EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4104851/2020

Held in Glasgow on 19, 20 and 21 July 2022

Employment Judge P O'Donnell

Mrs Maureen Young	**Claimant** **Represented by:** **Mr G Flaherty -** **Lay Representative**
Dsv Road Ltd	**Respondent** **Represented by:** **Mr G Miller -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that the Claimant's claim of unfair dismissal is not well founded and is hereby dismissed.

REASONS

Introduction

1. The Claimant has brought a complaint of unfair dismissal relating to her selection for redundancy. The claim is resisted by the Respondent who say that they carried out a fair selection process.

Evidence

2. The Tribunal heard evidence from the following witnesses:-

    a. The Claimant.

    b. Jane Sherlock (JS), the Claimant's line manager who carried out the redundancy scoring exercise.

c. Michael Heard (MH), the Respondent's general manager for customer services (at the time of the Claimant's dismissal) who conducted the consultation with the Claimant and made the decision to dismiss.

d. Denise Clarke (DC), a senior director with the Respondent who dealt with the Claimant's appeal against dismissal.

3. There was a bundle of documents prepared by the Respondent which was, in effect, a joint bundle as it contained all the documents to which the Claimant sought to refer. A reference to page numbers below is a reference to a page in this bundle.

4. This was not a case where there was any dispute of fact between the parties in relation to the relevant facts. In any event, the Tribunal considered that all the witnesses were reliable and credible.

5. There was one anomaly which was a focal point of the cross-examination of the Respondent's witnesses by the Claimant's representative; the Claimant was placed on furlough on 26 March 2020 but the documents (pp33-38) which contained the scores used to decide who was to be placed on furlough were dated 30 March 2020.

6. No explanation could be given for this anomaly, particularly by JS who completed the document. The Tribunal considers that this is unsurprising given the fact that these events occurred well over 2 years before the hearing. JS gave clear and consistent evidence, which was accepted by the Tribunal, that she completed these documents as part of deciding who was to be placed on furlough from her team and completed a different set of documents for the redundancy exercise (the Claimant's scoring being at p110).

7. The Tribunal did not consider that the anomaly with the date was sufficient to cast any doubt on the reliability or credibility of the evidence of JS and that it had little relevance to the issues to be determined in this case.

Findings in fact

8. The Tribunal made the following relevant findings in fact.

9. The Claimant was employed by the Respondent as a customer service adviser from 10 November 1997 until she was dismissed on 31 July 2020. She was based at the Respondent's depot in Hamilton (although it is sometimes described as the "Glasgow depot"). She worked as part of a team of 3 customer service advisers.

10. JS had managed the customer service team at Hamilton since September 2013; she was also based at the same depot and worked in a shared office space with the team.

11. The Respondent handles logistics, exports and imports for clients in manufacturing and road transport. The customer service function at the Hamilton depot involves general customer service work as well as the handling of what are described as "key accounts" for specific clients of the business.

12. In March 2020, the first national lockdown for the Covid pandemic began. At this time, the Government introduced its job retention scheme, known as "furlough", where it would pay 80% of wages of staff who were furloughed from their place of work as part of the lockdown.

13. Due to the impact of the pandemic, the Respondent saw an immediate reduction in business and, although it would continue to operate during the lockdown, it did not need the same numbers of staff. A decision was taken to furlough a certain proportion of its employees. At the Hamilton depot, one person was to be furloughed from the customer service team.

14. The Respondent sought volunteers for furlough but no-one from the team volunteered and so a decision had to be made as to who would be selected. The Respondent used their redundancy selection criteria to make these decisions across the workforce. A copy of the Respondent's redundancy selection criteria was at pp27-28. It sets out nine criteria; knowledge, performance, skills, experience, versatility, qualifications, disciplinary record, attendance record and time-keeping. It allows for managers to weight the score under each criteria to reflect what is most important for their team. It also sets out, for each factor, what is needed for a particular score (out of ten)

to be awarded. The disciplinary factor is different from the others in that it deducts points for any warnings and a score of zero reflects a clean disciplinary record. Finally, it notes that length of service is not used in the matrix because of the potential for age discrimination but can be used in the event of a tie-break.

15. JS carried out an assessment for her team and the scoring for each of them was provided at pp33-38. The Claimant was the lowest scorer and so she was selected for furlough. She went on furlough on 26 March 2020.

16. By May 2020, the Respondent had taken a decision to make organisational changes as a result of the impact of Brexit and the pandemic on the business. The relevant change for this case was that the general customer service function was going to be removed from the outlying depots and centralised but the depots would retain the key accounts. This meant that there was a reduced need for customer service advisers at the depots and, in the Hamilton depot, one employee would be made redundant from the customer service team.

17. JS held a remote Teams meeting at 10am on 18 May 2020 with her team to make the announcement. Managers were asked to read out a prepared statement (p44) and this is what JS did. The announcement did ask for volunteers for redundancy but no-one in the team volunteered.

18. JS then held individual meetings with the three customer service advisers. She was given a template to follow which set out discussion points to be raised during the meeting which would be ticked off as they were completed. The template also had space to record any specific issues raised by each employee.

19. JS held the meetings with her team on 21 May 2020 and a copy of the templates completed by her during each meeting are at pp50-58. One of the points raised during these meetings was whether the employee in question had any suggestions which might avoid redundancy. In response to this, the Claimant answered “no”.

20. After these meetings, JS completed redundancy selection matrices for each employee. A copy of the Claimant's matrix is at p110; this is dated 30 March 2020 but this was an error by JS who forgot to update the date on all the matrices. It is quite clearly a different matrix from the one done in March as the scores are different.

21. The Claimant scored a total of 200 across all the factors. She scored highly in all factors with her scores ranging from 8-10. She had scores of 10 in attendance and time-keeping where she had no issues and a score of zero for disciplinary record (being the highest score in this factor) having a clear record.

22. The other two employees in the team scored 210 and 226. The Claimant had the lowest score and so was at risk of redundancy. She, therefore, entered a further consultation process conducted by MH.

23. The first meeting between the Claimant and MH took place on 4 June 2020 and was held remotely. The Respondent's policy on being accompanied to such meetings is that an employee can only be accompanied by a trade union officer or a colleague. The Claimant asked if her brother could accompany her and the Respondent agreed to this.

24. A minute of the meeting is at pp60-62 and it was common ground that this (and the minutes of the subsequent meetings) were accurate records of what was discussed:-

    a. MH explained that a matrix had been used to score staff and the Claimant had scored the lowest out of her team. She was, therefore, at risk of redundancy but no notice was being given at this time whilst the consultation is conducted.

    b. A point was raised about the Claimant's performance never having been an issue in the past and MH explained that it was not the case that there was an issue with her performance but that the other employees scored higher.

c. The Claimant asked for a copy of the matrix and this was provided to her after the meeting.

25. By letter emailed to the Respondent on 15 June 2020, the Claimant lodged what was described as an appeal against her selection for redundancy (pp66-67) raising nine points:-

a. The fact that length of service was not used as a factor in the selection criteria.

b. The matrix was not counter-signed.

c. The date on the matrix was 30 March 2020 but the initial consultation meeting was on 21 May 2020.

d. A request for the date of consultation meetings with her colleagues.

e. A request for the date of the selection matrices for the Claimant's colleagues.

f. The disciplinary factor was scored zero.

g. A request for an explanation of the weighting.

h. A reference to it being said at the last meeting that versatility was what took the Claimant below the scores of her colleagues and asking for an explanation when this was her second highest score. (The Tribunal notes that no such comment was recorded in the minutes and the mention of versatility at the meeting held on 4 June 2020 related to MH explaining what this criteria meant).

i. An allegation that age discrimination was why the Claimant had been selected.

26. MH replied to this by letter dated 29 June 2020 (pp68-69):-

a. He explained that length of service was not used in any of the matrices and that this was excluded because of the age demographics of the workforce.

b. MH confirmed that he had verified all the scores but due to issues with remote working could not add his signature.

c. It was accepted that the date was wrong and an explanation for this mistake was given as set out above.

d. The dates of meetings were confirmed.

e. The dates of the matrices were confirmed.

f. MH explained that zero was the highest score for the disciplinary record factor and how this factor was scored.

g. An explanation for how the weighting of factors worked was given.

h. MH confirmed that versatility was one of the factors where the Claimant had scored lower than the other employees.

i. It was denied that there was any age discrimination.

27. Although it was not part of the normal process followed by the Respondent in redundancy consultation, it was decided to hold an additional remote meeting on 2 July 2020 to allow the Claimant to seek any clarification of the points addressed in this correspondence and raise any further queries.

28. A minute of the meeting is at pp73-75. The Claimant was again accompanied by her brother.

a. It was explained that the purpose of the meeting was to allow the claimant to raise any further issues before a final decision was made.

b. Comments were made by the Claimant's brother that there were issues with the matrix but that they would keep those for an employment tribunal. No detail was provided of these issues.

c. The Claimant commented that she was not happy with the answers to her appeal points but gave no detail of this.

d. It was said several times that the Claimant just wanted to proceed to a decision rather than discuss matters further.

29. A final consultation meeting between MH and the Claimant (accompanied by her brother) was conducted remotely on 9 July 2020. A copy of the minutes are at pp81-84:-

    a. The issue of part-time work arose during the meeting and MH indicated that this could be taken away and looked at but the Claimant stated that she did not want part-time work.

    b. The Claimant was also aware of vacancies in other offices but did not want to pursue these.

    c. The Claimant was asked if there were any other alternatives that she could think of but she could not.

    d. It was explained to the Claimant that she was being given notice of redundancy with her last day of employment being 31 July 2020.

30. The Claimant's dismissal was confirmed by letter dated 15 July 2020 (pp91-93).

31. The Claimant appealed her dismissal by an undated letter (p99-100) setting out six points:-

    a. She alleged that she was singled out and that none of her colleagues attended the same consultation meetings or were aware of the selection matrix.

    b. She complained that length of service was not used as a factor and that she should have received a score of 10 for the disciplinary factor.

    c. She disputed the justification for excluding length of service and that it had no connection with age. She makes reference to a "simple example" proving this but gives no detail.

    d. There is an assertion that the matrix is flawed but no detail is given.

    e. She states that her skills and versatility was not discussed with her throughout her employment and she was not given the chance to improve these.

f. There is a repeat of the allegation of age discrimination.

32. DC was appointed to deal with the appeal, having had no involvement in the process to that point. The Claimant declined the offer of a meeting and asked for the appeal to be dealt with in writing.

33. The outcome of the appeal was given in a letter dated 3 August 2020 (pp103-107):-

a. The reason why redundancies were necessary was set out.

b. DC noted the ways in which the Respondent had gone beyond their normal process to assist the Claimant.

c. She went to address each of the appeal points raised by the Claimant before concluding that the appeal was not upheld.

Respondent's submissions

34. The Respondent's agent produced written submissions and supplemented these orally.

35. It was submitted that the Claimant's case was based on assumptions and not evidence. She had an unfounded belief that someone with 23 years' service being selected must be unfair.

36. The Respondent relies on redundancy as a potentially fair reason for dismissal and the submissions set out the circumstances which it is said amounts to a genuine redundancy situation.

37. Reference was made to the cases of *Safeway Stores plc v Burrell* [1997] IRLR 200 and *Murray & anor v Foyle Meats Ltd (Northern Ireland]* 1999 IRLR 562 as setting out the test for assessing whether a dismissal by reason of redundancy is fair.

38. The written submissions go on to set out the facts which the Respondent invites the Tribunal to make. For the sake of brevity, these have not been set out in detail.

39. Reference was made to the well-known case of *Polkey v AE Dayton Services Ltd* [1987] IRLR 503 as authority for what an employer must do to make a dismissal fair; warn and consult employees; have a fair basis for selection; consider suitable alternative employment.

40. It was submitted that there had been consultation with staff and reference was made to the meetings held between the Claimant and the managers involved in the redundancy process. Consultation began at an early stage and the Claimant was invited to identify alternatives to redundancy. Reference was made to the information provided by the Respondent to the Claimant regarding the reasons for redundancy, the selection matrix and her scores. It was submitted that this was adequate information for the Claimant to be able to respond to the situation.

41. Mr Miller submitted that the Claimant did not engage with the process and presented no evidence or alternatives to challenge her selection other than seeking to add length of service to the selection criteria. Although comments were made about the matrix, it was submitted that nothing of any detail was provided to dispute this.

42. Reference was made to the case law regarding the pool for selection and it was submitted that the pool used in this case was reasonable.

43. Mr Miller submitted that JS had been provided with detailed guidance as to how score to employees under the selection criteria. She was the best person to carry out this scoring.

44. It was noted that the Claimant had not actually disputed any of her scores. It was said that her selection was pre-determined but the fact that the Claimant was the lowest scoring employee for both furlough and redundancy does not show bias or pre-determination.

45. It was submitted that the Tribunal should not interfere with the selection criteria unless those were ones which no reasonable employer would use.

46. The submissions turned to the issue of alternative employment and reference was made to *Vokes* (below). It was submitted that there were limited

opportunities available within the Respondent's business. The Claimant was offered relocation or part-time hours but declined these options.

47. The submissions concluded with reference to the issue of remedies.

Claimant's submissions

48. The Claimant's representative made the following submissions.

49. There was no appraisal system used. There should be one set of scores which reflect the Claimant's performance with evidence but there was no evidence to back up the scoring.

50. The basis on which the Claimant was furloughed is unclear. There were two sets of matrices and the one dated 30 March 2020 was prepared hurriedly.

51. There was a reference to carrying out a redundancy exercise using public money.

52. It was pre-determined in March that the Claimant would be made redundant.

Relevant Law

53. The test for unfair dismissal can be found in s98 of the Employment Rights Act 1996 (ERA).

54. The initial burden of proof in such a claim is placed on the respondent under s98(1) to show that there is a potentially fair reason for dismissal. There are 5 reasons listed in s98 and, for the purposes of this claim, the relevant reason is redundancy.

55. Redundancy is defined in s139 ERA and, for the purposes of this claim, the relevant definition would be that the requirements of the business for employees to carry out work of a particular kind had ceased or diminished.

56. The test then turns to the requirements of s98(4) for the Tribunal to consider whether dismissal was fair in all the circumstances of the case. It is worth noting that there is a neutral burden of proof in relation to this part of the test.

57. In assessing the fairness of a dismissal on the grounds of redundancy, the first question is whether there has been a proper pool of employees from which selection for redundancy is made.

58. The principles to be applied by the Tribunal in assessing whether a proper pool for selection has been used are set out by Silber J at para 31 of *Capita Hartshead Ltd v Byard* [2012] IRLR 814:-

"'Pulling the threads together, the applicable principles where the issue in an unfair dismissal claim is whether an employer has selected a correct pool of candidates who are candidates for redundancy are that

(a) "It is not the function of the [Employment] Tribunal to decide whether they would have thought it fairer to act in some other way: the question is whether the dismissal lay within the range of conduct which a reasonable employer could have adopted" (per Browne-Wilkinson J in Williams v Compair Maxam Limited [1982] IRLR 83);

(b) "…the courts were recognising that the reasonable response test was applicable to the selection of the pool from which the redundancies were to be drawn" (per Judge Reid QC in Hendy Banks City Print Limited v Fairbrother and Others (UKEAT/0691/04/TM);

(c) "There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem" (per Mummery J in Taymech v Ryan EAT/663/94);

(d) the Employment Tribunal is entitled, if not obliged, to consider with care and scrutinise carefully the reasoning of the employer to determine if he has "genuinely applied" his mind to the issue of who should be in the pool for consideration for redundancy; and that

(e) even if the employer has genuinely applied his mind to the issue of who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it.'"

59. The Tribunal would then, normally, go on to consider the fairness of the selection criteria applied to the pool. The Tribunal are not entitled to substitute their own criteria for those of the employer and are simply to assess the fairness of the criteria used.

60. Any criteria used for selection must be capable of some degree of objective assessment (*Williams v Compare Maxim* above) but there is no absolute requirement for objectivity and criteria which have some degree of subjectivity such as performance or quality of work can be proper criteria (see, for example, *Graham v ABF Ltd* [1986] IRLR 90). In particular, in *Mitchells of Lancaster (Brewers) Ltd v Tattershall* UKEAT/0605/11 it was said that:-

"Just because criteria of this sort are matters of judgment, it does not mean that they cannot be assessed in a dispassionate or objective way, although inevitably such criteria involve a degree of judgment, in the sense that opinions can differ, possibly sometimes quite markedly, as to precisely how the criteria are to be applied, and the extent of which they are satisfied, in any particular case. However, that is true of virtually any criterion, other than the most simple criterion, such as length of service or absenteeism record. The concept of a criterion only being valid if it can be "scored or assessed" causes us a little concern, as it could be invoked to limit selection procedures to box ticking exercises."

61. The Tribunal must be satisfied that the selection criteria has been genuinely and fairly applied to the individual employee bringing the claim of unfair dismissal. However, this does not involve the Tribunal in carrying out a detailed re-assessment of the claimant's score (*Eaton Ltd v King* [1995] IRLR 75, *British Aerospace plc v Green* [1995] IRLR 437).

62. In making the decision to dismiss, a senior manager is entitled to rely on any assessment made by a subordinate (*Eaton*, above). This is particularly the case where the decision maker has no reason to doubt the reliability of the

information before them which is being used to make the decision (*Buchanan v Tilcon Ltd* [1983] IRLR 417).

63. In relation to the obligation to consult, the current state of the law in relation was summarised by the EAT in *Mugford v Midland Bank* [1997] IRLR 208 at paragraph 41:-

"Having considered the authorities we would summarise the position as follows:

(1) Where no consultation about redundancy has taken place with either the trade union or the employee the dismissal will normally be unfair, unless the industrial tribunal finds that a reasonable employer would have concluded that consultation would be an utterly futile exercise in the particular circumstances of the case.

(2) Consultation with the trade union over selection criteria does not of itself release the employer from considering with the employee individually his being identified for redundancy.

(3) It will be a question of fact and degree for the industrial tribunal to consider whether consultation with the individual and/or his union was so inadequate as to render the dismissal unfair. A lack of consultation in any particular respect will not automatically lead to that result. The overall picture must be viewed by the tribunal up to the date of termination to ascertain whether the employer has or has not acted reasonably in dismissing the employee on the grounds of redundancy."

64. There is a requirement on an employer to make efforts to find alternative employment for a redundant employee (*Vokes Ltd v Bear* [1973] IRLR 363). However, this duty is only to take reasonable steps and not every conceivable step to find alternative employment (*Quinton Hazell Ltd v Earl* [1976] IRLR 296).

Decision

65. The first question for the Tribunal is whether there was a potentially fair reason for dismissal.

66. The Respondent relies on redundancy and the Claimant has not sought to argue that this was not the genuine reason for her dismissal. In any event, the Tribunal is satisfied, on the facts found above, that there was reduction in the Respondent's requirement for employees to carry out the customer service function in their Hamilton depot. This clearly falls into the definition of redundancy.

67. In these circumstances, the Tribunal has no hesitation in finding that there was a potentially fair reason for the Claimant's dismissal, that is, redundancy.

68. Turning to the question of whether the Claimant's dismissal was fair in all the circumstances of the case, there are a number of issues for the Tribunal to determine.

69. First, there is the question of whether there had been a fair pool for selection. Again, this is not a matter which the Claimant has sought to challenge. The Tribunal reminds itself that it is not for it to substitute its view of what the pool should be and, rather, it has to consider whether the Respondent has applied its mind to the pool and that what was done was with the band of reasonable responses.

70. It was quite clear to the Tribunal that the pool was clearly with the band of reasonable responses; the redundancy situation arose from a centralisation of customer services which impacted on the local depots. A pool consisting of the customer service team at each depot is clearly within the band of reasonable responses in such circumstances.

71. The second issue is whether the Respondent used a fair selection criteria. In this case, the Respondent used a multi-factor scoring system set out at pp27-28 and, at the hearing, the Claimant did not raise any real challenge to this criteria.

72. The Tribunal, again reminding itself that it is not to substitute its own opinion, considers that the criteria used by the Respondent falls within the band of reasonable responses. Although some of the factors involve the opinion of a manager (for example, knowledge or performance) as compared to being entirely objective (for example, attendance and timekeeping), any scores for those factors are still capable of being explained by reference to evidence.

73. Further, managers are given guidance as to what is required for an employee to be awarded a particular score under each factor. It is not the case that it is left entirely to a manager's discretion.

74. Although the Claimant did not raise a specific challenge to the criteria in itself during the Tribunal hearing, she did raise an issue during the consultation process about the fact that length of service was not used, either as a determinative factor on its own or as part of the scoring system. The Tribunal considers that it will address this point for the sake of completeness.

75. As set out above, the question for the Tribunal is not whether the Respondent could have used a different criteria but whether the criteria they did use was within the band of reasonable responses. For the reasons set out above, the Tribunal has found that what the Respondent did in relation to the selection criteria was within the band of reasonable responses.

76. Further, the Respondent has clearly applied its mind to the use of length of service and decided not to use it as a criteria given the risk of it amounting to age discrimination. They will use it as a "tie breaker" if needed (p28). It is quite clear from this that the exclusion of service from the criteria was not an arbitrary decision.

77. The Tribunal notes that the Claimant had suggested in her internal appeal that length of service was not discriminatory but the Tribunal was not required to determine that point. It is aware that there have been cases where such a factor has been said to amount to indirect age discrimination because it can potentially disadvantage younger workers as compared to older workers who have had less time to build up the same length of service.

78. In these circumstances, there is no basis for the Tribunal to find that the fact that the Respondent did not use length of service in its selection criteria was sufficient to render that criteria unfair.

79. The Tribunal now turns to the third issue, that is, whether the selection criteria has been properly applied. Again, there was no real challenge to the Claimant's scores and she said in evidence that she did not dispute her scores under each criteria.

80. The Claimant did, in her evidence, seek to suggest that a manager other than JS should have carried out the scoring but did not give any reason for this. The Tribunal has real difficulty in seeing any basis why it would not be in the reasonable band of responses for an employee's line manager to score them in a redundancy selection exercise; this is not a case where JS had only recently become the Claimant's line manager and so did not have the necessary degree of knowledge to score her and the other members of the team nor a case where JS worked at a different location and so lacked direct knowledge of the work being down by the Claimant and her colleagues. Rather, JS had worked closely with the employees in the pool for a number of years.

81. In these circumstances, there is no basis on which the Tribunal could conclude that JS was not an appropriate person to carry out the scoring exercise and that it was unreasonable for her to do so.

82. The Claimant also raised an issue about the lack of any prior performance appraisal. There is no legal requirement for an employer to operate a performance appraisal system (although many choose to do so for a variety of reasons) and an employer is not precluded from using performance as a factor in a redundancy scoring exercise simply because there has been no prior appraisals.

83. The Tribunal considers that the Claimant has proceeded on a misunderstanding in this regard; it was said that she did not have the chance to improve her performance in the absence of any appraisal but this is to misunderstand that it was not about the Claimant under-performing (indeed,

her score of 9 for this factor indicates that she meets and exceeds performance targets) but simply that her overall score across all the factors was lower than those of her colleagues.

84. To put it another way, the Claimant was not selected for redundancy because she was under-performing nor was performance determinative of her selection for redundancy.

85. It was also said that the Claimant's selection was pre-determined but it was not clear what was meant by this. If the Claimant was seeking to suggest that it had been decided that she would be selected and the scores manipulated to ensure this outcome then there was no evidence of this whatsoever.

86. If, on the other hand, the term "pre-determined" referred to the earlier scoring exercise done in March 2020 then the Tribunal does not consider this renders the later exercise unfair. It may be the case that both exercises produced the same result (that is, the Claimant receiving the lowest score) and so the writing may have been on the wall when the redundancy scoring was done in May 2020 but that is not sufficient for the Tribunal to conclude that the scoring was not properly done especially in the absence of any challenge by the Claimant to the scores awarded in either exercise.

87. It is noteworthy that the Claimant did not challenge her individual scores either during the internal process or at the Tribunal hearing. There was, therefore, no evidential basis on which the Tribunal could conclude that there was anything improper about those scores. Further, the Tribunal should not be engaging in any form of re-scoring.

88. Importantly, the lack of a challenge to the scores during the internal process meant that there was no basis on which it could be said that MH was not entitled to rely on those scores.

89. For all these reasons, the Tribunal can see no basis on which it can conclude that the selection criteria had not been properly applied.

90. The fourth issue for consideration is the process of consultation about the Claimant's redundancy. In this regard, the Tribunal notes that the Respondent held a number of meetings with the Claimant even departing from their normal processes to allow her to be accompanied to these by her brother and adding an additional meeting prior to the final meeting before dismissal to allow her to raise any queries or concerns.

91. There is no basis on which it could be said that there had been no meaningful consultation. The Claimant had multiple opportunities to discuss her selection, challenge her scores and discuss alternatives. The Tribunal notes her evidence about feeling stressed and anxious during the process, which is understandable, but this does not mean that there was not a proper consultation.

92. There was also no evidence that the Claimant was not provided with all the necessary information to be able to meaningfully engage in the consultation. She was given her scores and the queries which she raised during the process were answered by the Respondent.

93. It was said that there was no evidence provided for the Claimant's scores but this is entirely understandable where these were not being challenged. In circumstances where the Claimant was not querying these or seeking an explanation for how these scores were reached, there was no reason for the Respondent to disclose the detail behind these.

94. The same is true in relation to the Tribunal hearing. In the absence of any challenge to the scores, there was no reason why the Respondent would need to lead evidence as to why any particular score was awarded.

95. There was also a criticism of the scoring being "secret" which was a reference to LS carrying this out without the Claimant's input (although it is worth noting that the same was done for all the employees in the pool). The Tribunal does not consider that this was sufficient for it to conclude that meant that the consultation was unfair, particularly given that the Claimant was provided with her scores and had the opportunity to challenge these (but did not do so).

96. An issue also arose about the fact that the other employees in the pool did not go through the same consultation meetings as the Claimant. However, the Tribunal is concerned with what was done with the Claimant rather than what was not done with anyone else. In any event, it was quite understandable why the employer would not consult with the other employees who were not, at that point, selected for redundancy, there being nothing to consult with them about unless the position changed.

97. In these circumstances, the Tribunal can see no basis on which it could conclude that there was not a proper consultation process.

98. The fifth and final issue is that of alternatives to dismissal such as alternative employment. This was clearly explored with the Claimant during the consultation process and there was the opportunity for her to apply for vacancies at other locations. The Respondent also indicated that they would explore part-time work. However, the Claimant did not want to pursue these options which was, of course, a choice open to her.

99. There was no evidence before the Tribunal that there were any other alternatives to the Claimant's dismissal and so there is no basis on which it can be said that the Respondent had failed to comply with the requirement relating to alternatives to dismissal.

100. For all the reasons set out above, there is no basis on which the Tribunal can conclude that there was anything unfair in relation to the Claimant's selection for redundancy; there was a proper pool for selection, fair criteria were used, these were properly applied, there was genuine and reasonable consultation and the Respondent had complied with the requirement to consider alternatives to dismissal.

101. In these circumstances, where there was a fair reason for dismissal and the dismissal was fair in all the circumstances of the case, the Claimant was not unfairly dismissed.

102. The claim of unfair dismissal is, therefore, not well-founded and is hereby dismissed.

Employment Judge: **P O'Donnell**
Date of Judgment: **27 July 2022**
Entered in register: **28 July 2022**
and copied to parties