



EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case No: S/4100002/17 Held at Aberdeen on 15, 16, 17 & 18 May 2017**

Employment Judge: Mr J M Hendry (sitting alone)

10 **Mr Ousman Khan**

Claimant
Represented by:
Mrs R Mohammed –
Solicitor

15 **Shell UK Limited**

Respondent
Represented by:
Mrs A Stobart -
Counsel
Instructed by:
Miss c Denison –
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Claimant's application for a finding that he was unfairly dismissed by the Respondent company does not succeed and is dismissed.

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REASONS

1. This Judgment is issued following a request for written reasons made after an oral Judgment was promulgated.

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2. The claimant in his ET1 sought a finding that he was unfairly dismissed from his post as a Contract Holder with Shell and that his selection for redundancy was unfair. The principal argument advanced was that the internal annual scoring

system used by the respondent, the 'IPF' score, used in the process, was not objective and was unfair to him. This rendered the dismissal unfair in their view.

3. The respondent denied that the claimant had been unfairly dismissed. Their position was that the claimant had been fairly dismissed on the grounds of redundancy and that the IPF scores were fairly compiled and applied and that it was reasonable to have regard to them.

Issues

4. The issues for the Tribunal were whether or not the dismissal was fair or unfair in all the circumstances and in particular if the use of the IPF score given to the claimant was not sufficiently objective and that the use of the measure rendered the selection process unfair and hampered the claimant being deployed into a different role. The claimant also submitted that he was disadvantaged more generally both with regards to his selection and in relation to his possible re-deployment through the selection panels and that the company had failed to assist him sufficiently.

Witnesses

5. The Tribunal had the benefit of witness statements from:

- Mark Reid, HR Account Manager, Shell UK;
- Chris Birdsey, AIPSM Lead based in Aberdeen;
- Jeffrey Forsyth, Strategic Contract Management Team, Engineering and Maintenance Lead;
- Julian Rippiner, Strategic Contract Lead;
- Rob Jansen, Head of Project Delivery – End of Field Life assets, Shell UK and
- Andrew Vaughan, Development/ FM Lead
- and from the claimant on his own behalf.

6. The Tribunal considered the Joint Bundle of Documents lodged by the parties prior to the Hearing.

Facts

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7. Shell UK Limited is a company within the Shell Group of Companies (Shell Group). It is a multinational global group with interests in the energy sector throughout the world. Shell UK Limited is involved in exploration and exploitation of oil and gas in the North Sea. It employs numerous staff in and around
10 Aberdeen where it has a major base of operations.
8. The claimant was employed by the company. He worked in Aberdeen supporting the respondent's UK upstream business. The claimant was recruited to carry out the role of Engineering Modifications Lead for offshore facilities and worked in
15 this capacity from 23 August 2013 until 31 October 2014. He worked in Aberdeen supporting the respondent's UK upstream business. He was responsible for co-ordinating a portfolio of modifications carried out on the respondent's offshore facilities as part of a single maintenance team.
- 20 9. The company has various job roles which are graded JG1 through to JG6 and below. His role was banded as JG3. This was a senior management position. Consequently, certain high levels of personal initiative were expected of him. In this grade an employee was expected to work independently and with little supervision. JG4 was a lower grade reflecting lower responsibility and
25 performance expectations.
10. The respondent also grades employees and give them a 'CEP' score to indicate what potential they have to progress in the company. The claimant was initially given a score of JG1 indicating he was expected to advance further ultimately to
30 this grade.
11. The claimant had a number of line managers throughout his career with the respondent. His first line manager was Steve McHattie (Maintenance Manager from 26 August 2013 to November 2013) followed by Chris Birdsey, Maintenance

and Tech Support Manager until November 2014. After that he was line managed by Julian Rippiner, Strategic Contracts Manager before he began reporting to Jeffrey Forsyth, in December 2014.

- 5 12. In his first appraisal carried out by Mr McHattie it was identified that the claimant needed to be more assertive. On a number of occasions Mr Birdsey had to intervene to assist the claimant with stakeholders. The claimant acknowledged these difficulties and the need to develop his skills in this area.

10 **Re-Organisation 2014**

13. The oil price collapsed worldwide. The respondent faced poor trading conditions worldwide and a loss of revenue due to a falling demand for oil and price falls. In early 2014 as part of the 'operating model review' there were proposals to create a more streamlined organisation. This meant increased focus on smaller groups of facilities. The proposals significantly impacted on the 'upstream' business within which the claimant worked. The effect of this restructuring was that the claimant's engineering modification lead role ceased to exist. Whilst other positions were created to take responsibility for modifications, those newly created roles were more junior. The claimant expressed no desire to take up such a position. He was therefore redeployed to the engineering and maintenance division. The claimant at this time had made it clear that he did not want to compete for jobs at a more junior grade and wanted to retain his JG3 grade.

- 25 14. The upshot of the re-organisation was the claimant was offered a Contracts Holder post at grade JG3. He accepted this role as Contract Holder in the newly formed Strategic Contracts Team ('SCT') headed by Julian Rippiner.

- 30 15. The role required the claimant to liaise with different offshore facilities and engineering contractors to deliver agreed maintenance in as cost effective manner as possible. The claimant also had line management responsibilities. It was a senior role. He had to be able to manage relationships. It was not his preferred option. His experience before joining the respondent was in sub-sea

engineering rather than in maintenance. He wanted to move into Project Engineering and kept an eye out for such opportunities. He approached Julian Rippiner in August 2015 seeking a move.

- 5 16. On 1 November 2014, the claimant commenced the role of Contract Holder in the reorganised maintenance team. This was within a newly formed strategic contract management team based in Aberdeen. The claimant was responsible for ensuring the safe and environmentally effective implementation of contract activities, the proactive management and development of contracts and the
10 valuation of contract performance. The claimant had not previously carried out this type of role.

IPF (Individual Performance Factor)

- 15 17. The respondent operates a pay policy along with other companies in the group (Shell Global Pay Policy). Each employee is put in a 'salary group' and each position in a Job Group. Such groups are determined using a common global job evaluation system. Salary grades generally align with Job Grades.

- 20 18. The respondent's managers allocate, annually, every employee an IPF score ("IPF"). This is in accordance with the Shell Group Global pay policy. The IPF rates an employee's performance and his or her achievements matched against a set goals and objectives relative to the performance of other employees within the team (defined as the "ranking population"). The goals are recorded in an annual
25 Goals and Performance Appraisal document ("GPA"). The employee's performance is discussed and agreed with the line manager at the end of each year. They consult about progress throughout the year. The IPF is designed to show the employee's relative performance in the group. It does not seek to judge an employee's competence against a set objective scale.

- 30 19. All employees of Shell Group companies are allocated an IPF on 30 September. The IPF ranges 0.0 to 1.5. In order to achieve the objectives of the relative ranking system, ranking panels composed of senior managers are challenged to identify a spread of IPF scores within the ranking population of around 10% of

employees within the operation. They are then given an IPF score. Between 3 to 7% of employees being given an IPF score of 0.7 or lower.

- 5 20. At this time the respondent wanted to “stretch” employees and ensure that there was a proper distribution spread of scores. It wanted managers to focus closely on staff performance in their team vis-a-vis that of other members of staff. Shell Group global pay policy indicates that the average IPF ranking population must not be higher than 1.03. The company provides guidelines (JBp.1035).
- 10 21. Historically the respondent company found that the IPF scores tended to congregate at around 1.0. In recent years, there was increased emphasis on managers and ranking panels scrutinising carefully performance to ensure a correct spread of scores that more closely reflected employee’s performance was achieved. Because of the practical difficulties in assessing the performance of
15 employees who commence employment part way through a performance year those employees were generally awarded a default IPF score of 0.9. As the claimant commenced employment for the respondent on 26 August 2013 just six weeks prior to the ranking date he was therefore awarded an IPF score of 0.9 for 2013. This was a standard or accepted practice.
- 20 22. An employee’s IPF is usually determined by the ranking panel which consists of a panel of managers from across the business area in which the employee works. It operates with guidance and support from HR and input from the employee’s line manager who attends the meeting with his own score for the
25 employee. This is then discussed and it can be confirmed or challenged. There is a discussion about the employee’s performance within the team he/she is in. Usually most of those taking part will have had experience of the quality of the employee’s work. There were about ten or so employees in the claimant’s team.
- 30 23. It was not unusual for an employee to get a relatively low score, at least initially, especially if they joined a high performing team as the score ranked them relative to others.

24. In 2014 the claimant's line manager Mr Birdsey made up a spreadsheet showing the various employees reporting to him including the claimant. He allocated them an IPF assessment based on how they were performing against his expectations of their performance for that year with reference to agreed goals/objectives. The claimant had only recently started work with the company. It was recognised that it was premature to assess new employees until they had spent a reasonable time in the company. Because of this he gave the claimant an initial suggested assessment of point 9. Following this Mr Birdsey attended a ranking panel where he argued for the claimant to be given this score. The panel assessed the claimant's relative performance in the team and awarded him an IPF score of point 8.
25. The company operated a discretionary bonus scheme. The IPF feeds into the calculation of any discretionary bonus paid for the performance year. The claimant received bonuses.
26. The claimant did not raise any grievances in relation to the IPF scores he was awarded in 2013, 2014 or 2015. Employees were encouraged to discuss the scores they were awarded with their line manager and the claimant did this. They also had the opportunity throughout the year to discuss their performance in the team. The claimant was unhappy with the scores he had received. In particular, he spoke to Steve McHattie about the 0.9 rating and was told that he could not appeal it. He later challenged his next rating to Julian Rippiner (JB p 166-196). It became clear to him that grievances in relation to relative rankings were discouraged and that grievances would only be entertained in relation to specific concerns about the process.
27. The claimant was not assisted in gaining higher scores because the team in which he worked was extremely competitive. He was also hampered that due to the reorganisation that occurred in 2014 his role was not as clear as he would have wished it to be nor was he experienced in such a role having been redeployed there. The claimant had not worked on contract maintenance before.

Re-Organisation in 2014

28. A further re-organisation took place in 2014. Although the claimant was disappointed that a colleague and equal Jeffrey Forsyth had become his line manager he generally had a good professional relationship with Mr Forsyth. On one occasion when discussing performance, he was concerned that Mr Forsyth had mentioned to him that he was the highest paid JG3 in the team. This made the claimant feel insecure and he complained. Mr Forsyth was later reprimanded for his comment.

29. Mr Forsyth noted that the claimant appeared to need to build up his profile and build relationships with others. He thought that the claimant was very quiet at team meetings and plenary sessions and did not have a forceful personality. Feedback from others suggested to Mr Forsyth that the claimant needed to develop himself in the role and become more confident and proactive. These matters were discussed with the claimant at formal one to one meetings and informally. Mr Forsyth set the claimant's goals for 2015 in February of that year. The claimant was reluctant to accept the feedback (JB p201-206). These matters relating to the claimant's performance were discussed with Julian Rippiner to whom Mr Forsyth reported. Mr Rippiner agreed with the assessment.

30. Throughout 2015 the claimant worked hard and began delivering important projects. He was praised for the improvement in his work. He was regarded by Mr Rippiner as a solid performer but one that was not performing at the sort of level expected of a JG3 grade as Mr Rippiner believed that he struggled to assert his influence over stakeholders.

31. Mr Forsyth was involved in the setting of the claimant's IPF score for 2015. The ranking panel was chaired by Ben Taylor head of the Commercial Division and Julian Rippiner. Mr Rippiner led the SCM team and had been the claimant's line manager. They were both aware first hand of the claimant's work. The ranking panel was overseen by HR. The panel had a good overview and knowledge of the claimant's performance. There were 36 employees in the commercial ranking

population (JB p208-209). The spread of IPF scores at JG3 level and below was decided at 0.7 to 1.4. Two employees got lower scores than the claimant.

- 5 32. In the ranking population, there were a number of employees working at a particularly high level and who were greatly exceeding expectations. One employee who was a JG4 grade was given a ranking of 1.3 because she has significantly improved the standard contracts with contractors, created a strong visual management tool and was involved in promoting women in the Oil Industry through a separate organisation. Another employee in the group covered a JG1
10 role despite being a JG5 grade. This left lower scores for others, including the claimant, in the ranking such as the claimant.
- 15 33. The claimant continued to be unhappy with the scoring. Mr Forsyth explained how the score had come about and mentioned that the claimant could raise a grievance if he remained unhappy.
- 20 34. The claimant's IPF score of 0.8 recognised that the claimant had limited practical experience in contracts management and he could not be expected to excel in all areas of the role immediately. It also reflected that the claimant was not yet developed into the role in the way a JG3 grade employee was expected to develop. Particularly the respondent's managers noted that the claimant had been slow to deliver the required outputs and that his collaboration and network building skills needed further development particularly compared with other better performing colleagues. Various topics were discussed with the claimant by his
25 line manager in order to assist him.
- 30 35. In April 2016, the claimant, along with other employees, was given a score for his ability to progress in the company. Jeffrey Forsyth attended a meeting with Ben Taylor the head of the commercial team to discuss the score that the claimant should be given. The claimant's initial CEP had been JG1 suggesting that this would be the high point of his career with the respondent. Mr Forsyth disagreed with Mr Taylor's suggestion that the claimant's CEP should now be JG5-3 . He acknowledged that the claimant had to improve his performance but he argued that the claimant had recognised this and that improvements were showing in his

performance. The CEP was eventually agreed at JG2-1. At this time there were discussions about the claimant's performance and it was agreed to manage it informally so as not to demotivate him.

5 **Re-Organisation 2016**

36. A further global re-organisation was proposed in 2016. The purpose of these changes were to enable the successful integration of the large BG Group, and their employees, into Shell Group and to improve performance. This was to particularly impact the respondent's upstream business's portfolio of businesses.

37. On the acquisition of BG their project teams worked through a proposed organisation design known as the "TOM" model or target operating model. These changes impacted on all employees in Aberdeen including the claimant. The company was aware that there would be a considerable reduction in roles and decided to look at its "skill pool" and select suitable employees for roles in the new organisational structure from those available. Consultation took place with staff through the staff committee. In May 2016, the proposed organisation changes were announced. A reduction of 250 in headcount was anticipated.

38. In May and June line managers were encouraged to identify employees in their teams who might not be as competitive as others when it came to filling roles in the new structure and to discuss voluntary severance with them. As a consequence, the question of voluntary redundancy was raised with the claimant on or about 8 June. Julian Rippiner explained to the claimant that he might find it difficult to secure a role in the new combined organisation given the competition for places. He explained that the offer was not 'set in stone' and that the company could be flexible about the leaving date. He was provided with a copy of his likely severance package (JB p 686). He declined the offer. Mr Rippiner asked Mr Forsyth to have a further follow up meeting with him to ensure he understood the position which he did.

39. The claimant was, at this point, unaware that the company had put together a grading scheme to identify employees as 'red, amber or green' to roughly assess

the chances of them being made redundant and that he had been assessed as being in the most at risk of redundancy group.

- 5 40. The claimant thought that as part of the new SCM team he would be likely to be unaffected by the reductions in staff. The commercial department at an early stage had estimated the loss of only 2.4 full-time roles. However, there were a large number of positions proposed to be removed from the whole organisation. This resulted in significant competition for available positions. The numbers at risk for redundancy were swollen by returning expatriate employees. Out of the 10 230 expatriate employees returning to Aberdeen 30 obtained roles the rest were made redundant or took voluntary severance. Staff were kept abreast of the planned reorganisation and consultation took place throughout this period from April onwards.
- 15 41. On the 24 May, the claimant was invited to a meeting for all employees addressed by Ben Taylor. He mentioned the loss of 2.4 posts.
- 20 42. A further staff committee meeting took place on 26 May throughout the re-organisation. Individual consultation meetings were held including with the claimant.
- 25 43. On the 8 June, the claimant asked for copies of the new organisational charts and what the selection process was to be. Mr Rippiner referred him to information produced for the guidance of staff 'Question and Answer Pack (JB p446) specifically to page 454 onwards which set out the selection criteria. One of the criteria was to be the employees sustained performance over three years. This would mean that the panel would look at the IPF score amongst other factors.
- 30 44. The respondent's organisation at this point was under severe strain because of the reorganisation. The reorganisation also affected the HR department and who at this point were unable to provide individual staff members with much assistance.
- 35 45. At this time the claimant tried to obtain as much information as he could about the new structures. He found this difficult. Many roles were going to remain

broadly the same so new job descriptions were not being written. He was advised to contact line managers to discuss individual roles if he was interested in them.

- 5 46. The claimant met his line manager Jeffrey Forsyth and Strategic Manager Julian Rippiner for a formal individual consultation on 15 June 2016 to discuss the changes to the business. The claimant was told that the commercial team of which his team was a component part was reducing in size and there was a number of returning expatriates competing for jobs in the TOM. The claimant was told that in 2014 the SCM team had been populated by employees from a wide variety of backgrounds, experience and skillsets and that this had shown that employees from such a wide cross section could perform well as contract holders doing maintenance work. This meant that a significant number of employees who were at risk from redundancy and who had expressed interest in the commercial role could be considered for the available commercial roles. The claimant was told that he was therefore at risk for redundancy.
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- 20 47. At the meeting, it was explained that roles at the claimant's level would be resourced through what was called 'light resourcing' namely via selection panels and how that would work. He would get the opportunity to specify the preferred roles he wanted to be considered for. He suggested that the claimant concentrate on a few particular roles he was both interested in and qualified for. In the event the claimant applied for many roles.
- 25 48. An email was sent to the claimant after the meeting confirming that he was at risk (JB p 478-479). The redundancy warning period was to last for three months starting on the 1 July. The claimant had access to information and guidance produced by the respondent and available on the intranet (JB p382-426).
- 30 49. In the following few months the claimant met Mr Rippiner on several occasions to discuss the reorganisation process and opportunities arising for roles in the new TOM.
50. The claimant sent Mr Rippiner a list of roles he was interested in. His preferred role was in Project Engineering or Management then Facilities or Contract

Management. He supplied a summary of his experience prior to joining the respondent. Mr Rippiner responded asking him to confirm his understanding of the roles he wanted to pursue and suggesting that the claimant might also wish to consider JG3 Wells contract management.

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51. Mr Rippiner intimated the claimant's interest in taking up a project engineering role to John Wilkinson, General Manager UK Projects who would be chairing the Projects Selection Board. He followed this up by emailing him with background information about the claimant. He told Mr Wilkinson that the claimant had completed the Shell Project Academy self-assessment. This information was copied to Rob Jansen and James Woods who were going to be on the selection panel. It was felt that the self- assessment was too optimistic.

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52. Mr Rippiner later discussed the matter further with Mr Jansen and suggested that the claimant had not had an opportunity to demonstrate all his project engineering skills gained before he joined. The discussion was summarised (JB p 539). Mr Rippiner also raised the possibility of the claimant getting experience of decommissioning. The claimant was on paternity leave at this point. This was followed up with the claimant (JB p538). On reviewing the situation again it appeared that the claimant did not have the relevant project experience.

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53. In June the claimant also contacted Chris Birdsey for advice and to discuss opportunities to work for the Maintenance, Reliability and Turnaround team. They met on the 21 Jun. The claimant asked whether his skills and experience suited him for a JG3 role. The claimant was advised that there were a number of roles but that the incumbents were performing well and that the claimant had not previously worked in a front line operations and maintenance role. The roles required specific knowledge of major hazards and inspection and maintenance procedures. He asked the claimant if he would consider levels at a lower grade. The claimant said he would not.

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54. The claimant's interest was discussed at the later selection panel meeting on the 7 and 8 July. Mr Birdsey was on the panel. He provided feedback on the claimant's skills, knowledge, leadership attributes, behaviours and capability to

meet future needs. The panel did not discuss IPF scores of applicants although they were available to the panel members. Competition for available roles was fierce and the claimant was unsuccessful because of his lack of experience and track record in such work and because he only wanted a JG3 grade post. In August, the claimant asked Mr Birdsey to use him as a reference and he agreed to do so. He met the claimant on 12 August and again asked him if he wanted to apply for jobs in lower grades. He confirmed that he did not wish to do so.

Projects Selection panel

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55. The claimant had been in contact with Rob Jansen since September 2015 to discuss ways of furthering his interest in project work.
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56. Over the next year or so Mr Jansen had mentored the claimant. The claimant was interested in applying to the Shell Academy. This facility could be accessed by employees who have project engineering as their primary or secondary skill pool. It provided on line self-assessments, guidance and information about engineering skills.
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57. On the 16 June Rob Jansen made enquiries as to how the claimant could get project management in his secondary skill pool to allow him to access the Shell Academy. This would put him in a stronger position to be considered for project engineering roles. It transpired that there was a minimum entrance requirement for the skill pool and the claimant would have to complete a self-assessment against the Shell Academy competency level one. Mr Jansen informed the claimant of this and provided him with a link (JB p499). The claimant completed the self-assessment form (JB P486). The self-assessment form did not contain adequate evidence to show competency. The form was usually completed over a lengthy period with the assistance of a line manager after experience in a project had been gained.
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58. Mr Jansen liaised with the claimant about the forthcoming projects selection panel and met him to discuss potential roles. Mr Jansen warned the claimant that

he would be competing with established project engineers. Nevertheless, the claimant pursued his interest in this area.

Selection Panels

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59. Employees were to be selected for roles in the organisation through the use of selection panels. Each panel was responsible for selection for a specified area from the best candidates available.

10 60. The Commercial panel was due to meet on the 13 July 2016. It was delayed until the 18 July. The claimant was still on paternity leave. The panel was chaired by Ben Taylor who was aware of the claimant's work. Mr Rippiner sat on the panel along with six other senior managers. Mr Rippiner had collated a table of information about everyone on his team, including the claimant, setting out their
15 experience and performance. Jeff Forsyth and other leaders in the team assisted in completing the information commenting on the employee's performance set against Shell Group behaviours.

20 61. Prior to the panel meeting Mr Rippiner was given an overview of the dates of the other panel resourcing meetings and a list of employees to be discussed (JB 564-580). Between 40 and 50 employees were ultimately discussed and considered at the meeting. The candidate IPF scores were available at the meeting as was other information about their experience and performance.

25 62. Mr Rippiner said that the claimant was resilient and had good focus but struggled to make decisions independently and quickly. The panel approached its task broadly looking at candidate's skills experience and past performance. They assessed other candidates as being more suitable for the available roles than the claimant. The claimant was unsuccessful in obtaining a role. The panel
30 concluded that there were better candidates for the available roles. The claimant was advised of the panel's decision.

63. On the 18 July Mr Rippiner heard that the Projects Selection Panel had decided to give the claimant an interview to assess whether he would be a good fit for a

project engineering role at JG3 level. He supported this action and indicated that he would be happy to discuss the claimant further with the interviewers. He told the claimant about the interview. The claimant was told to prepare for the interview as if it was an interview and offered to meet to discuss project roles generally. Unfortunately, the claimant had personal difficulties at the time and little time to prepare. He did not communicate these difficulties to the respondent's managers or seek another date for the interview.

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64. The interview took place on the 25 July. The interviewers were not impressed with the claimant's performance and provided feedback to Mr Rippiner that his knowledge of project completion and HSE matters was incomplete. They considered it doubtful that he was a good fit for JG3 roles. In early August, the claimant requested feedback on the meeting which was provided to him.

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65. The claimant felt he had been given insufficient time to prepare for the meeting.

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66. On the 8 August Mr Rippiner was told that the claimant had requested feedback following the interview. The claimant was given feedback on the 18th August by Mr Steve Jordan. He was given advice about how to improve his chances in getting a role in the future resourcing rounds.

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67. At this time, Mr Rippiner contacted Ali McDougall and Chris Birdsey who were to be on the Production and Maintenance Panel to alert them to the fact that the claimant was interested and to consider him for a role.

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68. On the 28 July Mr Rippiner emailed his team including the claimant advising that he would provide feedback the following week. The claimant was told that he had not been selected on the 3rd August.

69. The claimant was in contact with Mr Rippiner on 17 August to query the financial package he would receive on redundancy. He was sent a link to documentation prepared by the HR department to answer such queries.

70. The claimant's line manager continued to explore opportunities for the claimant's redeployment throughout September and October. The claimant was referred to the Open Resourcing online application system run by the respondents where any vacancies were listed. There was little support for staff in how to operate the system. The claimant managed to submit applications. He did not seek assistance from Mr Rippiner.

71. On the 29 August, the claimant sent Mr Rippiner a list of roles he had applied for that had been posted on the Open Resourcing system and Mr Rippiner emailed the hiring managers to support the claimant's applications and to emphasise the positive aspects of his skills. The claimant's line manager supported the claimant as best he could throughout the process and was very keen for the claimant to get a post.

Appeal Process

72. The claimant was notified of his redundancy on 29 September effective from the 1 October. On the 27 October, the claimant sent a farewell email to colleagues (JB p956).

73. The Claimant was unhappy at his dismissal. He decided to lodge an appeal. The appeal was passed to Andrew Vaughn to deal with. Mr Vaughan did not know the Claimant. He was employed in a different sector of the business namely as a Manager in the Development/WRFM Division (Wells, Reservoirs and Facilities Management Lead) based in Aberdeen. He was an experienced manager with Shell Group. The Claimant lodged an appeal letter (JB847-850). The Claimant's grounds of appeal were:

"Jeff,

Appeal – Notice of Redundancy

In response to my stage 2 letter dated 29/06/16, I would like to respectfully invoke my right to appeal the decision. Accordingly see below my grounds of appeal:

1. *The company has unfairly selected me for redundancy because he selection criteria used by the company failed to account for the following:*
 - a. *The amount of change in the organisation; I have had 3 Line managers in 3 years; my performance reviews and the IPF issued to me do not reflect the reality. I have already raised this prior to the redundancies being announced. You can see this by the disconnect from the comments of previous managers in comparison to previous IPF's.*
 - b. *As a result of the above concern the panel selecting who are made redundant have been provided inaccurate information to allow them to make their decision fairly.*
2. *The company has failed to consult with me fairly. I was not provided the option to appeal once I had been marked 'at risk'. The Appeal process now issued was announced formally at stage 2 (giving me only a week) which was the notification that an alternative role had not been secured. A complete process and timeline for this Appeal process is still not clear at this point other than an independent line manager will review it.*
3. *The company has failed to carry out the redundancy process consistently and fairly. I was told that within our department 'commercial' 2.4 FTE (Full time employees) would be at risk within commercial as a whole, in our team alone 2 people took voluntary severance and I have seen a number of folk in commercial leaving. Furthermore I know of 2 individuals (1 in our team and 1 in CP) that haven't received their stage 1 notice and I believe this puts me at a disadvantage in terms of the timeline I have to try and secure another position internally within the company.*
4. *The HR support and professionalism throughout this process has been poor/inconsiderate and as a result has left me feeling that I am not clear on the appeal and its impact on me. This in itself leaves me feeling I have been unfairly dismissed.*
5. *Coming from the engineering modifications lead role into the contract holder role, I was told it would it would be a broadening role and a*

5 *good fit; it wasn't on my preference list during OMR and was a tell
with no other alternatives at the time. As a result I feel I have been
directed into this position. You as my current LM previously being at
the same JG level as me mentioned at twice verbally in previous
performance meetings that I was the highest paid person in my JG. I
am concerned therefore that the main reason for my redundancy is
the cost of me to the business and not just the IPF scoring i.e.
historical performance (which I couldn't appeal at the time) even
though I have made TPSS savings and production deferment impact
10 values much more greater than my pay.*

15 *I would like to stress that this is a very distressing time for me and my
family as I am losing my livelihood. I have taken a lot pride in working for
Shell (what I considered would be a career for life) and have always felt
that I was a key part of the team and the organisation. The number of
organisational structural changes I have been subjected (since I joined in
2013) has however left me disillusioned. I am keen to establish some
transparency on the matter and perhaps bring to light points that have
gone missed in what is clearly a large scale and complex process.*

20 *I look forward to hearing from you on the next steps in the process*

Kind regards

Ousman Khan"

74. Mr Vaughan met Mark Reid from the HR Department on 11 October to discuss
the appeal process. Mr Vaughan was clear on the concerns raised by the
25 claimant. He was sent the guide for Appeal Managers. The guidance related to
hearing appeals against findings of a grievance investigation. He was reassured
that the same process applied to hearing redundancy appeals.

75. It was agreed that there would be a meeting with the claimant to obtain more
30 detail about his complaints and then Mr Reid would meet the relevant witnesses.
After considering the evidence, he said he would make findings and
communicate his decision to the claimant.

76. The claimant was invited to a meeting. On 17 October, he sent by e-mail further information in support of his appeal in which Mr Vaughan reviewed. The claimant attended a meeting on 18 October. He was accompanied by Diane Thompson, an employee of Shell Group. The claimant added a further ground of appeal during the hearing namely that he understood that a contractor was undertaking one of the available roles at one of the Respondent's facilities.

77. Following the hearing Mr Vaughan conducted an investigation. He interviewed Julian Rippiner, Ben Taylor, Chris Birdsey, and Rob Jansen. He chose to interview the witnesses based on their role and the various selection panels that considered the claimant for positions in the restructured organisation as well as the involvement in giving the claimant his IPF score. He also interviewed Alistair Hope who had interviewed the claimant to assess a suitability for a Project Engineer role

78. On 20 October, the claimant had sent Mr Vaughan further information which he considered as part of the appeal.

79. After considering the evidence he had obtained and taking into account the claimant's position Mr Vaughan made the decision in relation to the various allegations. He believed that the Respondent had followed a robust process throughout the re-organisation and all reasonable efforts had been made to mitigate the claimant's redundancy. He believed that the claimant had been fairly treated throughout the redundancy process. Mr Vaughan rejected the appeal. He met the claimant and explained his reasoning to him. He was later asked to put his reasons in writing which he did on the 15 February 2017:

"Dear Ousman,

Decision following appeal hearing

I am writing following the appeal hearing that you attended with me on 18th October 2016. Also present at the hearing were Mark Reid (HR) and Diane Thomson who acted as your companion. I am writing to confirm my decision to you.

Summary of reasons for your appeal

1. Did the company follow a robust procedure throughout the recent workforce reduction process and were all reasonable efforts made to mitigate your redundancy.

5 2. Were you represented robustly and appropriately within the above process.

You raised 6 areas of concern in your appeal letter which you believe challenged the robustness of the above two areas. It was the purpose of the hearing for me to fully understand each point you have raised. As discussed I then committed to review each of your concerns thoroughly

10 and with the assistance of Mark Reid (HR), systematically and diligently. The 6 areas of concern you raised are as follows:

1. Selection criteria used by the company was not representative of me/inaccurate information was used in the panel sessions due to my having 3 line managers in the last 3 years. This was exacerbated by an apparent inconsistency in the written feedback/performance and the final IPF awarded.

15 2. Lack of clarity on the overall timeline for the appeal process and as a consequence insufficient time to prepare for an appeal.

20 3. The company has failed to carry out the redundancy process consistently and fairly. This concern was raised in the context you were advised that the Commercial department would be reduced by 2.4 FTE's and that as you had heard that two members of staff in the Commercial department took voluntary severance the target would be met without the need for additional reductions.

25 4. HR support has been poor/inconsiderate and consequently has left you poorly prepared and has affected your inability to prepare for positions and this subsequent appeal process.

30 5. Concern that the main reason for redundancy is your salary and not just the IPF.

6. There are Agency Contractor positions in the organisation which you believe you could be placed into to mitigate against redundancy.

Investigation

I have completed a number of interviews at various levels of management directly involved in this case and further corroborated the information they provided to assist me with investigating all the concerns you have raised.

5

Conclusions

Following the completion of the interviews and reviewing the information provided I have concluded that the Company did follow a robust process throughout the recent reorganisation and all reasonable efforts made to mitigate your redundancy. I further conclude that you were represented robustly and appropriately within the above process.

10

The following provides a brief summary for the reasons behind my conclusion addressing each of the six points raised in our meeting, as per your appeal letter and the information you sent subsequently. For the purposes of this letter rather than repeat each of your concerns I have summarised the salient concern and provided a summary of my findings.

15

Consultation criteria used by the company was not representative of me/inaccurate information was used in the panel sessions, my having 3 line managers in the last 3 years. This was exacerbated by an apparent inconsistency in the written feedback/performance and the final IPF awarded:

20

I have interviewed the Chairs of the respective panels in which you were discussed and also the persons who represented you to assess if they had sufficient and robust information to represent you and to understand how the session itself was conducted. In the case of the former all were comfortable they knew you sufficiently well to ensure you were correctly and robustly represented. I am satisfied the decision in each panel was based upon a quality discussion centred on the resourcing criteria and not based overly or solely on previous years performance as recorded in the annual IPF.

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You were advised on 3rd August that you were unsuccessful in the above selection panels. An important part of the process was also to take all reasonable measure to prevent redundancy. I was particularly pleased with the efforts made to ensure you were represented by all the resource

panels for the skillpool positions you expressed an interest for in your 121 mtg at the start of the process on 15th June; a Project Engineering role and a Maintenance and Integrity role. For the Project Engineering selection panel, as above, I was pleased to hear that discussions took place beforehand and you were subsequently interviewed to determine your level of experience and suitability for the positions available. The outcome from this and the Maintenance/Integrity selection panels was unfortunately that you were not successful as these were other more suitable candidates who were selected for available positions based on the resourcing criteria.

2. Lack of clarity on the overall timeline for the appeal process and as a consequence insufficient time to prepare for an appeal.

Given the above my key area of investigation was to then understand how much additional notice you had received during the process that should have prompted your preparations earlier or if the mandatory minimum 7 days after the Stage 2 letter was the first point at which you could reasonably have deduced that you were at risk with which to prepare for an appeal.

Prior to receiving the Stage 1 notification letter and as per the process, you were advised by your line manager on the 15th June that you were potentially at risk and were requested to summarise a list of alternative positions you would be interested in should you not be successful for your first choice. This was followed by the Stage 1 letter issued on the 16th June 2016. You were then advised of the outcome of the resourcing process (3 panels) on the 3rd August. The stage 2 letter was then issued on the 29th September. Given the above I am satisfied that the company has given as much information as it could reasonably be expected to do so and has kept you apprised of the situation as it unfolded. It is my belief that the above has given you sufficient time to prepare accordingly.

3. The company has failed to carry out the redundancy process consistently and fairly. This concern was raised in the context you were advised that the Commercial department would be reduced by 2.4 FTE's and that as you had heard that two members of staff in the Commercial

department took voluntary severance the target would be met without the need for additional reductions. You then raise concerns on the notification timeline.

5 *On speaking with those involved you were advised of this information on the 25th May but you were also advised at the same time that the available positions in the department would be opened up/made available for applicants across Shell UK and also returning nationals from overseas to ensure the department is resourced with very best candidates possible. The above was repeated in your 121 mtg with your line manager on the*
10 *15th June. As a consequence you were all advised that despite the seemingly modest reductions of 2.4 everyone in the department was potentially at risk. I have reviewed and addressed the concerns on the notification timeline as above.*

15 *4. HR support has been poor/inconsiderate and consequently has left you poorly prepared and has affected your inability to prepare for positions and this subsequent appeal process.*

I have provided this feedback to HR and requested they review your feedback and take action as appropriate. Without prejudicing the latter, I
20 *do also feel that you could have asked one of your colleagues to assist you with the new Open Resourcing system as required. Given my review of the notification timeline (as above) I believe you would have had sufficient time to enter as robust an application as possible.*

25 *5. Concern that the main reason for redundancy is your salary and not just the IPF.*

I discussed this with the Chair of the panel and the person representing you. They have assured me that at no point was yours or anyone's salary discussed in the selection panels. An HR representative and an
30 *Independent Panel member were also present at each and I am satisfied with the information given that they would have intervened should such a discussion on salary have ever been raised. As a consequence I am satisfied that the basis for the selection was centred on the resourcing criteria and nothing else.*

6. Agency Contactor positions in the organisation which you believe you could be placed into to mitigate against redundancy.

This matter was investigated within your Line and the conclusion is that the Agency positions you highlight are timebound and the role of Modifications Coordinator in Late Life will be filled with a Shell staff employee selected into the role during the reorganisation selection process earlier this year. The Aberdeen Leadership Team have a full list of all unplaced Shell staff to review against any potential established vacancies in the organisation and further to this potential established vacancies would be advertised on the company OR system.

Decision

On reviewing all of the information received from you and the subsequent investigation as detailed above, I have concluded that the Company did follow a robust selection process and made all reasonable efforts to mitigate your redundancy. Therefore it is my decision not to uphold your appeal.

I hope the diligence and sincerity with which I have reviewed your appeal and the information above will help you start to come to terms with this decision. I would also encourage you to make the very most of the services provided by Shell to assist you with the redundancy and planning for the future.

Yours sincerely,

Andrew Vaughan

Appeal Manager (Development/WRFM Lead: Gannet, Nelson & Triton)"

Witnesses

80. I found the claimant a generally credible and reliable witness. He clearly narrated events as he honestly recalled them. I found the respondent's witnesses similarly credible and reliable. They gave their evidence in a clear, straightforward and professional way. It was clear that they regretted the claimant's redundancy and had valued him as a colleague.

Submissions

- 5 81. Ms Mohammed began by considering the IPF scores and Mr Khan's assertion that they must have played a negative part in his selection. Her position was that there had been a lot of confusion as to their meaning and application. The 'culture' was to regard a poor score as indicating that someone was not up to the job. The IPF system was subjective in her view and its use tainted the redundancy and recruitment process.
- 10
82. Added to these problems the claimant did not get enough time to prove himself and was disadvantaged when it came to redeployment. The score was not truly reflective of individual performance as it was not calculated with regards to any objective standard. In relation to the recruitment panel there were dozens of applicants and the claimant believed that the panels would have used the IPF scores as a rough and ready way of sifting candidates. This is what he had been told. If it wasn't a significant factor why were they provided at all she queried. There was also a difficulty in translating competencies into 'Shell' language and this meant that insufficient account was taken of the claimant's pre-Shell experience. In her submission, there was a lack of 'visibility' for the claimant involved in the recruitment process as Job Descriptions and other information was not available to allow him to make proper applications for jobs.
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- 20
83. There had been problems with the interview as the claimant had been asked to attend in relation to a particular post. He was not aware of the post or ready to discuss it. He had been at a funeral the day before. He was not offered a second chance. His belief was that the hiring managers were only paying lip service to the policies. Ms Mohammed then returned to consider the IPF process and highlight what she regarded as the unfairness of the system. She then referred the Tribunal to a number of cases which might assist in the proper analysis of the position in relation to selection criteria: **Mitchells of Lancaster(Brewers) Ltd v Tattersall** UKEAT/0605/11 and **Martindale and Co v HARRIS** EAT/0166/07.
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- 30

84. Mrs Stobart first of all took the Tribunal to factual circumstances surrounding the reorganisation that had occurred and suggested the appropriate finds in facts that the Tribunal should make. She pointed to what she regarded as the careful way in which the Respondent's managers had acted. Following, as they did, their policies and guidance from the HR department at every step. This was a case where the employers had 'gone the extra mile' to be fair and transparent and to try their best to redeploy the claimant. There was an appeal process that carefully examined the concerns the claimant had raised. These were essentially the same as in the current proceedings for unfair dismissal.

85. The IPF process had elements of subjectivity but these were addressed as best any system relying on judgment could. The process was transparent. It was moderated by a panel who were aware of a candidates work. It was a ranking within a team and some of the respondent's witnesses had given evidence that on occasion they themselves had received low scores for a variety of reasons.

86. Counsel then took the Tribunal through the various re-organisations that had taken place culminating with the last one in 2016. The claimant had the misfortune to be competing with many skilled and experienced engineers not only from the amalgamation with BG but the expatriate employees returning from overseas due to the world-wide slump. The claimant had been given good advice to lower his expectations and to focus on a small number of roles. He had ignored this advice. He had been given the chance to demonstrate his project knowledge at an interview and had failed to do so. He had suggested that he was unaware that he was at risk as there were only going to be a couple of likely redundancies in his department but he must have been aware that he was competing for his job against the BG and expatriate groups. He complained that he was not told that he was at risk of redundancy when offered voluntary redundancy. The respondent cannot be criticised for not looking as if they had prejudged the matter. The claimant was a 'grown up' and should have anticipated the danger of redundancy that faced him. He was aware of the marks he had achieved and the concerns his line managers had over his performance.

87. The selection criteria used for filling the posts was appropriate and the use of the IPF score a minor and possibly insignificant factor. Similarly, he was given considerable support in seeking redeployment and there is no unfairness in that process. Even had there been the appeal which was comprehensive would have cured it. In relation to the role that was not advertised there was a sound business reason for not doing so as it had been filled and a contractor for a couple of months and used merely as a stop gap until the post holder could take it up. In Mrs Stobart's view the claimant could not be seriously suggesting that he should have been given the role for a couple of months given that it would take some time to get up to speed with the role.
88. The claimant stated that the Open Resourcing system was poorly supported. This had some basis but he was still able to make applications and has adduced no evidence of particular disadvantage.
89. It was significant that there had been no challenge to the consultation process both collective and individual carried out by the respondent. The case of **Morgan v Welsh Rugby Union** was authority for the proposition that an employer could still act fairly when selecting on the basis of an interview. This was a much more robust process with an applicant's manager advocating his position for a job before a suitably qualified and experienced panel. The system was as robust as it could be and the dismissal on the grounds of redundancy fair in all the circumstances. This could not be said to be a situation such as pertained in the **Mitchells of Lancaster** case of a wholly subjective criteria being applied. The test in any case was one of fairness as indicated in the well known case of **Green v British Aerospace** UKEAT/ 94/0679.

Discussion and Decision

90. Redundancy is a potentially fair reason for dismissal in terms of section 98 of the Employment Rights Act 1996 ('the Act'). The claimant accepted that there was a redundancy situation. The Tribunal had no difficulty in holding that the reason for dismissal was redundancy following the re-organisation in 2016. A dismissal on

the grounds of redundancy arises in terms of section 139 of the Act. In layman's terms there was not enough work to go around the expanded workforce.

91. At this point it should be recalled that the way in which an employer approaches such matters has to be within the discretion afforded to them in their conduct of the procedural and substantive aspects of such a process. As such it is not for the Tribunal to substitute its views for the decisions taken. (**Sainsburys Supermarket v PJ Hitt (2002) EWCA Civ 1588**) **Iceland Frozen Foods Ltd v Jones [1983] ICR.**

92. It is wise perhaps to start with the opening comments made in the case of **British Aerospace** where it is stated:

“ It has been accepted from the outset of the unfair dismissal jurisdiction that the concept of fairness, when applied to the selection process for redundancy, is incapable of being expressed in absolute terms. There are no cut and dried formulae and no short cuts. The recognised objectives include the retention within the reduced workforce, once the redundancies have taken effect, of employees with the best potential to keep the business going and avoid the need for further redundancies in future; as well as the need to ensure that qualities of loyalty and long service are recognised and rewarded. These are objectives which are liable to conflict with each other. When they do, it becomes the task of the Industrial Tribunal to determine whether in all the circumstances of each particular case the employers have succeeded in providing a response to the tension between them which comes within the range of reasonableness.”

93. In the past employers have used criteria that were objective but often blunt such as the number of absences or timekeeping, length of service and so forth. Criteria that try and keep the most talented employees in the business are to an extent bound to have an element of subjectivity where issues such as performance are being judged. The selection criteria are principally a matter for

employers and not an area where a Tribunal can impose its own views. It is only if the criteria are those that no reasonable employer would utilise can the Tribunal intervene. In this case the criteria used were the competencies and experience required for the post. No issue was taken about these except for the use of the IPF score.

94. These issues have a long pedigree and it might be wise to set out exactly what was said in the well-known case of Williams v Compare Maxam.

“1. The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere.

2. The employer will consult the union as to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria.

3. Whether or not an agreement as to the criteria to be adopted has been agreed with the union, the employer will seek to establish criteria for selection which so far as possible do not depend solely upon the opinion of the person making the selection but can be objectively checked against such things as attendance record, efficiency at the job, experience, or length of service.

4. The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection.

5. The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.”

5 It suggested in the Judgment that an important buttress against a selection being subjective was that the selection should not depend on the subjective opinion of one manager. A manager involved in selections can take account of assessments made by others (**Buchanan v Tilcon Ltd** (1983) IRLT 417.

95. An example of a departure from what might be called the traditional method of
10 redundancy selection can be seen in the case of **Morgan**. The issue is addressed by Judge Richardson thus:

15 ***“29. There are some redundancy cases, of which this is one, where redundancy arises in consequence of a re-organisation and there are new, different, roles to be filled. The criteria set out in Williams did not seek to address the process by which such roles were to be filled.***

20 ***30. We shall turn in a moment to the authorities which support this proposition. But it is, we think, an obvious proposition. Where an employer has to decide which employees from a pool of existing employees are to be made redundant, the criteria will reflect a known job, performed by known employees over a period. Where, however, an employer has to appoint to new roles after a re-organisation, the employer’s decision must of necessity be forward-looking. It is likely
25 to centre upon an assessment of the ability of the individual to perform in the new role. Thus, for example, whereas Williams type selection will involve consultation and meeting, appointment to a new role is likely to involve, as it did here, something much more like an interview process. These considerations may well apply with
30 particular force where the new role is at a high level and where it involves promotion.”***

- 5 96. In the present case I must reject the submission that the IPF scores are so subjective as to lead to unfairness. These are scores that are carefully worked out and developed. The employee has input into the matter. The score is finally decided by a panel at which evidence of the employee's performance is given by the line manager to other managers who are aware of the employees work. I find it difficult to criticise the system. Added to that the claimant was unable to demonstrate that in fact anyone made some improper use of this criteria and used it as the sole determinant of success. The evidence was that the various panels had access to the scores but also had other information to assess candidates including the advocacy of the line manager. The claimant was unable to show any instance where he should or would have been given a post in preference to someone else but for the IPF score.
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- 15 97. The other issues raised about the process were in general of a minor nature and do not detract from the overall fairness of the dismissal although from the claimant's perspective they were unsatisfactory. The claimant did not believe that the company had sufficiently taken into account his previous experience in project work before joining. This had some merit and is why he was given an interview by Mr Hope to demonstrate his knowledge of project work. Unfortunately he was unsuccessful but it shows that the respondent's managers were alive to such issues and flexible and fair in their approach. Once more it is difficult to see how the respondent was at fault in some way by providing this additional opportunity to him.
- 20
- 25 98. The claimant had tried to get his project work recognised through the Shell Academy. It seems that despite Mr Rippiner's assistance he was unsuccessful. Trying to do this in a short timescale was difficult as competence had to be assessed on evidenced work and the impression was that he simply did not have enough time to do so. We should also not forget that the claimant had his line manager's support in seeking work and there appears to have been no lack of effort on his part in advocating the claimant's merits to hiring managers.
- 30
99. One of the threads running through the claimant's evidence was that he felt that he had not been sufficiently warned that his position was in peril. With all due

5 respect the claimant was an experienced professional and must have been able to see the difficulties the company would have in accommodating staff from BG and returning expatriate employees. It would have been problematical to say the least had he been told that he had been assessed as being likely to be made
10 redundant when offering voluntary severance and we are not critical of the employer for the approach they took. Mr Khan suggested that he should have been told that recent improvements in his work might not be enough or more forcefully told to accept a lower grade post. These are all no doubt regrets but he must have realised that taking a step back as it were and accepting a lower grade
15 post might have allowed him to stay with the company and move forward again in his career if business improved. He chose not to do so and to insist on staying at the current grade despite being aware of the circumstances that militated against this including his relatively low grades. The Tribunal heard evidence that many managers, including Mr Birdsey, had on occasion received a relatively low score for reasons pertaining to the team he was in and his performance at that time.

100. The claimant also raised the fact that a post was filled or rather remained filled by a sub-contractor. The matter was fully explained by the fact that they were just temporarily filling it awaiting the new post holder's arrival and that the disruption
20 of asking the claimant or anyone else to fill it temporarily for a couple of months was outweighed by the potential disruption that would entail.

101. No redundancy process is perfect and there were difficulties such as the pressure on the HR department and the relative vagueness of some expected skills
25 needed for newly created positions. The claimant was however, not alone in facing these difficulties. They applied to everyone. Overall the way in which the whole exercise was carried out by the respondent's net's managers impressed the Tribunal as being fair and robust. The support given to the claimant was of the sort seldom encountered by Tribunals.

30 102. I can quite appreciate how upset the claimant must have been at losing his post and not being redeployed. That was a misfortune for him and his family. He was unlucky to have been a relatively recent recruit to the respondent and to face a

series of reorganisations forced on the company by the downturn in the industry.
He was in short in the wrong place at the wrong time.

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Employment Judge: James Hendry
Date of Judgment: 30 June 2017
Entered in Register: 30 June 2017
and Copied to Parties

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