Case No: 6040191/2025

EMPLOYMENT TRIBUNALS

Claimant: Mr Jeremy Sharp

Respondents: Chelsea Bidco

Heard at: Cambridge Employment Tribunal (by CVP)

On: 24 & 25 September 2026

Before: Employment Judge David (sitting alone)

REPRESENTATION:

Claimant: In person

Respondent: Laura Hale (Head of HR for the respondent)

RESERVED JUDGMENT

1. The claimant was dismissed unfairly.

2. There shall be no reduction for contributory conduct.

3. Compensation shall be reduced by 20% pursuant to *Polkey v AE Dayton Services Ltd*.

WRITTEN REASONS

Introduction

1. The claimant brought claims of ordinary unfair dismissal arising from redundancy and for holiday pay. The claimant was employed at the respondent from 2000,

latterly as Operations Director, until his employment terminated on 31 August 2025 following six months' garden leave.

2. The respondent submits that there was a fair reason for dismissal namely, redundancy. The respondent accepts that there were procedural deficiencies in the redundancy process. However, it does not concede liability for unfair dismissal under section 98(4) Employment Rights Act 1996. The principal dispute is whether there was a genuine redundancy situation and, if so, whether the dismissal was fair.

3. During 2024, the respondent decided to restructure its senior management team and recruit a Chief Operating Officer ("COO"). By September 2024 the Chief Executive Officer ("CEO"), Michael Yates, had decided that there was no requirement to retain both a COO and the claimant's Operations Director ("OD") role. External recruitment for the COO commenced at that time. The claimant was not considered for the COO position and was not informed that his own position was to be removed until February 2025. The claimant says that he should have been considered for the COO position. The respondent says that the COO position was materially different and that the claimant did not possess the necessary skills and experience.

Procedure and evidence

4. The claimant presented his claim form (ET1) on 31 October 2025. He brings a complaint of ordinary unfair dismissal and, originally, a claim for unpaid holiday pay. Prior to issuing proceedings, the claimant complied with the Acas Early Conciliation requirements.

5. The respondents presented a response (ET3). Whilst accepting that the redundancy process was flawed, the respondents did not concede liability for unfair dismissal and maintained that the claimant was dismissed by reason of a genuine redundancy situation.

6. The claimant represented himself and gave evidence on his own behalf. The respondents were represented by Ms Laura Hale, Head of Human Resources, who also gave evidence. The respondents additionally relied upon the evidence of Mr Michael Yates, Chief Executive Officer. I am grateful to all parties for the professional and constructive manner in which they presented their cases and for their helpful submissions.

7. I considered the agreed hearing bundle, the witness statements, the documentary evidence contained within the bundle, and the documents provided during the course of the hearing.

8. I heard sworn oral evidence from the claimant, Ms Hale and Mr Yates. All witnesses were cross-examined and answered questions from the Tribunal.

9. At the outset of the hearing, I explained the overriding objective contained in Rule 3 of the Employment Tribunal Procedure Rules 2024 and conducted the proceedings in accordance with that objective. I also considered Rule 4 concerning alternative dispute resolution. The parties confirmed that the case was not capable of resolution by agreement and wished the Tribunal to determine the issues before it.

10. The parties confirmed that no reasonable adjustments were required to enable their full participation in the proceedings.

Preliminary Matters

11. There were three preliminary matters to clarify at the start of the hearing.

12. There was an issue in the pleadings as to the identity of the claimant's employer. Both Mr Fothergills Seeds Ltd and Chelsea Bidco are named as respondents in the ET1. The respondents' case was that following the 2022 service agreement, the employer was Chelsea Bidco and that Mr Fothergills Seeds Limited should not remain a respondent. This was put to the claimant who agreed that the claim should only be against the second respondent, Chelsea Bidco. The first respondent was removed from these proceedings in accordance with Rule 35 of the Employment Tribunal Rules.

13. The claimant withdrew his claim for holiday pay and therefore this part of the claim is withdrawn.

14. I sought clarification on what was admitted in relation to unfair dismissal. The respondents said that they did not admit that the claimant was unfairly dismissed for the purposes of section 98(4), so liability was not conceded. They said they simply admitted that the dismissal was procedurally unfair.

List of Issues

15. A list of issues was agreed at the hearing and are as follows:

Unfair dismissal

16. What was the reason or principal reason for dismissal? The respondent says the reason was redundancy.

17. 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.

18. The Tribunal to decide, in particular, whether:

    a. The respondent adequately warned and consulted the claimant;

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

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

d. Dismissal was within the range of reasonable responses.

Findings of Fact

Background

19. The claimant joined the respondent in February 2000 as Production Manager. He subsequently held a number of senior positions, including Production Director and, from January 2022, Operations Director ("OD"). By the termination of his employment, he had approximately 25 years' service and extensive knowledge of the respondent's business and operations.

20. In February 2022, the business received private equity investment. In June 2023, Harwood acquired full ownership. Following those transactions there were significant changes to the leadership and management structure of the business.

21. At the time relevant to these proceedings there were no material concerns regarding the claimant's ability to perform his existing role as Operations Director. In oral evidence, Mr Yates accepted that he was "relatively satisfied" with the claimant's performance in that role. This is consistent with the claimant having received a pay increase, bonus and positive appraisal feedback. The respondent's case was not that the claimant was unable to perform his existing role, but that he lacked some of the skills and experience the respondent considered necessary for the future COO role.

PACE and Leadership Review

22. In September 2023 the claimant participated in a PACE profiling exercise. I accept his evidence that this was presented to him as a leadership development exercise. There is no evidence that he was informed at the time that the exercise might be used in connection with future restructuring proposals or decisions concerning his employment.

23. Documents produced in October 2023 demonstrate that the respondent was already considering a revised leadership structure, including the possible creation of a Chief Operating Officer ("COO") role. The claimant was not aware of those discussions.

24. At that stage, however, the proposals did not envisage the removal of the claimant's role. Rather, they contemplated a structure in which a COO would sit

above the claimant, who would remain within the business. The claimant's experience and institutional knowledge were identified as valuable assets.

Appointment of Mr Yates

25. Mr Yates joined the respondent as Chief Executive Officer in January 2024. His remit included transforming the business and improving its performance. During 2024, he reviewed the existing leadership team and considered what skills and capabilities he believed would be required in the future structure.

26. During that process Mr Yates formed the view that the claimant did not possess all of the skills, behaviours and experience he considered necessary for a future COO role. He told the Tribunal that this assessment was based upon his observations of the claimant and his understanding of the requirements of the proposed role. He also stated that discussing those concerns with the claimant would not have altered his assessment.

27. Ms Hale gave evidence that she too had concerns regarding aspects of the claimant's leadership capability. However, she accepted that she had no evidence that those concerns were ever raised with the claimant.

28. I find that any concerns the respondent held regarding the claimant's suitability for the future leadership structure were never communicated to him. There was no formal assessment of the claimant against any COO criteria, no interview process and no documented comparison between the claimant's skills and the requirements of the proposed role. Ms Hale also confirmed that there were no formal job descriptions for either the Operations Director or COO roles.

Project Spring

29. During 2024 the respondent undertook a substantial transformation project known as Project Spring, including outsourcing logistics functions to a third-party provider. External consultants were engaged to assist with the project.

30. The respondent relied upon the use of external support as evidence that additional capabilities were required within the future leadership structure. The claimant accepted that external assistance had been engaged but attributed this largely to the pace at which the project was required to be delivered.

Creation of the COO Role

31. By September 2024 Mr Yates had decided that the future structure would include a COO role and would not retain a separate Operations Director role beneath it. The respondent considered that maintaining both positions would create an unnecessary management tier and additional cost. External recruitment for the

COO role began in September 2024 through a recruitment agency. The claimant was not informed that this process was taking place.

32. I find that there was substantial overlap between the claimant's existing responsibilities and those incorporated within the new COO role. Whilst the COO role was intended to be broader than the claimant's existing position, many operational functions previously carried out by the claimant continued within that role.

33. The COO role evolved during the recruitment process. Mr Yates accepted that responsibility for IT and digital leadership was not originally envisaged as part of the role but became part of the specification following discussions with candidates and recruiters.

34. The claimant accepted that he did not possess experience leading an IT or digital function. He questioned why he was never given an opportunity to discuss those requirements or demonstrate how any perceived gaps could be addressed. I find that there was nevertheless overlap between the claimant's experience and several of the capabilities sought for the COO role, including operational leadership, logistics and supply chain planning.

Exclusion from the Recruitment Process

35. By the time recruitment commenced, Mr Yates had already concluded that the claimant did not possess the skills and behaviours required for the role. The claimant was not interviewed, assessed, scored or otherwise evaluated against the role requirements.

36. Nor was the claimant given an opportunity to explain his experience, address any perceived shortcomings or demonstrate how any skills gap might be overcome. Mr Yates accepted that he had not discussed those matters with the claimant because he did not believe that doing so would alter his view.

37. I find that the claimant was excluded from consideration for the COO role on the basis of an assessment reached without his involvement and without any formal evaluation process.

Consultation

38. The respondent accepts that there was no meaningful consultation before the decision affecting the claimant's position was made.

39. Mr Yates accepted in oral evidence that consultation ought ideally to have commenced when recruitment for the COO role began in September 2024. That did not occur.

February 2025 Meetings

40. There is a dispute as to whether the first meeting took place on 11 or 12 February 2025. I do not consider that issue material to the matters I am required to determine.

41. By the time of that meeting, the key decisions had already been made. The respondent had decided to remove the Operations Director role, the claimant had not been considered for the COO position, and the external recruitment process had progressed to the stage where a preferred candidate had been identified.

42. On 25 February 2025 the claimant was given notice of dismissal and placed on garden leave for six months.

Appeal

43. The original dismissal letter did not provide a right of appeal. The claimant requested an appeal on 4 March 2025 and subsequently lodged a formal appeal.

44. The appeal was heard by Mr Parkin, the Executive Chair. Prior to the appeal the claimant raised concerns regarding Mr Parkin's impartiality. The evidence established that Mr Parkin had prior knowledge of the restructuring exercise and had participated in the final stage of the COO recruitment process.

45. By the time the appeal was heard, the claimant had been removed as a company director, and the restructuring process had substantially concluded. The appeal did not alter the outcome.

Shareholding

46. The claimant was a party to an Investment Agreement dated 4 February 2022 concerning Chelsea Topco Limited. The agreement identified him as one of the management shareholders and provided for him to apply for the allotment of 4,000 C Shares in that company.

47. The claimant gave evidence that he invested approximately £113,333 pursuant to those arrangements and that he thereby acquired a shareholding within the acquisition structure.

48. The claimant's evidence was that, following the 2023 ownership transaction and restructuring of the business, that investment became worthless. He further contended that, had he remained employed, he would have had an opportunity to

recover the value of that investment through future management incentive or share participation arrangements available to senior executives. He therefore contended that his dismissal deprived him of that opportunity.

49. The claimant also referred in his oral evidence to provisions which he understood distinguished between "good leavers" and other departing shareholders, and which he believed were relevant to the future value of his shareholding. Ms Hale also gave evidence regarding the claimant's shareholding and the respondent's position that the shares had no value.

50. However, the Tribunal did not have before it the Articles of Association, any shareholders' agreement governing the operation of any good-leaver provisions, or other complete documentation explaining the rights attaching to the shares, the treatment of those shares following the 2023 transaction, or the terms of any subsequent management incentive arrangements.

51. I therefore find only that the claimant acquired a shareholding pursuant to the February 2022 investment arrangements, that he believes that investment subsequently became worthless following the 2023 ownership transaction, and that he contends his dismissal deprived him of an opportunity to recover that loss through future participation in management incentive arrangements.

52. On the evidence before me, I am unable to make findings as to whether the claimant qualified as a good leaver, whether any good-leaver provisions were engaged, the legal basis of any entitlement arising from the shareholding, the value of any such entitlement, or whether any recoverable loss was caused by the dismissal. The evidence before the Tribunal was insufficient to permit findings on those issues.

The law

Unfair dismissal and Redundancy

53. Section 94 Employment Rights Act 1996 provides employees with the right not to be unfairly dismissed.

54. Under section 98(1), the employer must establish the reason or principal reason for dismissal. Redundancy is a potentially fair reason under section 98(2)(c).

55. An employer should also take reasonable steps to identify suitable alternative employment and bring material vacancies to the attention of an employee at risk of redundancy.

56. Under Polkey v AE Dayton Services Ltd [1987] IRLR 503, the fact that a dismissal was procedurally unfair does not necessarily mean that the employee's losses

should be calculated on the basis that employment would have continued indefinitely. The Tribunal must consider what would probably have happened had a fair procedure been followed.

57. The assessment is not necessarily binary. The Tribunal may assess the percentage prospect that the employee would nevertheless have been dismissed and may also determine that a fair dismissal would have occurred at a later date.

94.— The right.

(1) An employee has the right not to be unfairly dismissed by his employer.

98General.

(1)In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
(a)the reason (or, if more than one, the principal reason) for the dismissal, and
(b)that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2)A reason falls within this subsection if it—

(a)relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b)relates to the conduct of the employee,
(c)is that the employee was redundant, or
(d)is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

…

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

139 Redundancy.

(1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—
(a)the fact that his employer has ceased or intends to cease—

(i)to carry on the business for the purposes of which the employee was employed by him, or
(ii)to carry on that business in the place where the employee was so employed, or

(b)the fact that the requirements of that business—
(i)for employees to carry out work of a particular kind, or
(ii)for employees to carry out work of a particular kind in the place where the employee was employed by the employer, have ceased or diminished or are expected to cease or diminish.

Analysis and Conclusions

Reason for Dismissal

58. The respondent submits that the claimant was dismissed by reason of redundancy.

59. I accept that there was a genuine business reorganisation. Following his appointment as CEO, Michael Yates concluded that the senior management structure should be reorganised and that the business should recruit a Chief Operating Officer ("COO"). The decision to create that role was a genuine business decision directed towards the future operation of the business.

60. I also accept that the respondent had decided by September 2024 that it no longer wished to retain a separate Operations Director role beneath a COO. External recruitment for the COO role commenced at that stage.

Was there a redundancy situation?

61. I accept the claimant's submission that a substantial proportion of his duties continued after his dismissal. The respondent continued to require operational leadership and many of the claimant's responsibilities were incorporated into the newly created COO role.

62. However, the existence of substantial overlap between an employee's former duties and a successor role does not necessarily mean that there is no redundancy situation. The relevant question under section 139 is whether the employer's requirement for employees to perform work of a particular kind has ceased or diminished.

63. Taking the evidence as a whole, I am satisfied that the respondent genuinely decided to alter its leadership structure by replacing the separate Operations Director role with a broader executive role. The claimant's previous duties did not disappear, but they formed part of a wider role which the respondent decided should replace the existing structure. I therefore conclude that redundancy was the reason, or principal reason, for dismissal.

Fairness of the Dismissal

64. The existence of a redundancy situation does not determine whether the dismissal was fair. The question under section 98(4) is whether the respondent acted reasonably in treating redundancy as a sufficient reason for dismissal in all the circumstances.

65. I conclude that it did not.

66. The claimant had approximately 25 years' service. He had extensive operational experience, detailed knowledge of the respondent's business and a long record of senior leadership. The respondent did not contend that he was incapable of performing his existing role. Indeed, Michael Yates accepted in oral evidence that he was "relatively satisfied" with the claimant's performance as Operations Director.

67. The evidence establishes that during 2024 Mr Yates formed the view that the claimant did not possess the skills, behaviours and attributes required for the proposed COO role. However, those concerns were never put to the claimant. He was not informed that his suitability for the future leadership structure was being questioned, nor was he given any opportunity to address the concerns later relied upon by the respondent. Ms Hale accepted that she had no evidence that those concerns had ever been raised with him. Despite those concerns, Mr Yates accepted that he was "relatively satisfied" with the claimant's performance as Operations Director.

68. The most significant failing in the process concerned the COO role itself. The claimant had approximately 25 years' service, extensive operational experience and many of his existing responsibilities continued within the new structure. In those circumstances he was an obvious candidate for consideration for the COO position. Yet he was not informed of the vacancy, invited to apply, interviewed or assessed. There was no scoring exercise and no comparison between his experience and the requirements of the role. The claimant was never given an opportunity to address the concerns later relied upon by the respondent.

69. I find that the respondent reached a view about the claimant's suitability for the COO role without involving him in that assessment. Michael Yates accepted that he had formed the view that the claimant was unsuitable and did not consider a discussion with him would alter that conclusion.

70. In my judgment, that approach was inconsistent with the purpose of consultation. Consultation is intended to occur when proposals remain at a formative stage so that assumptions may be tested and alternatives explored. Here, the respondent had already concluded that the claimant would not be considered for the only realistic alternative to dismissal.

71. By the time the claimant was informed that his role was at risk, the respondent had already decided that the Operations Director role would be removed, the claimant would not be considered for the COO position and the recruitment process for that role had progressed substantially. The claimant was therefore denied any meaningful opportunity to influence the process or advance his own candidacy.

72. A reasonable employer in these circumstances would have consulted with the claimant at a much earlier stage, explained the proposed structure, considered whether he should compete for the successor role, and assessed him against the requirements of that role before reaching a final decision. The respondent did none of those things.

73. I do not consider that the subsequent appeal cured those defects. By that stage the recruitment process had substantially concluded and the relevant decisions had already been made. The appeal could not recreate the consultation which should have occurred months earlier when the proposals remained capable of influence.

74. I therefore conclude that the respondent's failings were not merely procedural. The respondent failed to undertake meaningful consultation at an appropriate stage, failed properly to consider the claimant for suitable alternative employment and effectively predetermined that he would not be considered for the newly created COO role. The claimant was thereby excluded from proper consideration for continued employment.

75. I conclude that the respondent acted outside the range of reasonable responses open to a reasonable employer. The dismissal was unfair.

Contributory Conduct

76. The respondent did not allege misconduct or other blameworthy conduct by the claimant. Its case was that the claimant lacked some of the capabilities sought for the newly created COO role and that, following a fair process, the outcome would probably have been the same. Those matters are relevant to the Tribunal's assessment under Polkey, rather than contributory conduct. I find no culpable or blameworthy conduct on the claimant's part which caused or contributed to his dismissal. No deduction is therefore made under section 123(6) ERA 1996.

Polkey

77. I have considered whether compensation should be reduced to reflect the possibility that the claimant would have been fairly dismissed even if a fair procedure had been followed.

78. I accept that the respondent genuinely believed that the claimant might not possess all of the skills and experience sought for the COO role. However, that belief was never tested through a fair process and the claimant was never afforded an opportunity to demonstrate whether he could perform the role or develop any perceived areas of weakness.

79. The claimant was never assessed, interviewed or consulted. He was never provided with the opportunity to explain his experience, challenge the respondent's assumptions, identify areas of overlap with his existing responsibilities or demonstrate how perceived gaps might be addressed through support, training or transition.

80. I nevertheless accept that there was a real possibility that, following proper consultation and a fair assessment process, the respondent would have concluded that another candidate was better suited to the COO role and that the claimant's employment would have terminated by reason of redundancy.

81. Equally, I am not persuaded that dismissal was inevitable. The claimant had approximately 25 years' service, extensive operational experience, detailed knowledge of the business and a successful record in senior leadership. He was never assessed against the requirements of the role and the respondent never explored whether any perceived gaps could reasonably be addressed.

82. Whilst there was a real prospect that the claimant would not ultimately have secured the COO role, I consider the prospect of continued employment following a fair consultation and selection process to have been materially greater than the prospect of dismissal. Doing the best assessment I can on the evidence before me, I conclude that there was a 20% chance that the claimant would have been fairly dismissed had a fair redundancy process been undertaken. Compensation shall therefore be reduced by 20% in accordance with the principles in *Polkey*.

Conclusion

83. The claimant was dismissed by reason of redundancy.
84.
85. The respondent failed to undertake meaningful consultation, failed properly to consider the claimant for the newly created COO role, failed adequately to explore alternatives to dismissal and effectively predetermined the outcome before consultation occurred.

86. The dismissal was therefore unfair.

87. There shall be no reduction for contributory conduct.

88. Compensation shall be reduced by 20% pursuant to *Polkey v AE Dayton Services Ltd*.

89. A separate remedy hearing will be listed.

Approved by:

Employment Judge David

16 October 2026

Judgment sent to the parties on: 3 November 2026

For the Tribunal

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

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