EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Mr Martin Barraclough	AND	Princess Yachts Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 12, 13, 14 and 15 October 2026

EMPLOYMENT JUDGE N J Roper

Representation
For the Claimant: In person
For the Respondent: Miss L Cunningham of Counsel

JUDGMENT

The judgment of the tribunal is that the claimant's claims of disability discrimination and for unfair dismissal are not well-founded and they are dismissed.

RESERVED REASONS

1. In this case the claimant Mr Martin Barraclough, who was dismissed by reason of redundancy, claims that he has been unfairly dismissed, and that he was discriminated against because of a protected characteristic, namely disability. The claim is for direct discrimination, failure to make reasonable adjustments, and victimisation. The respondent concedes that the claimant is disabled, but it contends that the reason for the dismissal was redundancy, that the dismissal was fair, and that there was no discrimination.
2. I have heard from the claimant. For the respondent I have heard from Mr Adrian Bratt, Mr Andrew Benton, Mr Ashley Mallet and Mrs Lorraine Plews. The claimant was offered such adjustments as were necessary during this hearing to assist his back disability, including repeated rest breaks.
3. There was a degree of conflict on the evidence. I found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

4. The Facts
5. The respondent company is a manufacturer of luxury yachts operating from a number of sites in and around Plymouth, including its main Newport Street site, and premises at Langage Industrial Estate. The Covid pandemic had a significant impact on the respondent's business and finances. During this time the respondent had over 3,000 employees, the majority of whom had to be paid whilst on furlough. The respondent recorded a loss of some £70 million to the year ended 2022. The business was bought by overseas investors in 2023, and the new owners instigated a full review of the respondent's business organisations, and a structural staff review for its employees, who numbered over 3,200 at that time. The respondent initially sought to reduce headcount through non-replacement of employees who had left, with strict restrictions on the recruitment of new employees. Nonetheless further action was needed, particularly in the added context of reduced sales of its luxury yachts. In late 2024 the respondent decided that it needed to reduce its hourly paid workforce by around 260 roles, which potentially affected around 500 employees across a number of production areas. As a result of these measures, including the redundancy programme during late 2024 and early 2025, the respondent had reduced its workforce to a total of 2016 employees, which is over 1,250 fewer than its number of employees which were in place some three years previously. There was therefore a background of serious financial concerns with the respondent's business, and then a large-scale redundancy programme, during the times material to this claim.
6. The claimant Mr Martin Barraclough is a skilled carpenter. He commenced employment with the respondent in 2006 in the role of Fit Out Carpenter. He signed a written contract of employment, clause 7 of which referred to his Normal Hours of Work. This provided that he was required "to work whatever working pattern the Company requires to meet its production/process commitments. 39 hours minimum … Additional hours over and above these may be requested by the Company and mutually agreed from time to time. You may be required to work shifts should the need arise."
7. In February 2011 the claimant sustained a back injury which resulted in a period of certified sickness absence, and his eventual return to work on adjusted duties. The claimant suffered from nerve compression, and sciatica, which restricted his mobility. He continues to suffer from restricted mobility and back pain to this day.
8. With effect from March 2012 the claimant returned to work, with an agreed pattern of working half days only, and undertaking "snagging" duties. This meant that his carpentry skills were put to resolving problems and snags towards the end of the production process, rather than during the initial stages of production. The respondent obtained an Occupational Health report dated 21 August 2012 ("the 2012 OH report"). This report was not able to reach any final conclusion because the claimant was about to undergo further assessment and treatment, and it was noted that this might well lead to an improvement of his symptoms. Nonetheless the report suggested that the claimant was not able at that time to return to his full normal duties because this would involve working in confined spaces for sustained periods of time, with quite significant lifting, which the claimant was unable to fulfil at that time.
9. It seems that the respondent's HR department was annoyed at this turn of events because the individual role of snagging was not one of the respondent's normal roles, working half days "could no longer be tolerated by the business", and the claimant was unable to work in a full-time capacity on the boats. At that time the respondent's HR director expressed the view that he wanted the claimant "exited within the next two weeks". As it happens that HR director left the business in 2015, and as can be seen the claimant's employment continued for many more years. None of the respondent's other managers were aware of this comment during the events material to this claim which are explained further below, and it has no relevance to the matters as they developed.
10. As a result of the claimant's ongoing difficulties and his attendance levels, a capability meeting took place in March 2013. Although the respondent did not have a dedicated or permanent snagging team it was eventually confirmed in April 2013 that the claimant

would be appointed to undertake a full-time snagging position working with the Outside Crew.

11. During this time the respondent had obtained another Occupational Health Report dated 18 March 2013 ("the 2013 OH report"). This report concluded that the claimant's long-term back condition would be considered to be a disability under the Equality Act 2010. It stated: "He's really quite limited in how much he can lift without exacerbating his back pain, and in how much bending and stooping he can do in order to work in tight or confined areas." The report suggested a phased return to work with restricted work. There were a number of recommendations as to what restrictions needed to be put in place by way of adjustments to enable the claimant's return to work. These were a restriction in heavy lifting; not being expected to work on ladders; restricting work in confined spaces to short periods of time; affording variable work whenever possible; and if new work was required then a workplace assessment should be carried out to ensure that any new work would not aggravate his underlying back condition. There was therefore no suggestion or recommendation that any particular working pattern should be adopted. There was no suggestion or recommendation to the effect that the claimant should work weekends rather than weekdays, nor as to any specific number of days, as being necessary adjustments to ameliorate any disadvantage caused by his disability.
12. With effect from June 2014 the claimant volunteered to move to a regular weekend shift. This involved completing his normal weekly hours over a three-day weekend shift pattern rather than the respondent's normal four day week. This was expressed to be a permanent arrangement, but it was subject to a requirement for the claimant to give at least eight weeks' notice to change back, and still subject to the claimant's normal contractual provisions relating to potential shift changes.
13. This arrangement continued until 2019. The respondent wished to focus more on quality across its business and therefore increased the size of its Quality Team. Employees who were perceived to be more experienced and better performers from other teams were moved into the Quality Team in order to carry out quality checks. This included the claimant. The respondent's internal HR documents record this internal move with effect from April 2019, and on 29 April 2019 Mr Brill of the respondent's HR department wrote to the claimant to confirm his new position of Quality Controller. That letter made it clear that the role did not attract "tool money" which would no longer be paid but otherwise all other terms and conditions were unchanged, including the claimant's current pattern of weekend working. The claimant was invited to sign and return that letter as accepting the changes. The claimant agrees that the letter was sent and emailed to him, but he claims never to have received it, and asserts that there is no signed acceptance of that internal transfer.
14. It is an important aspect of the claimant's claim that he never agreed to a permanent move from his previous weekend snagging role to this new role in the Quality Team. He has continued to assert effectively that the respondent should therefore have always been in a position thereafter to reinstate him at his request to his previous weekend snagging role. I do not agree with that conclusion nor with that assertion. I have seen a transcript of a text message conversation between the claimant and his trade union adviser seeking advice on the removal of the claimant's "tool money" as a result of the move to the new role. He clearly knew of the new role at that time, and could have raised questions with the respondent's HR department in the same way as he chose to do so with his union representative. I have also seen holiday leave request forms signed by the claimant in 2022 and 2024 which include reference to the claimant's department being the Quality Team. The claimant continued to work in the Quality Team for at least five years. The evidence of the respondent's witnesses is to the effect that temporary moves between departments would only ever last for a matter of weeks (because of each department being responsible for its own costs), this could not therefore have been a temporary move, and the claimant was obviously a member of the Quality Team from 2019. Based on this evidence I find that it is clear that the claimant was subject to a permanent move of departments in 2019 to the Quality Team

and that he continued to work in that team for at least another five years. It is entirely implausible for the claimant to suggest that he had been moved as a temporary measure only, and that he was always at liberty to insist on a move back to his weekend snagging position in the event that he wished to do so. I reject the claimant's analysis in this respect.

15. During this time the respondent arranged for a further Occupational Health report which was dated 26 July 2021 ("the 2021 OH report"). This reports what the claimant had said, namely that he had ongoing back pain which fluctuated in severity and that he managed his pain normally with pain relief medication and self-help techniques. He reported that the four days gap between his working days helped him to rest and manage his symptoms as well as could be expected. The conclusion of the report was that "the employee is fit for work with the previously provided adjustments. The employee has said that he manages his symptoms under normal circumstances well and has had minimal absence … It is a business decision on if the recommended adjustments can be accommodated and are considered reasonable." These "previously provided adjustments" were the working restrictions set out in the 2013 OH report under which the claimant had been completing his snagging duties. Again, there was no suggestion or recommendation to the effect that the claimant should work weekends rather than weekdays, nor as to any specific number of days, as being necessary adjustments to ameliorate any disadvantage caused by his disability.
16. The claimant continued working these weekend shifts which suited him. The weekend working attracted an uplift in pay, and it allowed four days off during the week. This enabled him to assist with childcare. He felt that the weekend working was "less pressurised", and he explained that four days off allowed him to rest and recuperate. He also attended physiotherapy and chiropractic appointments, which he attended no more frequently than once every month or two months. He was also able to go swimming. Nonetheless it is important to note, and I so find, that the reasonable adjustments required, agreed, and put in place were only the working restrictions set out in the 2013 OH report. This enabled him to carry out work with no heavy lifting, no ladder work, limited time in confined spaces, and variable work if possible. There was also a recommendation that any move to a new position would require a further assessment. There was never any suggestion or conclusion that the claimant's disability restricted him to having to work on weekends rather than weekdays, nor that it restricted him from working a four-day week rather than a three-day week. One cannot blame the claimant for continuing with weekend working if he preferred it and enjoyed it, but that is not the same as concluding that he would be put to any substantial disadvantage by way of his disability if he was required to work weekdays rather than weekends, or four days in the week rather than three days. More specifically, there has never been any conclusion or recommendation from OH that working four days during the week would amount to any disadvantage with regard to the claimant's disability. He would still have three days off to rest and recuperate, and he would still be able to arrange his infrequent appointments at times to suit.
17. The claimant was able to work satisfactorily in this new role in the Quality Team from the move in 2019, until the events of 2024. It was then that the respondent decided to bring weekend shift working to an end across all of its sites, and this was gradually phased in so that there is now no standard weekend shift in operation. The respondent discussed the matter with its relevant employees, and by letter dated 23 February 2024 the claimant was informed that he would move from the three-day week over the weekend, to a four-day weekday working pattern with effect from mid-March 2024. The claimant objected to this change because he had been working the three-day weekend pattern for many years, and he was of the view that he had never agreed to a permanent move to the Quality Team, and was therefore entitled to insist on being reinstated to the weekend snagging role which had been created for him and which he had worked until 2019.
18. On 4 March 2024 the claimant asked for a meeting with the HR Department to explore "any possible alternatives to allow continuation of weekend working". By email dated 7

March 2024 he explained that he was disabled, and that "in March 2013 as a reasonable adjustment and after many meetings, it was agreed in writing by the company that I would be allowed to carry out carpentry snagging duties on a full-time basis… it allowed me to work in a less crowded and disruptive environment with greater productivity … three days at work and four days at home is better for me to rest my back and recuperate … gives me better chances of medical/physio appointments when needed … I would therefore like to cease working on the quality team and resume the role of snagging under supervision of the weekend management as before." The meeting took place and it was agreed that the proposed shift change would be delayed by two weeks to enable the respondent to explore other options.

19. By letter dated 25 March 2024 the claimant's manager confirmed that there would be a further extension to allow time to look for alternative roles, but that there would be a cut-off period of 26 May 2024 when the new shift would commence in any event. The claimant was asked to consent to a referral to Occupational Health "to obtain an up-to-date review on any restrictions or further recommendations that need to be taken into account before making a change of roles … please confirm consent … without further delay". The claimant did not do so, and from that stage adopted the intransigent position that there was no need for another OH report in circumstances where the respondent already had the 2013 OH report, which had not been changed in the 2021 OH report. The respondent adopted the view that a further OH report was required, not least because its production roles had changed, many years had passed since the previous reports, and they wished to consider what adjustments might be necessary in the context of any new role. In addition, both the 2013 OH report and the 2021 OH report and advised that it would be necessary to obtain a further OH report event that there was any change in the claimant's role. These reasons I find that the respondent's insistence on obtaining a further report was an entirely reasonable stance for the respondent to take.
20. It is also clear from an exchange of emails between the claimant's managers on 25 March 2024 that the respondent was actively seeking to accommodate the claimant's request to maintain weekend working. It was noted that the weekend shift was ending for the full Quality Team and the respondent was "also looking at how to help others". Enquiries were made on behalf of the claimant as to whether he might work on a weekend shift elsewhere in the business given his skill set as a carpenter. It was agreed that the claimant's consent to a further OH report was essential to advise on potential reasonable adjustments and/or restrictions before removing back him to a different carpentry role. The tentative conclusion at that time was that: "if the OH report states he is capable of returning to a carpenter role (with some restrictions etc) and we can accommodate this on the weekend shift, then we may well be in a position to make the simple transition. So again, the OH consent is critical."
21. The claimant attended a meeting on 17 May 2024 to discuss these changes, but decided that he could not continue with the meeting without his union representative present. The claimant was told at that meeting that the snagging role which he had worked many years previously no longer existed, and that if he wished to continue to work for a maximum of three days he was entitled to submit an application for flexible working to that effect. He was also told that if he wished to consider a change of role into a different carpenter role then he would have to agree to an occupational health review so that the respondent could have an assessment on his capabilities.
22. The meeting was postponed until 24 May 2024 as requested by the claimant. It was made clear to the claimant that the carpenter role had changed since his move to the Quality Team in 2019 and that an OH review would be required in order to assess what adjustments might be necessary. At that stage the claimant did then give his consent for the OH referral. The claimant made it clear that he preferred to work the weekend shift because of his personal circumstances as well as his health, and again the possibility of submitting a flexible working request to that effect was explained to the claimant. By this stage the cut-off period to commence the new shifts was about to commence following a bank holiday weekend. The claimant asked what would happen

if he simply failed to attend for the weekday shift on the following week and it was confirmed that this would be unauthorised absence. Later that day the claimant left work early and submitted a fit note certifying his absence from work because of work-related stress. The claimant remained on long-term sickness absence and never returned to work.

23. The claimant complains that a colleague, to be referred to in this Judgment as Mr X, was in a comparable position but that he was allowed to continue working on a weekend shift. Mr X had difficult family circumstances, and an alternative role was eventually found for Mr X on a weekend shift at that time. However, this required a move from the Quality Team back to his original job as a fibreglass operative, which also therefore involved an agreed reduction in salary from Grade 7 back down to Grade 4. Mr X therefore agreed to do a different job with a different salary, and he was not in a truly comparable position to the claimant.
24. By email dated 19 July 2024 the claimant exercised a formal grievance under the relevant procedure. The claimant confirmed that he wished to resume "my actual carpentry snagging role within the company". He alleged that his move to the Quality Team in April 2019 was only on a temporary basis, and he wished to return to his previous snagging role. He objected to having to undertake a new health review and referred to the OH reviews in 2013 and 2021 which had referred to his restrictions and capabilities. He stated: "I do not feel I have to prove myself able to carry out work that I've previously been able to do with my restrictions and consider not allowing me to work in this area a failure to allow a reasonable adjustment under the current legislation". The claimant also raised issues concerning sick pay and data access, which are not relevant for the purposes of this hearing.
25. Mr Andrew Benton, from whom I have heard, is a Production Quality Manager with the respondent. A different manager was initially appointed to hear the grievance, but the claimant objected to his involvement, and Mr Benton was appointed to hear it. The grievance hearing then took place on 1 August 2024. The claimant was present and he was accompanied by his trade union representative. At that meeting the claimant confirmed that his main objective was to remain on the weekend shift pattern and the most appropriate solution was to return into what he perceived to be his carpentry snagging role. He claimed to know that there was sufficient work demand over the weekend shifts. He explained that the weekend shift gave him more time to rest and relax and suited him better with his personal circumstances. The claimant continued to confirm that he did not think that a further referral to OH was necessary. Mr Benton found this approach to be frustrating given that it was standard practice for the respondent to obtain OH reports in circumstances where a receiving manager had to ensure what physical limitations should be put in place for any transferring employee. This was particularly the case given that the nature of the work on the individual boat lines was constantly changing. Mr Benton perceived the claimant's attitude to be difficult because he refused to consider any option other than staying on the weekend shift in a role which he wanted to do (that is his previous snagging role which no longer existed).
26. Despite this, the respondent continued to make enquiries as to an alternative position for the claimant. In August 2024 Mr Johnstone who was the respondent's manager in its Langage site confirmed in an email to HR that: "we may potentially have the capacity to take Martin on weekend shift here at Langage" but wanted to know further details and in particular with regard to a further OH report. He expressed the view that "an updated occupational health review would be needed before coming to Langage as the role may have progressed over the years and for health and safety purposes and the employee's overall safety I want to ensure we can fully support Martin". This email exchange was copied to the claimant and to his union representative.
27. The respondent had taken contemporaneous notes of the grievance meeting which were sent to the claimant on 19 August 2024. On 21 August 2024 the claimant sent a detailed email objecting to the minutes and suggesting various amendments. He continued to object to the new OH report and did not seek to pursue the possibility of

an alternative role in Langage, as he had been invited to do when copied into the exchange of emails with Mr Johnstone.

28. Mr Benton rejected the claimant's grievance, and he confirmed this in a letter to the claimant dated 29 August 2024. With regard to the transfer to the Quality Team in 2019, he concluded that the claimant had been sent the letter confirming the variation to his contract and even though he had not signed it, the claimant had not raised any concerns during the course of five years which he therefore took to be the claimant's acceptance of that new role. Mr Benton reiterated the need for a new OH report effectively because there was no certainty that the 2021 OH report remained relevant. It had been based on the claimant's existing role in the Quality Team and was not focused on his abilities to perform a new and different role, namely that of carpenter, in 2024. An opportunity had been presented to the claimant to transfer to the Langage site to carry out a carpenter role on a weekend shift, but the claimant had repeatedly refused to consent to a referral to OH for that purpose. For that reason, any prospective move could not be progressed.
29. By letter dated 16 September 2024 the claimant appealed against Mr Benton's finding. There were four grounds of appeal: (i) he had never received any paperwork to the effect that his move to the Quality Team in 2019 was permanent; (ii) the respondent should return him to the role of carpenter carrying out snagging work only on a full-time basis as a reasonable adjustment; (iii) he had by now provided consent for an OH referral and an appointment was imminent; and (iv) his sick pay banding was incorrect.
30. Mr Ashley Mallett, from whom I have heard, is a Quality Director with the respondent. He was appointed to deal with the claimant's appeal. An appeal hearing eventually took place on 29 October 2024 having accommodated the claimant's request for his trade union representative to be present. Mr Mallet found the meeting to be difficult and considered the claimant to be awkward in the sense that he repeatedly raised the same points. They discussed the various issues raised in detail. Mr Mallet did not agree that the move to the Quality Team in 2019 was temporary. He did not agree with the claimant's assertion that because there was still a lot of work to do at the end of each weekday shift pattern that there was therefore the necessity for employees to work a weekend shift. The claimant had been accessing the respondent's work systems whilst absent on sick leave, and he had referred to the volume of work which needed to be completed. Mr Mallet was of the view that costs were being closely controlled by the respondent and although some limited overtime was occasionally available at weekends, the respondent was now focusing on work having to be completed during the weekday shift. In addition, the claimant could not be returned to a snagging role because no such role existed. If anyone carried out snagging duties, they would now be on temporary loan from a particular boat line and carrying out their specialty or trade at a different location.
31. Mr Mallet also discussed with the claimant the possibility of the claimant doing his normal contractual period of hours over three weekdays, instead of the four-day weekday shift. Mr Mallet suggested the possibility of a three-day working pattern during the week, on the same contractual hours, which would allow rest and recuperation. There is a dispute about the accuracy of the minutes on this point, but in any event the claimant confirmed in his evidence that he was concerned that he would be financially worse off if he accepted such an offer, and although he confirmed he would think about it, he did not pursue this offer. After this meeting Mr Mallet also made further enquiries of Mr Johnstone, the Operations Manager at Langage. He confirmed that there was no longer any work available at weekends at the Langage site, which was consistent with the gradual move away from weekend working across respondent's business for all trades. Only a very small minority of people continued to be allocated to any weekend shifts in specific work areas.
32. Following a further dispute about the accuracy of the minutes Mr Mallet met with the claimant and his trade union representative on 22 November 2024 to discuss his decision on the appeal, which was rejected. By this stage the respondent had received a further Occupational Health report which was dated 4 October 2024 ("the 2024 OH

report"). This confirmed that the claimant had been absent from work since late May 2024 because of work-related stress and anxiety. The report confirmed that the claimant had worked as a carpenter on an adjusted role involving snagging with restricted duties as recommended in the 2013 OH report. His current concerns were that the new shift pattern would require him to work during the week without weekend working. The claimant had expressed concerns that this would prevent him from having the longer four days to manage his back condition at home as well as attending various appointments. The claimant felt unsupported. The report agreed with the claimant's suggestion that he would be able to cope by returning to work in an adjusted carpenter role (the role he was in before) together with the previous restrictions and adjustments that were already in place. This included avoiding heavy lifting, limited work in confined spaces, not climbing ladders, and taking mini breaks to alleviate his symptoms if required. The report concluded that the claimant would be covered by the disability provisions of the Equality Act 2010 and that reasonable adjustments should be made. The report suggested "This could include, if available, lighter work, more flexibility in the workplace, amended duties as mentioned above as well as increased flexibility concerning absences from work due to his back condition that I understand were previously in place". Again, there was no suggestion or recommendation to the effect that the claimant should work weekends rather than weekdays, nor as to any specific number of days, as being necessary adjustments to ameliorate any disadvantage caused by his disability.

33. Mr Mallet discussed this 2024 OH report with the claimant which had confirmed that the previous adjustments were still relevant. Mr Mallet agreed to continue to work with the claimant to seek to identify suitable roles for him. However, weekend shifts had already moved into the standard working week across all of the respondent's sites. The respondent's business had changed so that work was moved back into the production lines and on-site facilities, so as not to have to complete build work or other re-work at the respondent's Marina. Effectively the respondent wished the build to be done correctly the first time, and on the week-day shifts where there is more supervision and support. The respondent continued to look to make costs savings which is why it had moved away from weekend shift working which increased production costs.
34. On 20 January 2025 Mr Mallet telephoned the claimant by way of a welfare call. The transcript of that call makes it clear that Mr Mallet expressly referred to it as being a welfare call. For some reason the claimant now denies this, and during that call he suggested to Mr Mallet that he had not received any documentation following his grievance appeal. Mr Mallet made enquiries and confirmed that that was not the case, and the claimant had been sent the relevant documents. The claimant also suggested that Mr Mallet had failed to reply to other questions which he had raised with HR before the Christmas period. Mr Mallet invited him to resubmit those questions for his consideration, but the claimant did not reply to that email.
35. During this process Mr Mallet became very frustrated with the claimant and his attitude which he perceived to be difficult and awkward. Following their telephone conversation on 20 January 2025, Mr Mallet sent an email to colleagues to express his frustration. He stated: "I would like to be clear … we do not want Martin in the business, he is a terribly difficult person to deal with and will make our life difficult at every opportunity he has, it feels like we have not made this an easy one for ourselves." In addition, in the context of the claimant suggesting that Mr Mallet had not responded to questions given to HR before Christmas 2024, Mr Mallet stated: "Agree totally, he is so awkward!"
36. Against this background the respondent then commenced a significant redundancy programme, which as noted above, affected approximately 500 hourly paid employees, and during which the respondent sought to reduce that workforce by 260 people. Mr Adrian Bratt, from whom I have heard, is the respondent's Chief People Officer and General Counsel. He was responsible for overseeing this organisational restructure, and he appointed a dedicated team to manage the process under his supervision so that they would not be distracted by other HR issues. The respondent had both

recognised independent trade unions, and a Works Council, and these were involved at all stages of the process. The process adopted was one of general discussion with employees at large, formal consultation on a general basis with the trade unions and the Works Council, followed by first and second individual consultation meetings with each affected employee, at which they had the right to be represented. Employees were invited to apply for voluntary redundancy on improved terms if they wished to do so during this process.

37. The respondent agreed with the relevant trade unions and Works Council the pools of employees against which selection criteria for redundancy would be applied. In addition, the selection criteria themselves were also agreed with the relevant trade unions and Works Council. With regard to selection, the process was that two managers would each independently mark affected employees against the criteria, and then compare and agree their findings, and those marks and findings would then be independently reviewed by a senior independent manager by way of calibration to seek to ensure fairness and consistency through the selection process. In addition, as an extra safeguard, the relevant trade unions were present to supervise that calibration process.
38. This is the background against which the claimant's employment was terminated by reason of redundancy.
39. By email dated 3 December 2024 Mr Bratt informed the claimant that the respondent was considering redundancies and that his role was at risk. That letter confirmed that collective consultation would take place throughout December 2024 and that individual consultation would start with employees in January 2025. A further email to the claimant dated 10 January 2024 confirmed that the claimant had provisionally been selected for redundancy and that he was invited to his first individual consultation meeting on 14 January 2025 which was to be conducted by Mr Benton. He was a line manager of the Quality Control Technicians and he was responsible for carrying out individual consultation for all individuals in that pool for selection, which included the claimant. The claimant did not attend that meeting, and the reason was that the relevant emails and information had been sent to the claimant's company email address which had been temporarily suspended because of his long-term sickness absence. Once this oversight had become clear, the claimant was forwarded the relevant information, and his first individual consultation meeting took place on 28 January 2025.
40. The claimant complains that he was disadvantaged in the process because of this delay. I do not accept that assertion for the following reasons. In the first place no individual employees were involved in that capacity during the general consultation process which took place during December 2024. The claimant was aware through discussions with colleagues and other family members that the respondent was undertaking a redundancy process, and the claimant also knew this from local news sources because the respondent is a major employer in Plymouth. The respondent had earlier provided advice workshops to advise employees on how to cope with any change and/or make applications for new employment and the claimant did not appear to have access to these. However, as noted below, he did not apply for alternative employment when invited to do so. The initial deadline for seeking voluntary redundancy had also passed, but the claimant was not precluded from applying subsequently for this, and he chose not to do so. The administrative oversight in connection with his correct email address was therefore an unfortunate accident, but it did not cause any disadvantage to the claimant during the process which subsequently unfolded.
41. The selection process adopted by the respondent following agreement with the trade unions consisted of seven criteria, each one of them to be marked from 1 to 5, and each one to be given different weighting to achieve an overall total score. The claimant was given the highest score of 5 for each of length of service, timekeeping, and disciplinary record. He was marked with 3 for attendance which was an objective score which reflected his three instances of absence within the relevant reference period.

The claimant complains about the remaining scores which he says were too low because he says he was deliberately undermarked. These three scores are 3 for performance which reflects “meets all objectives of the role”; 3 for experience and skills which reflects “adequate level of experience”; and 1 for future potential which reflects “has reached potential”. When the scores were applied to the agreed weighting, the claimant’s total score was 370 which put him at risk of redundancy within the relevant pool of employees.

42. The two managers who assessed and agreed the scores were Mr Benton and Mr Mallet. The respondent was seeking to reduce the number of employees in the Quality Team from 14 to 8, and they scored all 14 employees against the agreed selection criteria. Mr Benton and Mr Mallet each scored the claimant independently, and they reached identical scores and conclusions. The claimant’s score, and the scores of the other employees in the pool for selection, were then checked and calibrated by a director of the respondent’s Board, who had not previously been involved in that proposed selection.
43. In his capacity of manager of the Quality Control Technicians Mr Benton had knowledge of the claimant’s capabilities along with other employees in the pool, not least because of his responsibilities for auditing the successful completion of work for the Department under his control. Mr Mallet had not directly managed the claimant, but as Quality Director he was aware of the quality process, and as noted above he had dealt with the claimant’s grievance appeal.
44. The claimant complains that Mr Mallet should not have been involved in his selection because he was effectively tainted by his prejudice against the claimant, as noted by his email comments to the effect that the claimant was awkward and that he wanted him out of the business. With a smaller employer and a smaller process that might well have been a cogent argument. However, in the circumstances of this case, the scores given by Mr Mallet were independently identical to those given by Mr Benton, and were then agreed during an independent calibration process which involved the relevant trade union.
45. On the face of the three out of seven scores in respect of which the claimant complains, the scores appear to be objectively reasonable and arguable. With regard to performance both managers decided that the claimant met all of the objectives of this role (which merited 3) but did not exceed the objectives nor were consistently exceeding expectations which was required for a score of 4 or 5 respectively. With regard to experience and skills, the score given of 3 reflected adequate level of experience, and neither manager felt that the claimant experienced a significant level of experience nor had highly applicable and relevant experience such as to merit a mark of 4 or 5. The future potential score of 1 reflected “has reached potential” rather than a higher mark for more significant potential and capabilities. Mr Mallet explained that he had given the claimant this low mark because during the grievance appeal process all the claimant wished to do was to seek to argue that he should regress, and to be returned to a snagging role which had not existed for many years. He had never expressed any intention to seek to progress to any other role.
46. It is not for this tribunal to undertake a repeat of the scoring process for the claimant and/or the other employees with whom he was compared in the selection process. I find that the scores given by Mr Benton and Mr Mallet appear to be reasonable on the face of the information before them, and there was the safeguard of independent calibration in the presence of the trade union. In addition, apart from the reference to Mr Mallet’s negative comments about the claimant in the earlier emails, the claimant has not adduced any evidence to the effect that either Mr Mallet or Mr Benton deliberately underscored him, and I reject that assertion.
47. It was then Mr Benton who carried out the claimant’s individual redundancy consultation. The first individual consultation meeting took place on 28 January 2025. The claimant was accompanied by his trade union representative. The earlier deadline for applying for voluntary redundancy had already passed, but the claimant was given the relevant information to consider this, and allowed an extension, but he did not

subsequently apply for this. The claimant was also provided with a list of alternative employment opportunities within the respondent. During that meeting the claimant challenged his scoring and requested a breakdown of the calculations for his scoring, but otherwise he did not raise any concerns about the overall process.

48. Mr Benton also conducted the second individual consultation meeting with the claimant which took place on 17 February 2025, again with the claimant's trade union representative present. He alleged that he had been placed at a significant disadvantage to everyone else because he had not received the earlier information which had been provided to other employees in early December 2024. He also complained that he had been given the limited opportunity and time to apply for other vacancies. Mr Benton's view was that he had been provided with less time than others, but he still had sufficient time to make an application if he had wished, and he had not pursued any such application.
49. With regard to possible alternative employment, the claimant had been given a list of alternative roles for which he was entitled to apply. The most relevant role was that of Carpenter, for which he was qualified to apply. There were nine such vacancies available and applications were open to all those subject to this redundancy process. The claimant did not apply for this alternative employment. He explained to this tribunal that he chose not to do so because in circumstances where the respondent had repeatedly refused to return him to his weekend snagging role (from which he was moved in 2019), he did not trust the respondent to put in place whatever reasonable adjustments would be necessary to accommodate his disability.
50. The claimant was informed later on 19 February 2025 that his employment was to be terminated by reason of redundancy. This was confirmed in writing by the respondent together with the relevant information concerning his redundancy payment. The claimant was afforded the right of appeal against his dismissal, and he entered an appeal on 25 February 2025. The claimant's appeal was heard on 13 March 2025 by Mr Carter, the respondent's Head of Facilities. The claimant was accompanied by his union representative. The claimant appealed on the basis that he should not have been included in the Quality Department; he had not enjoyed the same timescale for consultation as other employees; his scoring was unfair; and that he should have been moved by way of a reasonable adjustment. Mr Carter considered these points and rejected the appeal for the reasons confirmed in his letter dated 25 March 2025. He confirmed that the claimant was correctly included in the Quality Department and his complaints about the move from weekend working had already been discussed and addressed in the grievance process. He noted that the timescale for consultation had been extended given the difficulties concerning the incorrect email address. He concluded that the scoring process was reasonable and consistent with that received by other employees in the process. Finally, there were no roles identified which met the criteria for a suitable alternative role, and the claimant had chosen not to apply for the alternative position of Carpenter.
51. The claimant then commenced the Early Conciliation process with ACAS on 19 February 2025, and ACAS issued its certificate on 2 April 2025. The claimant presented these proceedings on 30 April 2025. The claimant then commenced the Early Conciliation process again on 29 April 2025, and ACAS issued a further certificate on 10 June 2025. The claimant reissued these proceedings on 8 July 2025. The second proceedings were a duplicate of the first set of proceedings, and both sets of proceedings (which are numbered 6015607/2025 and 6025569/2025) were combined, and have now determined by this Judgment.
52. Having established the above facts, I now apply the law.
53. <u>The Law</u>
54. The reason for the dismissal was redundancy which is a potentially fair reason for dismissal under section 98 (2) (c) of the Employment Rights Act 1996 ("the Act").
55. The statutory definition of redundancy is at section 139 of the Act. This provides that an employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to (section 139(1)(b)) "the fact that the requirements of

(the employer's) business for employees to carry out work of a particular kind, or 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"

56. Section 98 (4) of the Act which provides "…. 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".
57. This is also a claim alleging discrimination because of the claimant's disability under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges direct disability discrimination, failure by the respondent to comply with its duty to make adjustments, and victimisation.
58. The protected characteristic relied upon is disability, as set out in section 6 and schedule 1 of the EqA. A person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months, or is likely to last the rest of the life of the person.
59. As for the claim for direct disability discrimination, under section 13(1) of the EqA a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
60. The provisions relating to the duty to make reasonable adjustments are to be found in sections 20 and 21 of the EqA. The duty comprises of three requirements, of which the first is relevant in this case, namely that where a provision criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, there is a requirement to take such steps as it is reasonable to have to take to avoid that disadvantage. A failure to comply with this requirement is a failure to comply with a duty to make reasonable adjustments. A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
61. The definition of victimisation is found in section 27 of the EqA. A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. The following are all examples of a protected act, namely bringing proceedings under the EqA; giving evidence or information in connection with proceedings under the EqA; doing any other thing for the purposes of or in connection with the EqA; and making an allegation (whether or not express) that A or another person has contravened the EqA.
62. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides in section 136(2) that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However by virtue of section 136(3) this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
63. I have considered the cases of Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL; Igen Ltd v Wong [2005] IRLR 258 CA; Madarassy v Nomura International Plc [2007] ICR 867 CA; Ayodele v Citylink Ltd [2018] ICR 748 CA; Environment Agency v Rowan [2008] IRLR 20 EAT; Newham Sixth Form College v Sanders EWCA Civ 7 May 2014; Project Management Institute v Latif [2007] IRLR 579 EAT; Warburton v Chief Constable of Northamptonshire Police [2022] ICR 925 EAT, applying Chief Constable of West Yorkshire v Khan [2001] 1 WLR 1947 HL; Nagarajan v London Regional Transport [2000] 1 AC 501; Chief Constable of Greater Manchester v Bailey [2017] EWCA Civ 425; Williams & Ors v Compair Maxam Ltd

[1982] IRLR 83; Safeway Stores v Burrell [1997] IRLR 200 EAT; Langston v Cranfield University EAT [1998] IRLR 172; Osinuga v BPP University Legal Team [2022] EAT 53; and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. I take these cases as guidance, and not in substitution for the provisions of the relevant statutes.

64. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures (2015) ("the ACAS Code").
65. The Claims Before This Tribunal
66. The claimant's claims to be determined by this Tribunal were agreed at a case management preliminary hearing and set out as an Agreed List of Issues in the Case Management Order of Employment Judge Smail dated 18 December 2025. Although the List of Issues referred to potential out of time issues, in the event these were not relevant and were not pursued by the respondent. The claimant's claims are for disability discrimination, (being direct discrimination, an alleged failure to make reasonable adjustments, and victimisation), and for unfair dismissal. I deal with each of these claims in turn
67. The Claimant's Disability:
68. The disability relied upon by the claimant is a back impairment, namely spinal nerve compression with associated lower back pain and sciatica. For the reasons explained in the findings of fact above, I find that at all material times the claimant suffered from a physical impairment which had a substantial and long-term adverse effect on the claimant's ability to carry out normal day to day activities, and in particular his mobility. There was a substantial adverse effect because it was more than minor or trivial, and there was a long-term effect because it has lasted for at least 12 months.
69. The respondent has conceded that the claimant was a disabled person by reason of the impairment relied upon, and that it had knowledge of this disability, at all material times. I agree with that concession, and I so find.
70. Direct Discrimination:
71. With regard to the claim for direct discrimination, the claim to be determined is set out in paragraph 5 of the List of Issues, and it is this:
72. The claimant relies upon one act of less favourable treatment, namely the respondent's refusal "to return him to his snagging weekend role". He names as his direct comparator his colleague Mr X who was a fibreglass repairer and whom he says was allowed to work weekends. Mr X was not disabled. Alternatively, the claimant relies upon an hypothetical comparator.
73. A claim for direct discrimination will fail unless the claimant has been treated less favourably on the ground of his disability than an actual or hypothetical comparator was or would have been treated in circumstances which are the same or not materially different. The claimant needs to prove some evidential basis upon which it could be said that this comparator would not have suffered the same allegedly less favourable treatment as the claimant.
74. As for the correct comparator, paragraph 3.29 of the EHRC Code of Practice on Employment (2011) provides: The Comparator for direct disability discrimination is the same for other types of direct discrimination. However, for disability, the relevant circumstances of the comparator and the disabled person, including their abilities, must not be materially different. An appropriate comparator will be a person who does not have the disabled person's impairment, but who has the same abilities or skills as the disabled person (regardless of whether those abilities or skills arise from the disability itself).
75. As confirmed in Ayodele v Citylink Ltd, section 136 EqA imposes a two-stage burden of proof. Under Stage 1 the burden is on the employee to prove from all the evidence before the Tribunal facts which would, if unexplained, justify a conclusion not simply that discrimination was a possibility, but that it had in fact occurred. Under Stage 2 the burden shifts to the employer to explain subjectively why it acted as it did. The

explanation need only be sufficient to satisfy the Tribunal that the reason had nothing to do with the protected characteristic.

76. For the burden of proof to shift in a direct discrimination claim, the claimant must show that he or she has been treated less favourably than a real or hypothetical comparator ("the less favourable treatment issue"). As confirmed in section 23(1) EqA there must be no material differences between the circumstances relating to the claimant and the chosen comparator. That means they are in the same position in all material respects, except that they do not hold the protected characteristic (Shamoon paragraph 110). "Material" means those characteristics the employer has taken or would take into account in deciding to treat the claimant and the comparator in a particular way (except the protected characteristic) (Shamoon paragraphs 134 to 137).
77. In Madarassy Mummery LJ stated: "The Court in Igen v Wong expressly rejected the argument that it was sufficient for the claimant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an act of discrimination". The decision in Igen Ltd and Ors v Wong was also approved by the Supreme Court in Hewage v Grampian Health Board. The Court of Appeal has also confirmed that Igen Ltd and Ors v Wong and Madarassy v Nomura International Plc remain binding authority in Ayodele v Citylink Ltd.
78. In this case the claimant claims that the respondent's refusal "to return him to his snagging weekend role" is unlawful direct discrimination because of his disability. In the first place it is arguable that this claim must fail simply because there was no such act of less favourable treatment in the sense that there was no such thing as "his snagging weekend role". First of all, it was not the claimant's role, because he had already been moved by way of the internal transfer in 2019 to the Quality Team. Secondly, that role no longer existed within the respondent's organisation which gives a clear and non-discriminatory reason as to why the claimant was not moved back to that role.
79. In addition, with regard to the actual comparator relied upon, namely Mr X, he does not fill the role of a statutory comparator because his personal circumstances were materially different to those of the claimant. He had a different job-title and skill set, and he was offered a new weekend role because of his personal circumstances but on the basis that he dropped three salary grades in the process.
80. The claimant also seeks to rely on an hypothetical comparator, but no evidence has been advanced to the effect that an hypothetical comparator in the same circumstances as the claimant, but without his disability, would have been offered the weekend snagging job which had previously existed in 2019. Given that that role had disappeared, it cannot be said that the claimant was treated less favourably than an hypothetical non-disabled comparator who theoreticallywould have been given the role in circumstances where he did not have the claimant's disability.
81. In this case, I find that no facts have been established upon which the tribunal could conclude (in the absence of an adequate explanation from the respondent), that an act of discrimination has occurred. In these circumstances the claimant's claim of direct discrimination fails, and it is hereby dismissed.
82. Reasonable Adjustments
83. With regard to the claim relating to reasonable adjustments, the claim to be determined is set out in paragraph 3 of the List of Issues, and it is this:
84. The claimant relies on two provisions, criteria or practices (PCPs) which were imposed by the respondent as follows: (3.1.1) that there would be no weekend working in the Quality Team; and (3.1.2) that there would be no weekend working in the carpenting/fitters team. The claimant asserts that he was put to a substantial disadvantage by these PCPs compared to someone without his disability because the "less pressurised weekend environment assisted the claimant to manage his

disability". The claimant suggests that the respondent had a duty to make the following two reasonable adjustments, namely (3.4.1) returning him to his weekend role performing snagging work as a carpenter/fitter, a role he had before 2019; and (by way of explanation in 3.4.2) that he should have been so returned in 2024, and in 2025 at the time of being selected for redundancy.

85. The constituent elements of claims in respect of an alleged failure to make reasonable adjustments are set out in Environment Agency v Rowan. Before considering whether any proposed adjustment is reasonable, the Tribunal must identify: (i) the provision, criterion or practice applied by or on behalf of the employer; (ii) the identity of the non-disabled comparators (where appropriate); and (iii) the nature and extent of the substantial disadvantage suffered by the claimant.
86. Environment Agency v Rowan has been specifically approved by the Court of Appeal in Newham Sixth Form College v Sanders - the authorities make it clear that to find a breach of the duty to make reasonable adjustments, an employment tribunal had first to be satisfied that there was a PCP which placed the disabled person at a substantial disadvantage in comparison with persons who were not disabled. The tribunal had then to consider the nature and extent of the disadvantage which the PCP created by comparison with those who were not disabled, the employer's knowledge of the disadvantage, and the reasonableness of proposed adjustments.
87. It is incumbent on a claimant to show the duty to make reasonable adjustments has arisen and there are facts from which it could be reasonably inferred, absent adequate explanation, that it has been breached. That requires (i) the showing of both substantial disadvantage (to show that the duty has arisen), and (ii) evidence of some apparently reasonable adjustment that could have been made (the issue of breach) see Project Management Institute v Latif.
88. The main difficulty which the claimant faces with the two PCPs relied upon is that no evidence has been adduced that either of these two PCPs puts the claimant to a substantial disadvantage when compared with someone without his disability. Each of the two PCPs concerns the removal of weekend working when the claimant wished to continue with his weekend pattern. That was understandable in the context of his preferred lifestyle. However, requiring the claimant to work during the week, either for three days a week or four days a week, did not put the claimant to a substantial disadvantage because of his back disability when compared to someone without his disability. He would still have had time to rest and recuperate and arrange occasional appointments on the remaining three or four days. None of the four OH reports between 2012 and 2024 suggested that the claimant would be put to any disadvantage if he was unable to work weekends, and no adjustments were ever suggested in that respect. Such adjustments as were recommended were put in place by the respondent.
89. In the absence of any PCP which puts the claimant to a substantial disadvantage when compared with someone without his disability, the statutory duty to make such adjustments as are reasonable to ameliorate any disadvantage simply does not arise. For this reason I find that the claimant's claim is not well-founded and it is hereby dismissed.
90. Victimisation s27 EqA:
91. With regard to the claim for victimisation, the claim to be determined is set out in paragraph 4 of the List of Issues, and it is this:
92. The claimant relies upon two protected acts, namely raising his grievance in July 2024, and secondly raising his grievance appeal in August 2024. Each of these documents raises issues concerning reasonable adjustments and refers to the Equality Act legislation. In this respect these grievances amounted to making an allegation (whether or not express) that someone had contravened the EqA, and this therefore satisfies the provisions of section 27(2)(d) EqA. The respondent has conceded that the claimant has made these two protected acts. I find that these were both protected acts for the purposes of the victimisation provisions in section 27 EqA.
93. The claimant relies upon three acts of detrimental treatment. He asserts he was subjected to this detrimental treatment because he had done the protected acts. The

detrimental treatment relied upon is (4.2.1) the refusal to return him to his snagging weekend role; (4.2.2) selecting him as being at risk of redundancy; and (4.2.3) dismissing him.

94. What constitutes a detriment under the victimisation provisions was recently set out by the ET in Warburton v the Chief Constable of Northamptonshire Police. The key test is encapsulated in the question "is the treatment of such a kind that a reasonable worker would or might take the view that in all the circumstances it was to his detriment?" That precludes an unjustified sense of grievance from amounting to a detriment. The test is not a wholly objective one given the alternatives that the reasonable worker would or might take the prescribed view. It is not necessary to establish any physical or economic consequence. Although the test is framed by reference to a reasonable worker, it is not a wholly objective test. It is enough that a reasonable worker might take such a view. This means that the answer to the question cannot be found only in the view taken by the ET itself. The ET might be of one view, and be perfectly reasonable in that view, but if a reasonable worker (although not all reasonable workers) might take the view that, in all the circumstances, it was to his detriment, the test is satisfied. It should not, therefore, be particularly difficult to establish a detriment for these purposes.
95. The test of causation is similar to that for direct discrimination. Whether a detriment is because of a protected act should be addressed by asking why A acted as they did, and not by applying a "but for" approach. The protected act must be a real reason for the treatment – see Chief Constable of Greater Manchester v Bailey. Put another way, the correct legal test to the causation or "reason why" question is whether the protected act had a significant influence on the outcome - see Warburton, applying Chief Constable of West Yorkshire v Khan; Nagarajan v London Regional Transport and Chief Constable of Greater Manchester v Bailey.
96. The claimant faces a difficulty with regard to the first alleged detriment, which is its timing. On his own case he had been refused a return to the snagging weekend role in March 2024. This suggested detriment preceded the protected act of the grievance in July 2024 and for this reason there can be no causative link between the protected act and the detriment relied upon.
97. The second alleged detriment is selecting the claimant as being at risk of redundancy. The claimant does not take issue with the composition of the pool for selection which affected the Quality Team, but he complains that in effect he should already have been returned to his snagging job. However, he had left his job in 2019 some five years earlier, and the job no longer existed. The real reason why the claimant was at risk of redundancy was because of the scores allocated to him by Mr Benton and Mr Mallet. However, the claimant has not been able to establish or make out even a prima facie case to the effect that he was only allocated these scores because of his grievance and/or its appeal. Each manager gave him the same score, which was subject to independent calibration in the presence of the trade union. Being selected as at risk of possible dismissal for redundancy is clearly a detriment, but there is no evidence of that this was because the claimant had exercised his grievance or his appeal against its rejection. In addition, all of these events must be seen against the background of the significant financial pressures which had given rise to the need to make redundancies in the first place. I reject the assertion that the claimant was selected for potential redundancy because of either protected act of his grievance or appeal
98. Similarly, it is clear that dismissal for redundancy was a detriment, but equally it is clear that the claimant was selected for redundancy during an extensive and fair process during which he chose not to apply for alternative employment. Further explanations to why the process was fair and reasonable is set out in the following paragraphs, but for the purposes of this aspect of the claim, it cannot be said that the claimant was dismissed by reason of redundancy because of either protected act, namely because he had raised his grievance and/or appealed against its rejection.
99. For these reasons I find that the claim for victimisation is not well-founded, and it is hereby dismissed.

100. Unfair Dismissal s98(4) of the Act

101. With regard to the claim for unfair dismissal, the claim to be determined is set out in paragraph 6 of the List of Issues. There is one ground of specific unfairness which is alleged by the claimant, which is that "he was underscored deliberately or otherwise in the selection process".

102. I have considered section 98 (4) of the Act which provides "…. 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".

103. I have considered the cases of Williams & Ors v Compair Maxam Ltd [1982] IRLR 83; Safeway Stores v Burrell [1997] IRLR 200 EAT; Langston v Cranfield University EAT [1998] IRLR 172; Osinuga v BPP University Legal Team [2022] EAT 53; and Polkey v A E Dayton Services Ltd [1988] ICR 142 HL. I take these cases as guidance, and not in substitution for the provisions of the relevant statutes.

104. Unless the parties have explicitly agreed to the contrary, the Tribunal must consider whether the respondent has reasonably consulted with the employee, adopted a fair selection process, and made reasonable efforts to find reasonable alternative employment within its organisation (see Langston). This was reaffirmed in Osinuga, which also held that the Tribunal should consider Polkey and related matters.

105. The starting point should always be the words of section 98(4) themselves. In applying the section, the tribunal must consider the reasonableness of the employer's conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to a set of factual circumstances within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

106. The claimant does not seek to challenge the fairness of the redundancy process adopted by the respondent, except to the extent that the administrative error with his email address had caused a delay in the process, and more importantly that he was deliberately and adversely given a wrong score in the selection process.

107. In general terms I think it is fair to say that the process adopted by the respondent was exemplary. There was a general announcement and discussion to all employees; an offer of advice and support; discussion with trade unions and the Works Council; agreement as to the pools for selection for employees to be made redundant; agreement as to the selection criteria and marking method to be adopted; two managers independently scoring each employee before comparing the scores; an independent calibration process which was supervised by the trade union; all against the background of general consultation with the trade unions and the Works Council, followed by two individual consultation meetings for each employee. Each employee also had the independent right of appeal against any decision under the relevant procedure.

108. On the individual facts of the claimant's case, the confusion over his correct email address was unfortunate and did cause some delay. Nonetheless the claimant was well aware from an early stage of the large redundancy programme which affected him and his colleagues, and he was well able to raise any issues or concerns with his trade union representative and/or the HR Department even though he had not been formally notified. He was not disadvantaged by any delay because he still had two individual consultation meetings in which he was able to discuss and challenge the scores given

to him. These scores were consistent between the two managers, and on the face of it involved reasonable conclusions, and in any event they were subject to an independent calibration process. The claimant was not informed as early as other employees of his right to seek voluntary redundancy nor to apply for an alternative position as a carpenter, but he did have these opportunities later on in the process, and given that he chose not to do either of these things, he cannot claim to have been thus disadvantaged. He was also afforded a further independent appeal.

109. It is not for this tribunal to substitute its view for that of the respondent, nor to seek to re-mark or challenge the detailed reasons why the claimant was selected for redundancy. There is no evidence that he was deliberately undermarked as alleged during this process. The statutory definition of redundancy was met because the claimant's dismissal was wholly or mainly attributable to the fact that the requirements of the respondent's business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer, had ceased or diminished. I find that the process adopted by the respondent, and its decision to dismiss the claimant for redundancy during that process, were fair and reasonable in all the circumstances of the case.

110. For the reasons explained above, the decision to dismiss the claimant was not tainted by any unlawful discrimination. This decision fell within the band of responses reasonably open to the respondent when faced with these circumstances. Accordingly, I find that the claimant's claim for unfair dismissal is not well founded, and it is hereby dismissed.

111. These reasons are given pursuant to Rule 60(3) of the Employment Tribunal's Rules of Procedure 2024. For the purposes of Rule 60(7), (a) the issues which the tribunal determined are at paragraphs 1 and 66; (b) the findings of fact made in relation to those issues are at paragraphs 5 to 51; (c) a concise identification of the relevant law is at paragraphs 54 to 64; and how that law has been applied to those findings in order to decide the issues is at paragraphs 68 to 110.

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Employment Judge N J Roper
Dated 15 October 2026

Judgment sent to Parties on
05 November 2026

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/