dismissal had anything to do with the claimant's age. This claim is not well founded and is dismissed.

94. (5) Not responding to the claimant's appeal point regarding the pool for selection

This allegation was not put directly to Mr. Wilson in cross examination that the reason he failed to respond to the claimant's appeal point regarding the pool for selection was an act of direct age discrimination. His evidence to the Tribunal was that the claimant did not raise in the appeal hearing any point about pooling. He denied that this was an act of age discrimination. He stated that the claimant raised customer service managers in respect of the original move to Stoke in 2022 (see page 140). This was Mr. Wilson's unchallenged evidence. The Tribunal found that Mr. Wilson had not sought to clarify in any detailed way the claimant's appeal points either with the claimant or conducted any independent investigation; rather his approach to the appeal was that it was up to the claimant to raise pertinent points to consider in the hearing. However the Tribunal having heard the evidence of Mr. Wilson determined that was a matter of incompetence on the part of Mr. Wilson and had nothing to do with the claimant's age. He denied as set out above he discriminated against the claimant and this was unchallenged evidence. This allegation is not well founded and is dismissed.

Summary conclusions

95. In the circumstances the Tribunal determined that the claimant's dismissal was procedurally unfair but that the claimant would have been dismissed fairly within 4 weeks.

96. The claims of direct age discrimination are not well founded and are dismissed.

Employment Judge
Wedderspoon

Date: 16 June 2025