



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001647/2024 (V)

Held on 17, 18 & 19 February 2025

Employment Judge N M Hosie

Mr M Legge

**Claimant
In Person**

Croft Communications Limited

**Respondent
Represented by,
Mr P Sangha,
Counsel
Instructed by,
Ms R Clarke,
Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that: -

1. the claimant was unfairly dismissed by the respondent; and
2. a Remedy Hearing should be fixed.

REASONS

E.T. Z4 (WR)

Introduction

1. Michael Legge claimed that he was unfairly dismissed by the respondent,
5 Croft Communications Limited ("Croft"), from his employment with them as a
"Unified Communications Engineer". Croft admitted the dismissal but claimed
that the reason was redundancy and that it was fair. Mr Legge disputed that
there was a genuine redundancy situation and that, in any event, his
dismissal was still unfair as Croft had not acted reasonably when dismissing
10 him.

The evidence

2. I heard evidence on behalf of Croft from:-
- 15 • Paul Benson, Director of Professional Services, who took the decision
to dismiss Mr Legge
 - Victoria Chidgey, an external HR Adviser who was engaged to advise
on the redundancy process

I then heard evidence from Mr Legge.

- 20 3. A Joint Bundle of Documentary Productions was also submitted ("P").

Observations on the evidence

4. Mr Legge gave his evidence in a measured, consistent and convincing
manner, consistent with the Documentary Productions. He presented as
25 credible and reliable. Parts of Mr Benson's evidence were inconsistent and
not reliable. Ms Chidgey was not an employee of the respondent. She was
only engaged in May 2024 to advise on the redundancy process. This was
after Mr Benson had advised Ms Tania Muhith, Croft's HR & People
Integrations Manager, on 1 May, that he had decided, "*we need to manage*
30 *Mike Legge out of the business*" (P.188). It was Mr Benson who "*took the*
lead", as Ms Chidgey put it, and took the decision to dismiss Mr Legge.

5. I was not satisfied, on the basis of the evidence I heard, that there was a genuine redundancy situation. Also, there were aspects of the procedure the respondent adopted which led to Mr Legge's dismissal which, in my view, were not, "*within the band of reasonable responses*" which a reasonable employer might have adopted; and nor was his dismissal..

The facts

6. Having heard the evidence and considered the Documentary Productions, I was able to make the following findings in fact.

7. Croft provides telecommunications and IT and communication services to businesses of all sizes, as a "Managed Service Provider" ("MSP"). It has over 200 employees.

8. In late 2021, Mr Legge was approached by Oliver Curtis, "Head of Technical Pre-Sales" at Croft, to join a team of specialist engineers to deliver an MOD contract. Atos, a consultancy Company, supported the MOD with the work they required to be done.

9. Mr Legge became a Croft employee on 4 February 2022. His contract of employment was one of the documentary productions (P.72-94). His job title was that of "UC Engineer: Technical Services Division". In May 2022, Mr Legge joined the "Service Desk". For the most part, he worked remotely from his home in Forres, Moray, but he also did onsite MOD/Atos work at various locations both within the UK and abroad. One of the productions was a message from Mr Curtis dated 29 April 2023 in which he advised Mr Legge that "*Your role will be 95% remote*" (P.96) The remainder of Mr Legge's work was as an onsite Field Engineer, mostly for the MOD. There was only one other Croft employee in Scotland, in Edinburgh, but his work was exclusively "IT based".

10. In the summer of 2023, Mr Curtis arranged for Mr Legge to join a team which included Lee Williams and Chris Bradbury to do MOD work (P.96). They all had expertise in “Legacy” which was, “old work with complex wiring”.
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11. At the end of October 2023, Mr Legge spent five weeks in the Falkland Islands doing MOD work. It was around that time he was advised that he would no longer be working under Mr Curtis but under Mr Benson who had joined Croft in May 2022. Croft had acquired his business, NTI Limited, which he continued to run.
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12. There was a dispute as to when Mr Legge starting working under Mr Benson. Mr Legge said that it was March or early April 2024, whereas Mr Benson said it was in January 2024. Although I found that Mr Legge’s evidence was credible and reliable in general, the conflicting documents were such that I decided that he was mistaken in this regard. In his submissions, the respondent’s Counsel referred me to Mr Benson’s e-mail of 18 January 2024 to Mr Legge (P.115) when he said: “*Great to chat with you earlier today, looking forward to working with you more over the coming months.*” He also referred to Mr Benson’s e-mail of 22 January 2024 to his team, including Mr Legge (P.117) when he said: “*Mike Legge is moving into a remote Project Engineer role....I’ve added Mike to the call for tomorrow and onwards....Mike is available to get involved ASAP.*” Further, at the “catch-up” meeting on 17 May 2024 (P.341) Mr Benson is recorded as saying to Mr Legge: “*You’ve probably been aware from your diary in how busy or not been over the last sort of 3, 4 months I guess, we’ve been struggling to find tasks for you and work for you.*”
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13. Mr Legge relied on an e-mail exchange on 20 May 2024 (P.214) with James Walden in which Mr Walden said that he would get him added back into the Service Desk WhatsApp group. However, as Counsel submitted it is conceivable that Mr Legge was always on the group chats.
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14. I found, in fact, therefore, that Mr Legge started to work under Mr Benson in mid-January 2024.

Meeting on 26 April 2024

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15. Mr Legge had a meeting with Mandi Skillen, Engineering Manager, and others on 26 April 2024 when he expressed his dissatisfaction with the work he was doing under Mr Benson: *“Admin. Data Collection, Admin, Spreadsheets.”* Minutes of the meeting were produced (P.172-174). In the course of the meeting, Lee Williams, Engineering Team Leader, said, with reference to the MOD work, that, *“There’s a lot of stuff coming up, we’ve got 130 sites and they’re just..... I think they’re just sort of getting everything together to lump it all on us in one go. But Mike is, he’s part of that team so I suppose there’s four of us properly, the ones who went down to the Falklands who kinda know them the best and Mike has been great, it wasn’t easy was it Mike? But we got it done.”* He also referred to Mr Legge as *“a valued member of the team.”*
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Redundancy process

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16. On 1 May 2024, Mr Benson sent an e-mail to Tania Muhith, Cross’ “HR & People Integration Manager”, in the following terms (P.188):-
- “I’ve made the decision that we need to manage Mike Legge out of the business unfortunately. I’ve not discussed this with him as yet but his location in Aberdeen, combined with his skill set, mean that we have very little work that we can task him with. I’ve tried to involve him in remote projects, we’ve tasked him with on-line training for platforms, but the feedback from others is that he struggled to adopt these and there’s very little throughput.*
- I think therefore we need to consider his position. I believe he’s been employed since Feb. 2022 – so over two years now – I’m not sure what job role/description he was originally hired for, we’ll need to check that.*
- Please can you look into this and let me know options etc.?*
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I'll then be able to progress this with a call to him once I understand the process."

5 17. Mr Legge was not, *"located in Aberdeen"*. He was located in Forres, Moray, some 80 miles away.

18. Mr Legge was working on an MOD/Atos contract at Stafford Barracks at the time. He knew nothing of this. Mr Williams, the Team Leader, was also telling
10 him at the time *"about all the jobs that were coming up."*

19. On 14 May 2024, Mr Legge received a message from Mr Benson inviting him to a "Catch-up meeting" on 17 May 2024 on his return from Stafford (P.208).

15 **"Catch-up meeting" on 17 May 2024**

20. Mr Legge was unaware until he attended this meeting that the purpose of the meeting was to inform him that he was at risk of being made redundant. He was also not informed that Victoria Chigdey, an external HR Consultant,
20 would be in attendance. He was not provided with Minutes or a Note of the meeting. However, as the meeting was held by way of Microsoft Teams it was recorded and Mr Legge was able to produce a transcript of the meeting which was included in the documentary productions (P.341-343). The following are excerpts:-

25 *"(PB)....where have you been somewhere down south?*

(ML)....Stafford.

*(PB)....Stafford, wonderful, good stuff, umm, it's an unfortunate conversation I'm afraid we have to have, I've got Victoria here from our HR consultant and really the purpose of the call is to talk about your role, your position within
30 Croft, umm, you're probably.....*

(ML)....or lack of it.

(PB)....Yeah well I guess, you've probably been aware from your diary and how busy or not been over the last sort of three, four, months I guess, we've been struggling to find tasks for you and work for you.

5 (ML)....Yeah. I shouldn't really been in your group, I shouldn't been in your group.....

(PB)....I've asked the guys to try and find more tasks for you and fill your diary.

10 (ML)....Well it's all kind of IT stuff, it's spreadsheets, you know it's stuff that I've got no aptitude for you know..... the best thing really I would like to do is just to go back to the Service Desk.....

(PB).....Right, ok, well umm, I think that's the purpose of today's call is to let you know we are discussing and trying to understand what's best for you, your role and your position.

(ML)....It's not where I am right now. Apart from the MOD stuff of course.

15 (PB)....Yes absolutely and your work on that's been great, we really appreciate putting the time on that umm, so we are looking across different areas of business making redundancies and so obviously part of this conversation you know, your role is one of those that we are having to consider across that so, yeah it's an unfortunate position to be in umm, and
20 conversation to have but that's where we're at today umm, so what we need to do is umm, start a consultation process where we're gonna look and see what can be done etc. So we'd ask for some input from you over that time as well.

(ML)....(Yep).....

25 (ML)....Well that would put a question over the MOD stuff because there's only a few of us who can do that.

(PB).... Indeed, yes yeah, that's part of what we'd need to consider in terms of the workload from the MOD stuff.

30 (ML)....Yeah and that's that's been unfortunate because it was hard two and half years ago specifically for that and the it only started last October – the Falklands and it was supposed to really ramp up this year and it's only now, well, speaking to Sue (Atos) when she was down from the changeover, she said 'it's about to all kick off'.

(PB)....Yeah it's a difficult one isn't it because they've been saying that for quite some time and it's been extremely sporadic in terms of the workload that's come through from there so it's very difficult to anticipate what the demand might be.

5 (ML)....Well the demands there, the job, is gonna get done, you know, I mean it's supposed to be Cyprus, Sue was saying it's now scheduled for the end of June beginning of July.

(PB)....Hmm.

10 (ML)....Ehh, Lee's got some, I think there's two sites scheduled between them as well.

(PB)....Right I will pick that up with Lee Pollard umm, obviously he's part of this, will try and have some understanding of pipeline of that MOD stuff.

(ML)....Yeah.

15 (PB)....Yeah, is there anything else umm, that you'd like to mention at this point I guess?

(ML)....Well, emm other than I was doing fine until I got moved over to your department.

(PB)....Laughs.

20 (ML)....No disrespect to you but the stuff you guys are doing is I wouldn't say it's alien to me but it's a whole different discipline.

.....

25 (VC)....Sure, I know it's unfortunate, but as Paul said, we're going to consult with you over the next two weeks uhh, it's really important you uhh bring forward any ideas, suggestions that you might have as alternative positions umm.

(ML)....Well, I've said it, go straight back to Service Desk where I was, where I was doing stuff."

21. Mr Legge was taken completely by surprise when he was told that
30 consideration was being given to making his post redundant as it had been referred to as a "Catch-up" meeting. He was flustered. He "*blustered his way through it*". He could not understand this as he understood there was work for him to do on the Service Desk and there was also MOD work coming

up. He decided to seek out work himself before the next scheduled meeting with Mr Benson in two weeks' time to demonstrate there was work for him to do on the Service Desk and then the MOD work in Cyprus in June or July he had been told about.

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22. On 20 May, he sent an e-mail to James Walden, his previous Manager on the Service Desk to ask if there was *"room on the service desk for me?"* (P.214). Mr Walden replied immediately to say that: *"I'm sure Mark Walsh has definitely got something, I'll get you added back to the group chats."*

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23. On or about 23 May, Mr Legge had a telephone conversation with Mr Walden. He had heard that Mr Legge was being made redundant. He told him he had work for him on the Service Desk. He told him that he *"had plenty work and would take him back."*

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24. Mr Legge also telephoned Mr Pollard and Ms Piller who he had worked with previously to *"explain the situation."* They were able to give him "Project work" and for the next two weeks he had a "full diary" (P.267).

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Meeting on 3 June 2024

25. Once again, Mr Legge was not provided with Minutes or a Note of this Meeting. It was he who produced a transcript again which was included in the Joint Bundle (P.221-224).

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26. Immediately after opening, brief pleasantries, Mr Benson advised Mr Legge that he had decided to make his position redundant (P.221):

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"(PB)....We've been looking at various things across the business and your role was at risk of redundancy umm, obviously we've been looking at that over the last couple of weeks and umm, where we're at unfortunately where

we're at now is we do need to make that decision and umm, make your position redundant."

27. Mr Legge was of the view that it had been "a foregone conclusion" and he had prepared a statement which he read at the meeting (P.264-265). The following are excerpts:-

"I have said to you during a conversation in April that I should not be in your group and also said I should be moved back to the Service Desk where my skills in diagnostic abilities were put to best use. You took no further action with this....."

I find it ironic that the previous meeting was scheduled minutes after I returned from work for a week athaving had one day off in two weeks. I also find it incredible that it only took me two phone calls and one e-mail to fill up my schedule for the next two weeks and the long promised Unify training in support of my.....work began. There is plenty work available to me.

In the previous month, I had worked at.....twice and..... You were also aware of the increase of the.....installations including a four to five week secondment to Cyprus at the end of this month or early July. To quote from my last 121 'you are about to get really busy'....."

So let's stop pretending this is a redundancy situation, I am being fired and you're illegally using the redundancy procedure to achieve this because NTI is a club and I wasn't invited. I will of course follow the futile appeal process as this is now a statutory requirement."

Confirmation of redundancy

28. On 5 June, Mr Benson wrote to Mr Legge to confirm his dismissal on the ground of redundancy (P.225): *"Following our meetings on 17 May 2024 and 3 June 2024 and due to the fact that we have been unable to identify a means of avoiding redundancy or to identify a suitable alternative role for you within the organisation, I regret to now inform you that your redundancy is confirmed."*

Appeal

29. On 10 June 2024, Mr Legge sent an e-mail to Mr Benson to intimate that he wished to appeal against his dismissal. It was in the following terms (P.230-231):-

*"I'm writing to formally appeal against your decision to dismiss me because of redundancy on 3/6/24. My reason for appeal are as follows:
As set out in my statement of 3/6/24, you unlawfully used the redundancy process to remove me from your department.*

You were informed by me in April 2024 that I should not be in your group and should be moved back to the Service Desk. You ignored this request. You, as Croft MSP had a lawful duty to find other work for me before entering this process, you did not. I was able to find more than enough work with one email and two phone calls. You made no effort to engage with the Service Desk nor my teams Project Manager to ensure there was no work for me – as shown, there was.

As one of three key employees on the contract, you are fully aware of the work being done both now and in the immediate future and as I was told just three weeks previously, 'You're about to get very busy'.

I was the only engineer singled out for redundancy."

Appeal hearing on 18 June 2024

30. The appeal hearing was conducted by Greg Smith, Director of Finance and Operations. Victoria Chidgey, HR Consultant was also in attendance at the hearing. Notes of the hearing were produced (P.241-243).

31. During the appeal Mr Legge referred to job adverts which he had discovered immediately after the meeting on 3 June (P.273-276). Mr Legge produced "Meta Data" (P.275) which revealed that the "Telecoms Field Engineer PBX....." (P.273) had been published on 12 March 2024 and modified on 29 April 2024.

32. On 28 June 2024, Mr Smith wrote to Mr Legge to advise him that his appeal had not been upheld (P.244). He enclosed with his letter his “Findings and Conclusions” (P.245).
- 5 33. Mr Legge disputed these findings and conclusions. As far as his geographical location was concerned he was not “more expensive” as he was working remotely. Also his position was not in “Inverness”, but rather in Forres.
- 10 34. He disputed that any discussion had taken place about alternative work and he himself had found short-term work in the two week period following the meeting on 17 May after he contacted Mr Walden, Mr Williams and Ms Piller.
- 15 35. Further, at the appeal meeting he had advised Mr Smith that Mr Williams and Ms Piller were getting ready to go to Cyprus to work. This came to fruition as they went to Cyprus around 9 July. They had known about this work for some time and they had told Mr Legge it was coming up.
- 20 36. Further, when Mr Legge spoke to Mr Williams on 29 April he told him that work was “*going to happen very quickly*”.
- 25 37. Finally, Mr Legge maintained that Mr Smith’s conclusions were “*almost verbatim*” to what Mr Benson had said. Further, by his own admissions, Mr Smith had no knowledge of communication systems. He was the Chief Finance Officer.

Respondent’s submissions

- 30 38. The respondent’s Counsel made oral and written submissions by way of a “Skeleton Argument”. The following is a brief summary. He first set out his position so far as the relevant facts were concerned. He then went on to address the unfair dismissal claim. He confirmed that dismissal was not in dispute but maintained that the reason was redundancy and that it was fair. In support of his submissions he made reference to the following cases:-

Kingwell & Others v. Elizabeth Bradley Designs Ltd EAT/0661/02

Safeway Stores Plc v. Burrell [1997] IRLR 200

Murray & Another v. Foyle Meats Ltd (Northern Ireland) [1999] IRLR 562

Moon v. Homeworthy Furniture (Northern) Ltd [1976] IRLR 298

5 **Polkey v. AE Dayton Services Ltd** [1987] IRLR 503 HL

Alvis Vickers Ltd v. Lloyd EAT/0785/04

Vokes Ltd v. Bear [1973] IRLR 363

Quinton Hazell Ltd v. WC Earl [1976] IRLR 296

10 **Sainsbury Plc v. Hitt** [2003] ICR 111

39. Counsel submitted, with reference to s.139(1)(b) of the Employment Rights Act 1996 (“the 1996 Act”), that there was, “*a diminished requirement of the business for employees to carry out work of a particular kind*”. Mr Benson gave evidence that “*the market is moving away from on premise BPX to Cloud. That’s a natural migration of everything, obviously other than your larger sites such as the MOD which is still reliant on isolated solutions.....; Mr Legge was the only Project Engineer based in Scotland; there is very little work in Scotland. Requiring Mr Legge to work in England would not be efficient.*”

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40. Counsel further submitted that Mr Legge’s redundancy, “*was the start of a company wide cost cutting exercise earlier in 2024 with this process including redundancies across various departments. The claimant’s position was the first role identified due to his geographical location; see schedule of other redundancies at P.260.*”

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41. Counsel also submitted, with reference to the guidance in **Polkey**, that the respondent adequately warned and consulted Mr Legge. Although the meeting on 17 May was described as a “catch-up” one, there was a two-week consultation period culminating with a final meeting.

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42. Mr Legge did not communicate further with the respondent in that two-week period although he’d been told to get in touch if he wished to. Counsel submitted, in summary, that “*the consultation period was at a time when the process was still at a formative stage.*”

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43. Counsel also submitted that, the respondent adopted a reasonable selection decision including its approach to a selection pool, *“having regard to the fact that Mr Legge was the only Project Engineer who worked in Scotland and that he had a particular skill set (PBX) that limited his utility for the respondent. He submitted that the choice of pool was within the range of reasonable responses.”* In support of his submissions in this regard, Counsel referred to the **Alvis Vickers** case . Counsel also submitted, with reference to **Vokes Ltd** and **Quinton Hazell Ltd**, that the respondent took reasonable steps to find the claimant suitable alternative employment.

44. So far as the job adverts which Mr Legge brought to the respondent's attention were concerned Counsel submitted that these were *“incorrectly placed and left on the respondent's website. Once brought to the respondent's attention they were immediately removed.”*

45. Finally, Counsel submitted, with reference to **Sainsbury Plc**, that Mr Legge's dismissal was within the *“band of reasonable responses”* for a reasonable employer.

Claimant's submissions

46. Mr Legge also made oral and written submissions which are referred to for their terms. The following is a brief summary.

47. He submitted that the case turned on the credibility of Mr Benson's evidence and the documents.

48. He denied that there was a genuine redundancy situation. He submitted that it was “manufactured”. He referred to the e-mail exchange between Mr Benson and Ms Muhith, the HR Manager, on 1 May 2024 (P.188-187). Mr Benson advised her that he had *“made the decision that we need to manage Mike Legge out of the business”*. She replied that she wished to *“discuss the*

various options based on how soon you would like this to happen....". He submitted that if they were looking for "options", this was not a genuine redundancy situation.

5 49. He also submitted that there was no genuine warning and consultation. The only warning he received was when he joined the "catch-up" meeting. He claimed that his removal from the Company was pre-determined.

10 50. He further submitted that his was not in a stand-alone role. There were other Project Engineers who worked remotely but they were excluded. He submitted that the pool should have included these other engineers.

15 51. He also disputed that Mr Benson had carried out any further enquiries after the meeting on 17 May 2024. In particular, he did not speak to Mr Pollard as he said he would at the meeting.

20 52. He submitted that the respondent had failed to consider suitable alternative employment for him and at the appeal a different reason for his selection for redundancy was given by Mr Smith (P.245). He also submitted that the language and terminology used by Mr Smith at the appeal was the same as previously used by Mr Benson.

25 53. With reference to **Polkey**, therefore, he submitted that the procedures which the respondent followed were not reasonable.

54. Finally, Mr Legge said this in his written submissions with reference to **Polkey**:-

30 *"Determining whether the redundancy would have happened in any case. Mr Benson was unable to show there was a reduction in work available for me and this alleged reduction in work which would have resulted in redundancy even had the respondent followed the correct procedure is not valid. I was able to show the number of upcoming MOD sites to be refreshed, which did happen, despite Mr Benson's testimony that he was unaware. In my 'catch-*

- up' meeting (P.341) after pleading the case for the MOD work, Mr Benson said, '(PB) Right I will pick that up with Lee Pollard umm, obviously he's part of this, we'll try and have some understanding of pipeline of that MOD stuff.' While Mr Benson was giving evidence, I asked him if he had indeed spoken with Mr Pollard and before I could inform him of my long-standing relationship with Mr Pollard, Mr Benson replied, 'yes'. Only when I informed him that I knew he hadn't, he changed his answer to no. If he had spoken with Mr Pollard he would have been informed of the scale of the upcoming work in the pipeline which did indeed come to pass, only when I asked Mr Pollard and Ms Piller if they had work I could do, I discovered they had not been informed that they could schedule me for their projects. When they were made aware, they gave me enough work to fill my calendar for the next two weeks until my actual redundancy."
55. He submitted, therefore, that there was not a genuine redundancy situation and that, in any event, the respondent did not act reasonably and his dismissal was unfair.

Discussion and Conclusions

56. In every unfair dismissal case where dismissal is admitted, s.98(2) of the 1996 Act requires the employer to show the reason for the dismissal and that it is an admissible reason in terms of s.98(2) or some other substantial reason of a kind such as to justify dismissal of an employee holding the position which the employee held. An admissible reason is a reason for which an employee may be fairly dismissed and among them is that the employee was redundant. That was the reason which Croft claimed was the reason for Mr Legge's dismissal. This was the issue which I first considered.
57. The statutory definition of redundancy is to be found in s.139(1) of the 1996 Act. Sub-section (1)(a) deals with the situation where an employer has ceased or intends to cease to carry on business. Clearly that does not apply in the present case. The relevant provisions are in sub-section (1)(b) which reads as follows:-
- "(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 –

(a)

(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 the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.”*

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58. Giving the leading speech of the House of Lords in **Murray**, to which Counsel referred, Lord Irvine, the Lord Chancellor, thought that the wording of the relevant statute was “*simplicity itself*”. In his Lordship’s view, the language of the section asks two questions of fact. The first is whether the requirements of the employer’s business for employees to carry out work of a particular kind have diminished. The second question is whether the dismissal is wholly or mainly attributable to that state of affairs. This is a question of causation.

59. I was also mindful of the EAT Judgment in **Kingwell**, to which Counsel referred, that a redundancy situation can also arise even if the employer is not experiencing financial difficulties and even if there is no diminution in work, but when an employer decides that it is possible to carry out the existing amount of work with a lesser number of employees.

60. The onus was on Croft to establish that this was a genuine redundancy situation, something which was disputed by Mr Legge. I only heard evidence about this on behalf of the respondent from Mr Benson as the respondent’s other witness, Ms Chidgey, was not employed by Croft. She was an external HR Consultant who was only engaged to give advice on the redundancy process. She was simply informed by Mr Benson that, “*the work in Scotland had dried up*” which, on the basis of the evidence I heard, she accepted without any further enquiry.

61. There was a dearth of evidence in this regard. There were no supporting documents to demonstrate diminishing workloads or that the respondent would be able to carry out existing and expected future work with fewer employees. The only evidence I heard about this from Mr Benson was very

general in nature: that the Service Desk had reduced, that Mr Legge's primary skill set was legacy equipment (PBX) and "*the market was moving away from on premises PBX to Cloud.*" However, before he started to work under Mr Benson, Mr Legge's evidence was that he was fully occupied doing remote Service Desk work and onsite field work, mostly for the MOD; and even after he started to work in Mr Benson's Department there was no criticism of his work and he received a pay increase in March 2024.

62. Further, on 21 December 2023 Croft's CEO, Mark Bramley, sent an email to all employees in which he referred to the business "*doubling in size*" that year; that there had a number of "*departures*" and that, "*these departures have increased the pressure on the rest of the team*"; and "*we will continue recruiting*" (P.111-112).

63. I am bound to say that I did not find Mr Benson's evidence entirely reliable. He presented as guarded and on occasions evasive. On one occasion, as Mr Legge submitted, having giving unequivocal evidence at first that he had spoken with Mr Pollard after the meeting on 17 May 2024, to ascertain the likelihood of MOD work in the near future, as he had undertaken to do, (P.342), when challenged in cross-examination he admitted that he had not.

64. Mr Benson said that after the meeting he spoke to Dan Purdie who had overall responsibility for the Service Desk as he was on the Senior Leadership Team with him but he did not speak with James Walden the Service team Manager and I did not hear evidence from Mr Purdie. On the evidence, any such enquiries by Mr Benson were cursory.

65. By contrast, Mr Legge presented throughout his evidence, including cross-examination by Counsel, as entirely credible and reliable. He gave evidence that there was "plenty of work" for him to do. He told Mr Benson as much at the "Catch-up Meeting" on 17 May. He told him that "*Sue(Atos)*" had told him that the MOD work was "*about to all kick off*" (P.342). Having been advised

that he was at risk of being made redundant at the Meeting, he decided to demonstrate to Mr Benson that there was work for him to do; immediately after the meeting he made enquiries of his colleagues and found work which occupied him fully for the ensuing two weeks before his next meeting on 3 June with Mr Benson. Unfortunately, he was unable to advise Mr Benson of this before Mr Benson told him, right at the start of the meeting, that he had decided to make him redundant.

66. Mr Legge had been advised by colleagues that there was MOD work in the pipeline which he told Mr Benson about at the meeting on 17 May. This work came to fruition, as anticipated, in June or early July. Two of his colleagues, Mr Williams and Ms Piller, who he'd worked with before, went to Cyprus to do MOD work.

67. The onus was on the respondent to establish that this was a genuine redundancy situation. On the evidence, they failed to discharge that onus. They failed to show the reason for Mr Legge's dismissal was an admissible one, as they were required to do.

68. Mr Legge's dismissal was therefore unfair.

69. For the sake of completeness, I also wish to record my view that even if I am in error and this was a genuine redundancy situation, I would still have found that Mr Legge's dismissal was unfair.

70. The reason for this was that I also considered, under s.98(4) of the 1996 Act, whether Croft had acted reasonably in treating the reason for dismissing Mr Legge as a sufficient reason; a question which has to be determined in accordance with equity and the substantial merits of the case. In doing so, I had regard to the authoritative starting point for Tribunals assessing the fairness of a redundancy dismissal, namely the guidance of Lord Bridge in **Polkey**: "*The employer will not normally act reasonably unless he warns and*

consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and take such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation.”

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71. When considering this issue, I remained mindful that the range of reasonable responses test - alternatively described as the need to apply the objective standards of the reasonable employer - applies to all aspects of the question of whether Mr Legge was fairly and reasonably dismissed, the procedures Croft followed, the alleged consultation as well as the decision to dismiss (**Sainsbury's Supermarkets Ltd**).

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72. I found favour with Mr Legge's submission that his dismissal was prejudged. The exchange between Mr Benson and his HR Manager, Ms Muhith on 1 May 2024 was indicative of that (P.188-187). Before he had met Mr Legge on 17 May, allegedly to consult, Mr Benson advised Ms Muhith that, *"I've made **the decision** (my emphasis) that we need to manage Mike Legge out of the business"*; he also referred to Mr Legge having more than two years' continuous service, the qualifying period in order to bring an unfair dismissal claim, which also suggests he had dismissal in mind; and Ms Muhith replied that she wished to, *"discuss the various options based on **how soon you would like this to happen**" (my emphasis)*; the consultation period only took just over two weeks with only one meeting, the "Catch-up" one on 17 May when there was any discussion as Mr Legge was advised at the start of the Meeting on 3 June that Mr Benson had decided to dismiss him by reason of redundancy.

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73. The fact that Mr Benson did not write to Mr Legge to advise him that his position was at risk, but rather invited to him a "Catch-up meeting" when it was no such thing, was also indicative of a decision to dismiss Mr Legge.

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74. This was not within the band of reasonable actions open to a reasonable employer.

5 75. Nor was there any meaningful consultation, as at the start of the next meeting on 3 June 2024, Mr Legge was presented with a *fait accompli*: his position was redundant before there was any “consultation” (P.221).

76. This was not within the band of reasonable actions open to a reasonable employer.

10 77. Mr Benson also said at the start of that meeting that “*We’ve been looking at various things across the business and your role was at risk of redundancy umm, obviously we’ve been looking at that over the last couple of weeks umm, where we’re at unfortunately where we’re at now is we do need to make that decision and umm make your position redundant.*” However, in my view, there was no reliable evidence of either Mr Benson or Ms Chidgey making any such enquiries before the meeting. At the “Catch up meeting” on 16 May 2024 when Mr Legge told Mr Benson that there was MOD work “in the pipeline” Mr Benson said that he would “*pick that up with Lee Pollard*” (P.342) but he did not do so.

25 78. It is also surprising that Mr Legge was not provided with Minutes or Notes of these meetings which is often the case and is generally considered best practice. This was also indicative of an outcome which was pre-determined; a desire to complete the process in a peremptory manner.

30 79. Nor was there any evidence of attempts being made to investigate suitable alternative employment f (**Vokes** and **Quinton Hazell**); nor was there any meaningful consideration of whether or not Mr Legge should be in a pool of one or in a pool with the other Project Engineers, a position in which he was engaged at the time.

80. Mr Legge asserted that he would be able to go back to the Service Desk. As he said to Mr Benson at the Meeting on 17 May, "*I was doing fine until I got moved over to your department*" (P. 342). He had made enquiries about this with his colleagues and was advised there was work for him there which, along with the MOD work "in the pipeline", would have kept him fully occupied. To demonstrate this to Mr Benson at the next meeting, in the intervening two weeks between the two meetings Mr Legge had found work himself and been fully occupied. He told Mr Benson and Ms Chidgey about this at the meeting on 3 June but this was not investigated either and, in any event there was no point as at the start of the meeting Mr Benson had already told him that his position was redundant.

81. By the time it came to the appeal, Mr Legge, was understandably convinced that there would only be one outcome. The appeal was conducted by Greg Smith. He was Croft's Director of Finance & Operations. He had little knowledge of Mr Legge's telecommunications work. Before the appeal, Mr Legge had discovered two "live" advertisements for jobs which he would have been able to do. On the evidence, I was satisfied that at least one of these jobs was still being actively advertised. The advertisements may subsequently have been removed by Croft and the positions not filled, but the fact that neither Mr Benson nor Mr Smith seemed to be aware of them also suggested a failure on their part to investigate alternative employment, in any meaningful way. They failed to take reasonable steps to avoid redundancy (*Polkey*).

82. Further, the reference by Mr Benson to the claimant working in Inverness and by Mr Smith to him working in Aberdeen when he worked in Forres, some distance away, was also indicative of a lack of serious consideration of the matter; a failure to take reasonable steps to take seriously Mr Legge's representations at the meetings, his particular circumstances and his skills and experience, in the manner a reasonable employer would have done, by way a meaningful, reasonable, consultation.

83. For all these reasons, therefore, I found that Mr Legge's dismissal was not within the band of reasonable responses a reasonable employer would have adopted and that his dismissal was both procedurally and substantively unfair.

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84. Finally, and for the sake of completeness, and with reference to **Polkey**, even if I had only found that Mr Legge's dismissal was procedurally unfair, I would not have found that his dismissal could have been rendered fair had a fair procedure been adopted. On the evidence, there was no possibility of a fair dismissal.

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85. I shall issue a Judgment, therefore, that Mr Legge was unfairly dismissed and direct that a Remedy Hearing be fixed as soon as possible. I also direct the parties to liaise with a view to agreeing the remedy, if possible, without the need for a Hearing. I understand that Mr Legge may be seeking reinstatement. Despite the unfair dismissal finding, and reinstatement being the primary remedy, it is not automatic. Should the case proceed to a Remedy Hearing, the Tribunal will require to consider how practicable reinstatement would be, in all the circumstances. If the Tribunal decides, having regard to practicability, not to make a reinstatement Order, there will be an award of compensation, capped at one year's gross pay.

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Employment Judge: N M Hosie

Date of Judgment: 14 March 2025

Date Sent to Parties: 14 March 2025