EMPLOYMENT TRIBUNALS

Claimant:	Mrs C Degnan	
Respondent:	BP Services International Limited	
Heard at:	Reading	**On: 16, 17, 21, 22, 23 and 24 November 2016 20, 21, 23, 24 March 2017 and 20 April 2017**
Before:	Employment Judge Gumbiti-Zimuto Members: Mr J Cameron and Mr MJ Selby	

Appearances
For the Claimant: Mr D Northall (Counsel)
For the Respondent: Mr I Cordrey (Counsel)

RESERVED JUDGMENT

The claimant's complaints are not well founded and are dismissed.

REASONS

1. In a claim form presented on 16 October 2015 the claimant brought complaints of unfair dismissal, redundancy payment, victimisation, sex discrimination, and discrimination because of maternity. The respondent defended the complaints. The claimant withdrew her complaints about redundancy payment. At the commencement of the hearing the Tribunal gave the claimant permission to amend the claim to pursue complaints about detriment relating to pregnancy.

Ruling on the application to amend the claim:

2. On the 18 February 2016, the claimant made an application to amend the claim to include a complaint of unfair dismissal pursuant to section 99 of the Employment Rights Act 1996 and a complaint that the claimant had been subjected to detriment pursuant to section 47C of the Employment Rights Act 1996. No action was taken on the application at that time as the parties embarked upon judicial mediation.

3. The application was revived following the failure of mediation on about 26 April 2016. The application was considered by the employment tribunal on 3 May 2016 when an order was made permitting an amendment to the claim form to include a

complaint of unfair dismissal pursuant to section 99 of the Employment Rights Act 1996. The application to include a claim in respect of detriments pursuant of section 46C of the Employment Rights Act 1996 was put off to be considered at the start of the full merits hearing which was listed to start on the 9 May 2016.

4. The full merits hearing was vacated due to a lack of judicial resources. The application to amend the claim was again considered by an employment judge who made the order that the application should be considered at the start of this hearing.

5. In making the application the claimant contends that it seeks merely to re-label complaints that are already set out in the claim form. A draft of the amendment sought has been provided and the scope of the amendment is limited. The proposed amendment is as follows:

   "31A. I contend that: (a) my inclusion in the Sunbury, South East England and above the Region Aberdeen redundancy exercise; and the process of scoring me within that exercise, including the precise score given to me, were detriments for reasons related to my earlier pregnancies and/or periods of maternity leave.
   35.7 Pregnancy and/or maternity related detriment pursuant to s.47C Employment Rights Act 1996 and Regulation 19 Maternity & Parental Leave Regulations 1999."

6. The respondent objects to the claimant's application contending that the application is seeking to add a new claim and is doing so well after the time limit for the presentation of the complaint has passed. The respondent argued that the case had been running for some time and there had been several hearings; there had been an agreed list of issues on 1st December 2015; the claimant had been represented by lawyers throughout; the case had been pleaded in great detail listing relevant statutory provisions; there had been a judicial mediation followed by a Case Management Discussion at which no application was made to amend; the full merits hearing was originally listed for 9 May 2016 and the draft amendment was only provided to the respondent very late in the day and after the original listing of the full merit hearing had been postponed due to lack of judicial resources.

7. We were referred to **Selkent Bus Co Ltd v Moore [1996] ICR 836.** The relative injustice and hardship in refusing or granting an amendment is paramount. There are other relevant factors, namely the timing and manner of the application, the extent to which the amended claim is out of time and the explanation for the delay. Where the application is to add a claim out of time there is no rule of law that an employment tribunal cannot permit such an amendment; it is a relevant but not determinative matter.

8. We are satisfied that the claimant's application is seeking to re-label matters about which complaint is already made in the claim form. We note the comment made by the respondent that if there is nothing more than a re-labelling involved in this case what does it add to the claim? What it does in our view is allow the facts as they are to be considered in full and reduces the risk of technical decision, because a legal claim does not appear in the claim. The Tribunal is also satisfied that there is little or no prejudice to the respondent in answering the amended claim. The claim as amended remains entirely contained within the evidential scope of the case that the parties are engaged upon already. Refusing

the amendment would in our view mean that there is prejudice to the claimant in that she will be deprived of a potential remedy in respect of factual matters that are before the Tribunal. We have therefore determined that the application for an amendment of the claim to include a detriment claim is permitted.

9. The claims that we have been asked to make decisions upon are: ordinary unfair dismissal (section 98 Employment Rights Act 1996 (ERA); automatic unfair dismissal for a reason related to leave for family reasons (section 99 ERA); direct pregnancy/maternity discrimination (section 18 Equality Act 2010 (EqA); pregnancy related detriment (section 47C ERA); victimisation (section 27 EqA); indirect sex discrimination (section 19 EqA). After evidence had been produced the claimant did not pursue the direct sex discrimination complaint and the harassment complaint.

Ruling on the application to exclude the supplemental statements:

10. On the 21 December 2015 Employment Judge Lewis made an order that provided for the exchange of witness statements to take place on the 18 March 2016 and made provision for the parties to serve supplemental witness statements by the 8 April 2016. The order also contained the following limitation:

> "Permission to serve a supplemental witness statement is granted only if the primary witness statements raise an issue or point which the opposing arty has not understood to form part of the case and which it has therefore not dealt with in its first-round statement. Supplemental witness statements which repeat, reiterate or reemphasise the contents of the first round of statements will not be permitted."

11. The claimant, correctly, states that each of the supplemental statements in this case breach the terms of the order that was made by EJ Lewis.

12. The points made about the statements by the claimant are as follows: Miss Vikki Willis' witness statement gives additional detail which could have been contained in the first statement. The claimant does not object to this statement. Miss Leigh-Ann Russell gives additional information, further evidence in a manner which suggests an "iterative" process has taken place after the production of the first statement. Allowing Miss Russell's supplemental statement allows her a "second bite of the cherry" at producing a statement and there is no good reason why she should be allowed this facility. Mr Hugh Williamson gives a statement which it is said contains a scandalous allegation about the claimant with little relevance to the issues to be decided by the Tribunal. It is argued that the statement is only prejudicial to the claimant.

13. The respondent referred us to rule 41 of the Employment Tribunals Rules of Procedure 2013 which provides that: The Tribunal may regulate its own procedure and shall conduct the hearing in the manner it considers fair, having regard to the principles contained in the overriding objective. The following rules do not restrict that general power. The Tribunal shall seek to avoid undue formality and may itself question the parties or any witnesses so far as appropriate to clarify the issues or elicit the evidence. The Tribunal is not bound by any rule of law relating to the admissibility of evidence in proceedings before the courts.

14. The respondent states that we should also have regard to the overriding object of the Employment Tribunals Rules of Procedure which is to enable employment

tribunals to deal with cases fairly and justly. Dealing with a case fairly and justly includes, so far as practicable ensuring that the parties are on an equal footing; dealing with cases in ways which are proportionate to the complexity and importance of the issues; avoiding unnecessary formality and seeking flexibility in the proceedings; avoiding delay, so far as compatible with proper consideration of the issues; and saving expense. The Tribunal is required to give effect to the overriding objective in interpreting, or exercising any power given to it by, the Employment Tribunals Rules.

15. The respondent argues that it is more helpful to see the points of evidence in writing rather than because of supplemental questions seeking oral answers, it is fairer to present the case in this way, and it serves no purpose to shut out truthful and relevant evidence. The respondent states that the evidence of Miss Russell is a development of what is stated in the first statement. The evidence of Mr Hugh Williamson is relevant to the matters referred to in the claimant's statement at paragraph 21 of her witness statement providing a non-discriminatory explanation for a matter of alleged discrimination. It is further stated that the claimant has now had the statements for 6 ½ months and that there is now no disadvantage to the claimant. The respondent says that it is therefore appropriate for us to hear the evidence.

16. EJ Lewis made the order limiting the nature of the supplemental statements. The terms of the order are such that the we consider that each of the supplemental statements which have been produced by the respondent is in breach of its terms. The statement of Miss Russell is not put forward as a supplemental statement at all. Under the terms of the order made by EJ Lewis the statements cannot be admitted.

17. The matter does not end there as we may, in exercising our case management powers, allow the supplemental statements to be adduced in evidence. It is not disputed by the claimant that the supplemental statement of Miss Willis should be admitted into the evidence. In respect of the statements of Miss Russell and Mr Williamson we are satisfied that the matters set out in the statements and any conclusions that we arrive at in respect of the matters which are in dispute will assist us in coming to our decision in this case. We therefore consider that it is appropriate to allow the respondent to rely on the supplemental statements notwithstanding that they have been provided in terms which breach EJ Lewis's order.

Findings of fact

18. The claimant gave evidence in support of her own case. The respondent relied on the evidence of Leigh-Ann Russell, Ian Cavanagh, Jennifer Barker, David Cocking, Hugh Williamson and Vikki Willis. All the witness provided statements which were taken as their evidence in chief. We were also provided with a trial bundle containing more than 1064 pages of document. From these sources we made the following findings of fact which we considered necessary to decide this case.

19. The Claimant started work with the Respondent as a Senior Drilling Engineer at level G in May 2007 in Baku, Azerbaijan. When the claimant's employment terminated, she was employed in Functional Performance, Global Wells Organisation (GWO) as Special Projects Manager Level F.

20. The claimant was employed by the Respondent under a Global Employment Contract (GEC) which enabled the claimant to be assigned to various group companies worldwide. GEC employees are expected to be internationally mobile but may also be offered permanent roles on local terms.

21. The claimant's first assignment was to Baku, Azerbaijan in 2007. The assignment was for three years.

22. The claimant was promoted to level F, Drilling Excellence Team Leader (in 2008), and Drilling Engineering Manager (in 2009).

23. In 2009, the claimant fell pregnant. Concerns about medical facilities in Baku for pregnant women led to the claimant being relocated to the United Kingdom in August 2009. In October 2009, the claimant went on maternity leave.

24. The claimant remained on maternity leave for 12 months before she fell pregnant with her second child in 2010. The claimant used annual leave entitlement to bridge to her second period of maternity leave which lasted 12 months. The combination of maternity leave and annual holiday entitlement meant that the claimant was absent from work from September 2009 to April 2012.

25. Commencing on 10 April 2012 the claimant was assigned to BP Exploration Operating Company Ltd based in Sunbury, United Kingdom. The assignment was for a period of three years and due to come to an end on 9 April 2015. The assignment could be extended for a further three years if the host company wished to extend the term. If it was not extended the claimant would continue to be employed by the Respondent and moved to another assignment. The claimant's job title was GWI Specialist (Level F) (see paragraph 7 of the assignment letter of 2 April 2012 (p84)).

26. In May 2013, the claimant commenced a third period of maternity leave. The claimant returned to work on 22 September 2014.

27. Prior to her return the claimant discussed possible roles on her return. The claimant wished to work part-time hours.

28. Eventually the claimant took up the Special Projects Manager Role in the Global Performance team reporting directly to Leigh-Ann Russell. This was a Level F role. The claimant's assignment was due to come to an end on 9 April 2015. During the redundancy process the claimant's assignment was extended to the 20 July 2015.

29. In early 2015, the respondent carried out a review of its GWO function in Sunbury, South East UK and Above the Region Aberdeen. Reorganisation of the business and a reduction in staffing levels were necessary. It was proposed that 10%-20% of roles within the GWO function in Sunbury, South East UK and Above the Region Aberdeen would be removed.

30. The claimant attended a presentation at which the proposals regarding the reorganisation of GWO was explained on the 15 January 2015. In a letter dated 19 January 2015 the claimant was informed that her role was at risk due to redundancy.

31. On the 21 January 2015, the claimant wrote to Leigh-Ann Russell stating that "I am feeling slightly nervous with the redundancy process" and that she would like

to discuss how her current role and the end of her assignment was being treated in the "organisational redesign". The claimant made it clear that the she wanted to remain employed by the respondent.

32. Leigh-Ann Russell replied to the claimant's email stating that she had made "HR aware that your assignment is ending so you are covered in the process". The claimant and Leigh-Ann Russell met and discussed the claimant's situation. The claimant was informed that she would be considered for UK roles in the GWO redundancy process. This was in accordance with the announcement that had been that GEC employees based in Sunbury were to be included in the consultation process. Leigh-Ann Russell gave evidence that "We were going through a major reorganisation across the business every area in our business was reducing headcount."

33. Collective consultation meetings took place in January and February 2015.

34. In the redundancy process Leigh-Ann Russell was required to score employees under her management. She was to score employees under three categories: Performance and Potential (40%), Knowledge Skills and Experience (KSE) (40%) and Values and Behaviour (20%). The scores were to be in the range of 1 to 5 in each category. Leigh-Ann Russell scored the claimant 3 in each category. Leigh-Ann Russell, who had not been the claimant's team leader for 12 months, had discussion with the claimant's previous Team Leader, Hugh Williamson, in which she sought his opinion on the claimant. Hugh Williamson scored the claimant as follows: Performance and Potential 4; KSE 2; and Values and Behaviour 3. Leigh-Ann Russell considered the scores given by Hugh Williamson but decided to keep her scores of the claimant as 3,3,3. The scoring documentation was sent to Jenny Barker on the 26 February 2015.

35. Selection panel met and made decisions on level F roles. The claimant was not placed in a role in the new organisation. All employees at Level E and Level F not placed in a role were considered at GWO team Capability Forum. The claimant's case was considered but there was no alternative proposal for the claimant.

36. The redundancy process included a stage where HR carried out an assurance check including considering a "9 box grid". Employees are assigned a box based on their previous year's performance and their potential to progress to the next level. The claimant's grid position was +1 meaning that she had potential to move up one grade. Jenny Barker overlooked the claimant's 9 box grid. Jenny barker gave evidence that had she not done so the claimant's score of +1 would not have raised major concern but may have led her to have a conversation with the Team Leader to confirm the scores.

37. In a meeting on the 23 March 2015 the claimant was informed that she had not been placed in a new role in the new organisation and remained at risk of redundancy.

38. Individual consultation meetings between the claimant, Leigh-Ann Russell and Jenny Barker began on the 24 March 2015 followed by another meeting on 8 April 2015. Between the two meetings the claimant sent an email to Leigh-Ann Russell. In the meetings and in the email the claimant made it clear that she considered that her maternity leave may have affected the way she was regarded

in the redundancy process. The claimant also stated that her scores did not reflect her skill sets and experience. The claimant said that she would consider a level G role. The claimant pointed out that prior to taking maternity leave she had been considered a high performer. The claimant was concerned that her treatment, i.e. selection for redundancy, went against the respondent's inclusion and diversity agenda. The claimant requested a blueprint of the new organisation structure but was told that this would not be produced until everyone had been placed and all decisions finalised.

39. After the first consultation meeting the claimant set up a daily alert so that she would automatically receive all level F and G job postings across the organisation. The claimant considered two roles from those of which she was alerted. The role of Director Regional Performance and the role of Engineering Manager (Western Hemisphere) both were level F roles. The claimant understood that the roles were based in the United States of America and the incumbent in the role had to hold a valid work permit for the US. The claimant did not apply for either of the roles.

40. The claimant made an appeal against the scores that she received in the redundancy process. The claimant's appeal was considered by David Cocking. David Cocking's role in the appeal was to consider whether the score of 3 in each category was reasonable. David Cocking's role was not to re-score the claimant.

41. The claimant attended a scoring appeal meeting on the 13 April 2015 during which the claimant gave detail on each of her appeal points. The claimant complained that although she was considered in drilling Engineering skill pool the role she had in the period under review had not been in the claimant's core discipline and thus not representative of her broader KSE. The roles were not permanent career roles but rather roles that allowed the claimant to work part-time and were structured around her maternity and childcare responsibilities. The claimant's view was that the roles were less challenging, less responsible, requiring skills different to her core engineering skill set. The claimant suggested that the process should be varied to consult people who had direct knowledge of the claimant's KSE to validate her scoring. The claimant said that because she had been absent on maternity leave during much of the time that was being considered and in the period the claimant no appraisals she had been discriminated against. The claimant said that the scores that she had been given were not consistent with her performance in the past eight years her documented appraisals from the period before she went on maternity leave. The claimant said that the consultation process was not open and transparent.

42. Following the appeal meeting the claimant sent further material in support of her appeal to David Cocking. David Cocking carried out further investigation which involved speaking with Leigh-Ann Russell, Jenny Barker and Hugh Williamson. David Cocking also spoke to three other people mentioned by the claimant who could comment on her performance. David Cocking considered the points raised by the claimant and other information he had obtained from his enquiries before reaching his conclusion. David Cocking's conclusion was that the scores were reasonable and fair.

43. Leigh-Ann Russell and Jenny Barker made searches for alternative roles for the claimant. There were roles that the claimant was not considered suitable for

(contractor jobs involving travel to Iraq). There was a Project Services advisor role that the claimant was not considered a direct fit because the role was a lower level role and not specific to her skill set.

44. A further consultation meeting took place on the 15 April 2015 followed by a meeting on the 20 April 2015. Following the meeting on the 20 April 2015 the claimant was given notice of termination of her employment due to redundancy to take effect on the 20 July 2015.

45. The claimant appealed the decision to dismiss her on the grounds of redundancy. The claimant's appeal hearing took place on the 6 May 2015. The claimant's appeal was on grounds that the redundancy process was procedurally and substantively unfair. At the appeal hearing the claimant had the opportunity to expand on the reasons for her appeal. Following the appeal Ian Cavanagh spoke to Leigh-Ann Russell, Hugh Williamson and David Cocking. The claimant's appeal was not upheld. Ian Cavanagh wrote to the claimant on the 14 May explaining the reason for his decision on her appeal (p571).

46. In June 2015, the claimant was identified as a potential candidate for GWO Backbone Work Management Process Lead and Technical Specialist Organisational Learning roles. The claimant was contacted by Vikki Willis about the roles on the 30 June 2015. The claimant was offered the roles on GEC terms.

47. The claimant did not consider that the Technical Specialist Organisational Learning role was suitable for her because it was level G role thus resulting in a cut in pay and benefits. The claimant did not consider that the role offered the possibility of advancement.

48. GWO Backbone Work Management Process Lead was in the claimant's view a lower level role that provided no obvious path to return to a role of the size, scope and responsibility that the claimant had before she went on maternity leave. The role required international travel in blocks of up to 3 weeks. Although the role was being offered as a level F it had been a level G role and after the claimant's rejection of the role it was advertised as a level G role

49. The claimant did not accept the offer of either of the for GWO Backbone Work Management Process Lead and Technical Specialist Organisational Learning roles. The claimant was informed that the refusal of the roles may lead to the redundancy payment being withheld from the claimant.

50. The respondent's position is that where an employee has unreasonably refused an offer of a suitable position it can withhold the redundancy payment. Vikki Willis said that the two roles were "brilliant jobs on GEC conditions … we do not pay redundancy in relation to people who refuse job." The respondent did not make a redundancy payment to the claimant.

51. Vikki Willis made the decision to process the claimant as leaving the respondent's employment "on the grounds of Some Other Substantial Reason". This is what the respondent does when someone whose role is redundant refuses a role the respondent considers suitable alternative role in the redundancy process.

52. The claimant's employment with the respondent came to an end of the 20 July 2015.

Parties Submission

53. The claimant and the respondent provided the Tribunal with detailed written submissions. We have considered the points made in these documents and in the further oral submissions made by the parties.

54. We have been directed to and considered the provisions contained in section 98 ERA and section 99 ERA dealing with unfair dismissal. We were also referred to the provisions contained in section 48 ERA concerned with pregnancy related detriment. We have also considered the provisions in the Equality Act 2010 at sections 18, 19 and 27.

Conclusions

55. What was the reason for the claimant's dismissal was it SOSR or was it redundancy? The claimant says that the respondent has "shot it's self in the foot" by the change of reason for the dismissal from redundancy to SOSR. The respondent says that if it was SOSR then the dismissal was unfair because the respondent has failed to have a meeting to discuss the reasons for dismissal. The claimant further states that the real reason for the dismissal is the redundancy and the reference to SOSR is a "lawyerism" "cynically engineered" to hide the unfairness of the dismissal.

56. The respondent's reply is that the use of the term SOSR is part of the respondent's business language and refers to email correspondence that took place within the respondent's human resources department. The respondent says that in any event the claimant was not dismissed because of redundancy. The claimant was initially at risk of dismissal for redundancy but this was superseded by the fact that two suitable jobs were available for the claimant to take up. It is said by the respondent that the evidence of Vikki Willis makes it clear that the reason that the claimant's employment ended was because she refused to take up the jobs that the respondent offered to the claimant.

57. Whether there is a redundancy is determined by section 139 Employment Rights Act 1996. The claimant is dismissed by reason of redundancy if the requirements of the 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.

58. The respondent states that because there were two roles for the claimant within the respondent the claimant was not redundant. The fact that the claimant could take up alternative employment with the respondent but refused does not necessarily mean that she was not dismissed because of redundancy.

59. We consider that whether the dismissal was because of redundancy or SOSR requires us to consider the same question. Was the dismissal fair within the meaning of section 98(4)? We therefore consider the fairness of the dismissal below having regard to both redundancy as a reason and SOSR.

60. The claimant states that if the dismissal was for SOSR it was unfair because there was failure to comply with ACAS Code of Practice. The Code does not apply to redundancy dismissals. The claimant contends that the failure to hold a meeting with the claimant results in unfairness. The Code provides for the need to hold a meeting with the employee (see paragraphs 9 to 12 of the Code).

61. The respondent contends that in this case the provisions of the Code do not apply, even in respect of a SOSR dismissal. The respondent relies on the **Phoenix House Limited v Stockman and Lambis** [2016] IRLR 848.

62. In **Phoenix House Limited v Stockman and Lambis** the court was considering whether the Code applied to dismissal for SOSR so that section 207A Trade Union and Labour Relations (Consolidation) Act 1992 applied. Mitting J stated:

> "In my judgment, clear words in the Code are required to give effect to that sanction, otherwise an employer may well be at risk of what is in reality a punitive element of a basic and compensatory award in circumstances in which he has not been clearly forewarned by Parliament and by ACAS that that would be the effect of failing to heed the Code. The Code does not in terms apply to dismissals for some other substantial reason. Certain of its provisions, such as for example investigation, may not be of full effect in any event in such a dismissal. What is required when a dismissal on that ground is in contemplation is that the employer should fairly consider whether or not the relationship has deteriorated to such an extent that the employee holding the position that she does cannot be reincorporated into the workforce without unacceptable disruption. That is likely to involve, as here, a careful exploration by the decision maker, in this case Ms Zacharias, of the employee's state of mind and future intentions judged against the background of what has happened. Of course, it would be unfair, as it was found to be here to a marginal extent by the Tribunal, to take into account matters that were not fully vented between decision maker and employee at the time that the decision was to be made. Ordinary commonsense fairness requires that. Clearly, elements of the Code are capable of being, and should be, applied, for example giving the employee the opportunity to demonstrate that she can fit back into the workplace without undue disruption, but to go beyond that and impose a sanction because of a failure to comply with the letter of the ACAS Code, in my judgment, is not what Parliament had in mind when it enacted section 207A and when the Code was laid before it, as the 2009 and 2015 Codes both were."

63. In our view while the Code does not apply to SOSR the question whether the dismissal was unfair may be informed by the fact that the Code was not complied with by the employer. In this case, we must consider whether in all the circumstances the failure to hold a meeting was unfair.

64. Applying that to this case we have concluded that the failure to hold a meeting does not make the dismissal unfair even if it was on the grounds of SOSR. The context in which the failure to hold a meeting takes place is when the claimant's position in respect of redundancy had been made clear. The discussions taking place between the claimant and the respondent were about alternative

employment. The claimant had an opportunity to consider the two alternative roles that were offered to her and she could have been in no doubt what the outcome would be if she refused to accept the roles. The claimant made her positon clear in respect of the roles by indicating that she did not consider that they were suitable roles and rejected them knowing the consequence was going to be her dismissal. The fact that there was no meeting to specifically discuss the claimant's dismissal after her rejection of the roles in our view does not in this case make the dismissal, if an SOSR dismissal, unfair.

65. The claimant says that she should not have been included in the UK redundancy exercise until the respondent was satisfied that employment under the GEC was redundant, not simply her assignment.

66. The respondent's reply to the claimant is that the claimant did not have an entitlement to be redeployed globally; the claimant did not have a contractual guarantee of a role at the end of the assignment. Nothing in the claimant's contract rendered her immune from a redundancy situation. At the time that the respondent would have been looking at new opportunities for the claimant it was not possible to do so because all organisations globally were maintaining or reducing headcount.

67. The Tribunal conclude that there was no unfairness to the claimant in the claimant being placed in the UK redundancy exercise. There was no assignment for the claimant at the time that redundancy process took place. Had the claimant not been considered in the UK redundancy process it is likely that she would have met the fate of 12 of 13 GECs whose assignments ended in 2015. They were not part of the UK redundancy process and left the respondent because of redundancy. It is to be noted that the redundancy process took place in context where the respondent was reducing headcount across its whole organisation. We do not consider that the way that the claimant was treated by the respondent in the redundancy process was unfair in the light of the claimant's GEC contract.

68. The claimant says that her periods of maternity leave was a significant influence on the claimant's selection for redundancy. The short period that the claimant had been working with Leigh-Ann Russell and the role she performed were a direct consequence of the claimant's periods of maternity leave. The claimant's lack of operational experience in the period under consideration was a direct consequence of her maternity leave. This will have affected the claimant's marking by Hugh Williamson.

69. The respondent says that the claimant's case is fundamentally flawed because it misunderstands the way she was scored by the respondent which was about how well she performed the role. The claimant's performance was then judged against the selection criteria, the fact it may be a lower level is irrelevant. The claimant had the chance to impress her manager and the opportunity to exceed expectations. Nothing to prevent the claimant scoring higher in the redundancy process even if she had a more limited role.

70. The conclusion of the Tribunal is that we are not persuaded that the claimant was disadvantaged in the redundancy process by the fact she had been on maternity leave. The roles the claimant performed on her return from maternity leave were roles that the claimant agreed to take up as they suited her circumstances. The Tribunal has not been able to conclude that the claimant was marked down in her scoring because of the maternity leave. Leigh-Ann Russell's explanation of how and why she arrived at the claimant's score was in our view a cogent and coherent account which the Tribunal accepts shows she assessed the claimant on her perception of the claimants' performance.

71. We do not find that the scoring was discriminatory. The claimant was scored on her performance and not on her role. Had the claimant carried out a different role she may have got different scores on aspects of the selection criteria but this too would have been based on the claimant's performance in that role. There is no disadvantage to the claimant from the maternity leave.

72. There is no discriminatory effect that needed to be alleviated by altering the marking process.

73. While the claimant was absent during part of the review period this did not operate to the claimant's disadvantage. The claimant had less time under management of Leigh-Ann Russell than she would have done had she not been on maternity leave. However, the claimant was assessed by Leigh-Ann Russell based on her performance while at work and there is no evidence from which we can conclude that she marked the claimant down because she had been on maternity leave.

74. The claimant contends that there was no adequate validation of the scores. There was no contemporaneous written record of the reasons for the scores the claimant received. The explanation for the scores comes from Leigh-Ann Russell's witness statement. There is a real risk that the evidence in respect of the scores is "self-serving and ex-post facto rationalisation." The claimant's scores in respect of KSE from Leigh-Ann Russell was based on the claimant's skills in drilling and functional performance. It is said that Leigh-Ann Russell did not possess the knowledge of the claimant required to fairly score the claimant. The claimant was disadvantaged in the scoring because she had not been in her drilling discipline because of maternity leave, this absence was reflected in her scores for KSE which took account of the fact that the claimant had not been working in drilling roles in recent times and been absent from the business. The claimant contends that a similar faulty approach to the scoring was adopted by Hugh Williamson. The claimant also contends that sensible suggestions made at the appeal to mitigate against the disadvantage caused by maternity were not followed up by the respondent.

75. The respondent states that the law does not require the scoring system used in a redundancy to be scrutinised officiously when an employer has set up a system of selection which can reasonably be described as fair and applies it without any overt sign of conduct which mars its fairness. The Tribunal is not entitled to embark upon a re-assessment exercise. The respondent states that the claimant

asks the Tribunal, inappropriately, to subject the respondent's redundancy scoring to an over-minute analysis. The scoring of the claimant was conducted carefully was based on evidence and considered the representations that the claimant made about why her score should be higher. It was a fair system. It is said that the claimant's criticism of the KSE score is based on over minute criticisms. However, it is said that in the time the claimant was managed by Leigh-Ann Russell there as sufficient opportunity for the claimant to get into her stride and for Leigh-Ann Russell to evaluate her strengths and weaknesses. The respondent states that Leigh-Ann Russell had the qualifications and experience required to assess the claimant's drilling skills. In the scoring appeal David Cocking upheld the claimant's score as determined by Leigh-Ann Russell. When the claimant appealed the decision to dismiss the scoring was reviewed and upheld by Ian Cavangh.

76. The Tribunal having considered the competing contentions on this issue concludes that the claimant's mark of three for KSE was shown by the respondent to be reasonably justified. The basis for the scoring has been clearly and cogently explained by the respondent. The scoring appeal and the appeal both engaged directly with the issues raised by the claimant and addressed her points and concluded against her. We see no unfairness in the part of the respondent's process.

77. The claimant complains that the respondent's search for alternative employment was not transparent. Decisions were made without consultation with the claimant and as a result the claimant was not considered for roles or has been excluded where she should not have been.

78. The respondent says that the claimant has failed to show that any single vacancy which ought to be posted in TAS was not posted on TAS. While we note this point made by the respondent we consider it is asking a great deal of the claimant to say she should be able to do this.

79. However, the Tribunal have not been able to accept the claimant's criticism of about the lack of transparency. We are not persuaded that vacancies were identified and filled behind closed doors. We recognise that a process of assessment of the claimant and then considering the claimant for roles took place. This was necessary to fill the roles in the new organisations. As roles became identified as available they were advertised on TAS. The claimant never applied for any role advertised on TAS and before her employment ended the respondent offered her two roles that were considered by the respondent to be suitable alternative employment for the claimant.

80. We are satisfied that the evidence presented by the respondent illustrates an attempt to find the claimant alternative employment after the claimant's employment was identified as redundant. Two roles were offered to the claimant before her employment ended.

81. Having considered the dismissal on the grounds of redundancy we are not persuade that the claimant was unfairly dismissed.

82. At the point that the claimant's employment ended she had rejected roles that were offered. Had the claimant accepted either of these roles her employment would have continued. We accept the respondent's account about how the roles came to be identified and offered to the claimant on 30 June 2015. We are not persuaded that it has been shown that if the dismissal was because of some other substantial reason that it was unfair. The claimant's complaint of unfair dismissal relying on section 98(4) is not well founded and is dismissed.

Direct pregnancy/maternity discrimination

83. The claimant contends that as part-time GEC she was an anomaly. She was denied her basic entitlement to a review of her assignment and global redeployment. The claimant says that she has proven facts from which a prima facie case of discrimination is made out including the denial of her basic contractual and procedural rights and the respondent's belief that GEC status and part-time work were incompatible. The claimant's period of maternity leave played a significant influence on the claimant's selection for redundancy. The application of the selection placed the claimant at a disadvantage due to the pregnancy or maternity related reason, it was incumbent on the respondent to adjust the criteria or their application to alleviate that disadvantage provided the adjustment went no further than was reasonably necessary. The respondent did not do this her case must be upheld. Since it did nothing, the Tribunal need not engage with the issue of whether any step taken by the respondent was proportionate.

84. The respondent contends that the claimant's case as pleaded in the claim form relies on section 18(1) of the Equality Act 2010 and does not set out any facts to support it; further the respondent contends that such a claim would be out of time. However, the claimant states that she relies on section 18(4) of the Equality Act 2010 which provides that a person discriminates against a woman if they treat her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

85. The Tribunal has not been able to conclude that the claimant was treated unfavourably in being considered as part of the UK redundancy process. The Tribunal has also not been able to conclude that the claimant was denied basic contractual or procedural entitlements from her GEC contract. We have set out above our conclusions that the claimant did not suffer a discriminatory effect from taking maternity leave we have not been able to conclude that the claimant was disadvantaged in the redundancy process because of her pregnancy or taking maternity leave. We have not been able to conclude that the claimant was treated unfavourably because of taking maternity leave.

Automatic unfair dismissal

86. The claimant submits that the principal reason for her dismissal was her selection for redundancy. The claimant's period of maternity leave played a significant influence on the claimant's selection for redundancy. The claimant contends that the selection is sufficiently connected with her pregnancies and the fact that she

has availed herself of the right to take maternity leave as to amount to automatically unfair reason for dismissal.

87. The respondent contends that the reason that the claimant was dismissed because of her unreasonable refusal to accept suitable alternative work.

88. The claimant was dismissed because she refused to accept either of the two the roles that the respondent was offering her. As stated above the respondent offered the claimant two roles that the respondent considered suitable alternative employment. Had the claimant accepted either of these two roles she would not have been dismissed. Further the respondent has not been able to conclude for the reasons explained above that the claimant's dismissal was tainted by discrimination related to pregnancy and maternity leave. In the circumstances, we do not consider that the reason or principal reason for the claimant's dismissal was pregnancy or maternity leave.

Pregnancy related detriment

89. The claimant contends that her inclusion in the redundancy exercise and her selection for redundancy were detriments that were related to pregnancy.

90. The claimant's inclusion in the redundancy exercise was not related to her pregnancy. The claimant was included in the redundancy exercise because she was based at Sunbury and the decision was made to include GEC employees based in Sunbury in the UK redundancy process. There was no aspect of being pregnant or taking maternity leave that influenced this decision. In selecting the claimant for redundancy Leigh-Ann Russell did not consider the claimant unfavourably because of her maternity leave or pregnancy.

Indirect discrimination

91. The claimant contends that the application of the selection criteria to the claimant amounts to a Provision Criterion or Practise. The application of the criteria in unaltered form would place those who have held the protected characteristic of pregnancy and maternity at a particular disadvantage compared to those who have not held those characteristics. The claimant contends that she was placed at that disadvantage and so it is for the respondent to justify the treatment.

92. The respondent accepts that it applied a PCP to the claimant, she was included in the redundancy process. The respondent says that there is no evidence that women were placed at a particular disadvantage by this PCP and that there is no evidence that the claimant was disadvantaged by the PCP. The respondent contends that the claimant did not object to the PCP. The claimant would have objected if she was disadvantaged by it. The PCP was beneficial to the claimant.

93. The respondent contends that the PCP identified by the claimant in the paragraph 31 of the grounds of claim attached to the form is not a PCP at all. The respondent denies that the scoring of the claimant was limited to a 36-month period. The respondent further states that if there was such a PCP there is no evidence that it placed women at a particular disadvantage. The respondent contends that the claimant's evidence is that she was the sole person who was a level F GEC and therefore was no covered by the statutory proscription. The

respondent relies on comments made by Sedley LJ in Ewieda v British Airways plc [2010] IRLR 332. The respondent further states that there is no evidence that the claimant was disadvantaged because the 36 month review period focussed on a time when she was substantially absent on maternity leave. The respondent says that the claimant's KSE might be affected by the operation of this PCP but further states that even if the claimant and other women were placed at a substantial disadvantage because of this PCP it was a proportionate means of achieving a legitimate aim of ensuring that BP retained people with the necessary up-to-date KSE.

94. The conclusion of the Tribunal is that the respondent did apply PCP by including the claimant in the redundancy process. The claimant was in our view not disadvantaged by this. The claimant accepted in her evidence that she did not necessarily disagree with the respondent including GECs in the redundancy process.

95. The conclusion of the Tribunal is that the respondent did apply a PCP which involved the assessment of the claimant being assessed over a 36-month period. There is contention between the parties as to whether the claimant was disadvantaged by the PCP. The Tribunal is not satisfied that the claimant was disadvantaged by the operation of the PCP. Leigh-Ann Russell assessed the claimant on her performance we are not persuaded that had the claimant been assessed over a longer or shorter period by Leigh-Ann Russell would have assessed the claimant differently. It was the claimant's performance that she assessed. We are also satisfied that the use of the PCP was a proportionate means of achieving the legitimate aim of ensuring that BP retained people with the necessary up-to-date KSE.

Victimisation

96. The claimant complains that the failure to pay enhanced redundancy pay was an act of victimisation.

97. The claimant relies on the coincidence of timing of the offers of alternative employment with her threat to bring proceedings and contact with ACAS; the respondent knew that there was a potential of proceedings and that the claimant had complained of discrimination; one of the two roles offered to the claimant has been vacant for a significant period of time and not been offered to the claimant; the offers came at a time when the claimant had put in place the logistical process of leaving the country; the claimant had not previously been put on notice she might lose her enhanced redundancy terms; Vikki Willis' email which raised the possibility for the first time whilst simultaneously setting a very short deadline for acceptance of the roles; the attempt to get the claimant to sign settlement agreement as an exercise in litigation risk management; the very late decision to withhold redundancy pay at a time when the respondent knew that litigation was pending; the claimant was the only person not to receive enhanced redundancy pay; the needless decision to change the reason for the dismissal. Relying on these matters the claimant says that the burden of proof has passed to the claimant and that the respondent has not demonstrated that the

withholding of enhanced redundancy pay was in so sense whatsoever connected with the protected acts.

98. The respondent states that there was no evidence at all that Vikki Wallis was aware of the protected act at the time that the decision to withhold the enhanced redundancy payment was made; the claimant had been informed that a failure to sign a settlement agreement will result in non-payment of the enhanced redundancy; Vikki Wallis gave evidence that where there are suitable jobs for employees the respondent does not make enhanced redundancy payment; the respondent used settlement agreements in other cases where redundancy occurred; Vikki Wallis denied that the decision to withhold the redundancy payment was influenced by any knowledge of the Tribunal proceedings.

99. The conclusion of the Tribunal is that the decision to withhold the enhanced redundancy payment was not because the claimant had indicated an intention or prospect of bringing the proceedings. We accept the evidence given by Vikki Willis that the decision to withhold the enhanced redundancy payment was not influenced by the knowledge that there was a threat of proceedings. We also note that the use of settlement agreements by the respondent is done in cases where there are enhanced terms. The timing of the decision to withhold the redundancy payment occurs at the correct time there is a coincidence with the claimant's approach to ACAS and prospect of proceedings being brought but we do not consider that this shows that the reason for the withholding the redundancy payment was because of the Tribunal proceedings. Finally, we accept the evidence that in cases where there is suitable alternative employment available the respondent does not make enhanced redundancy payments, so the withdrawal of the offer is in line with the respondent's practise.

100. The claimant's complaints are not well founded and are dismissed.

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Employment Judge Gumbiti-Zimuto

Date: 19 June 2017……

Sent to the parties on: .....

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For the Tribunals Office