Case No: 2301203/2017

EMPLOYMENT TRIBUNALS

Claimant: Mr. S. Wardill

Respondent: Shell International Petroleum Company Limited

Heard at: London South, Croydon **On: 4-6 April 2018**

Before: Employment Judge Sage Representation

Claimant: In person

Respondent: Ms. Bowen of Counsel

REASONS

Requested by the Respondent.

1. By a claim form presented on 4 May 2017 the Claimant claimed unfair dismissal. The Respondent stated that the dismissal was fair and on the grounds of redundancy. Although the Claimant applied for a role in an Australian company, this was a separate entity from the Respondent and the Claimant was not a suitable candidate for the role.

The Issues

2. At the commencement of the hearing there was a discussion about the issues in the case, it was noted that there was reference in the Claimant's statement automatic unfair dismissal and discrimination. The Claimant confirmed that he was only pursuing a claim for unfair dismissal. The Claimant conceded in the preliminary discussion that there was a genuine redundancy and there were genuine business grounds. The Claimant told the tribunal that the dismissal was unreasonable and unfair on two grounds:
    1. The Global policy made him less attractive as the Australian company would have to pay 50% more for him and the Respondent refused to allow him to waive his pension and relocation benefits. He stated that the Australian company was

not able to make a decision as he would have to show that he was exceptional enough to justify paying the premium;

2. The Claimant also claimed he had been unfairly treated in his application for the Australian role by Ms. Armstrong. He referred to threats that she made about him raising a grievance, stating damaging things may occur; he also alleged that she produced a reference that was damaging to the role. He described this as extreme negligence and could only have been as a result of him raising a grievance.

Witnesses

The Respondent produced a witness statement by Mr Wheeler, however, Mr Wheeler had since refused to attend the hearing. The Respondent asked to produce this witness statement in evidence, even though he would not attend. The Claimant objected to Mr. Wheeler's statement, stating that had he known he was not attending, he would have contacted him personally. The Claimant believed that he would be prejudiced as a result of the admission of this statement. After some discussion, explaining what weight a tribunal can place on a witness statement that is not accompanied by live evidence, he withdrew his objection. Mr Wheeler's statement was therefore accepted in evidence.

Mrs. Lee gave evidence via video link the morning of 5 April 2018, from Australia
Ms. Armstrong gave evidence
The Claimant gave evidence but called no additional witnesses

It was agreed at the start of the hearing we would concentrate on liability and if appropriate, then move to remedy.

The Findings of Fact

3. The Claimant was employed by Shell International Petroleum Co Ltd "the Respondent". The Respondent is part of a global company comprising of approximately 1416 individual companies under the umbrella of the parent Company Royal Dutch Shell plc; the parent company is not a party to these proceedings. There was also a group of companies based in Australia under a group called BG Group Limited, this was an entirely different group of companies under the Shell umbrella. After a consolidation in 2016 Shell Australia Pty Ltd and QGC Ltd "QGC" were integrated into the Royal Dutch Shell plc group by the purchase of the BG group. The Tribunal saw an organogram of this group of companies was seen on page 303 of the bundle, it was not disputed that the QGC was a separate legal entity based in Australia and entirely distinct from the Respondent company and had its own distinct management structure and was responsible for its own hiring strategy and its own HR department. QGC worked under the Shell Global Policies including the Base Country Philosophy (see below).

The Policies

4. The Tribunal were taken to a number of policies in the bundle which were relevant to the issues in the case, firstly at page 185 of the bundle which was the Base Country Philosophy. In outline, this policy stated that a fundamental building block for an employee's career and terms of conditions of employment is determined by the Base Country. It confirmed that decisions as to the Base Country are made on hiring and the expectation remained unchanged throughout an employee's career. Base Country was set by recruitment and after consultation with the line manager, the supporting HR advisor and, where appropriate, the candidate. It was an expectation under this policy, that the Base Country would not change throughout an employee's entire career. The Base Country impacted rate of remuneration, retirement and risk benefits, travel entitlements and rights on termination of employment. The policy stated that Base Country decisions were important because they "assessed the strength of country and regional talent pipelines and the resourcing interventions [the Respondent] needed to take in particular countries and regions". This policy was common to the Respondent and to QGC.

5. The Tribunal were also taken to the Local National and Non-National "LNN" overview at page 189 of the bundle; the terms were applicable to new and existing employees on local terms in a country other than their Base Country. This was said to fit in to Shell's resourcing philosophy because "*international mobility policies support the business objectives by providing a suite of resourcing options that can be used as and when appropriate to ensure continuity of the business, talent development, transfer of skills, promote diversity in leadership positions and ensure governance to maintain adherence global standards and policies. Most employees that work for Shell will be on local terms it is the company's objective to continue building strong local talent pipelines. However, when it is not possible to find local talent (internally or externally), or where there is a requirement to fill a position with an international staff, the position qualifies for resourcing with staff on IBAS terms*". The policy then went on to state that if a job did not meet the criteria for ex-patriot appointments, *"it will be posted on local terms. There are no suitable candidates available (i.e. candidates with the same base country as the country where the job is located) the job can be offered to a candidate with a different base country on local non-national terms (previously referred to as LNN scenarios…). An employee who is interested in this vacancy has to make a conscious decision about applying for a job outside Base country on local terms. For existing Shell employees (previously referred to as going on LNN scenarios 5 and 6) the appropriate level of approval has to be obtained to be able to continue with the offer*". The effect of the interaction of the Base Country Philosophy and the LNN policy was that employees would remain in their Base Country, which was determined on appointment. Appointment to a role outside of the Base Country would only be under limited circumstances outlined above where there were no suitable local candidates and appropriate approval had been given by the Company. This was a legitimate policy that pursued a sound business objective for a multinational group of companies. Even though the Claimant referred to these policies as an anachronism he accepted that in a redundancy, the first place that the Respondent should look for roles is in the UK (in the employee's base country).

6. Mrs. Lee gave evidence to the Tribunal via videolink; she is employed by Shell Australia Pty Ltd and confirmed in her evidence that she was responsible for HR matters (including strategic planning and the application of "relevant global and local HR policies for both Shell Australia Pty Ltd and QGC Pty Limited"). Mrs. Lee's evidence about the local application of the LNN policy was in her statement at paragraph 10; she confirmed that they would only consider someone outside of their Base Country for a role in Australia if there was no available talent in the local market and the candidate had a strong background and experience fit. She also stated that the case would have to be put for the candidate to be appointed on local non-national terms or on an expatriate assignment and the appointment would have to be approved by the Vice President of HR and the Country Chair in Australia (as the host country). Mrs. Lee's evidence was that the Base country only changed in exceptional circumstances with sign off from the chief HR Officer. This evidence was entirely consistent with the policies in the bundle (referred to above at paragraphs 4 and 5) and it was evident that QGC was responsible for implementation and interpretation of both global and local policies. There was no evidence to suggest that the Respondent Company had any role to play in decisions made locally in Australia by QGC, thus confirming that the Respondent and QGC were separate legal entities.

7. The Claimant did not dispute that he was aware of these policies and also conceded that they applied to him and that they were global policies that applied in all Shell companies. The Claimant's Base Country was the UK.

The Facts relating to the Claimant's employment

8. The Claimant was employed by the Respondent on 1 December 2008 and in his claim form, he describes his role as Bill of Materials Lead (BOM). Although the Claimant made reference in his witness statement to raising a grievance in May 2016, he confirmed in his witness statement that this was background information and accepted that was there was no mention of any complaint about the grievance process or how it was handled in his claim form. The Claimant complained in outline, that during the conversation in the informal process of the grievance with his new line manager, Ms. Armstrong, she made an alleged threat that he may find the grievance process damaging (see page 44 of the bundle which was an email dated the 4 May 2016 giving an account of the discussion). This was put to Ms. Armstrong in cross examination who denied making any such threat and confirmed what she meant was that he may find it emotionally difficult to be faced with fact-based performance issues on the basis of his perception. She also went on to explain that she felt he had a fixed view on where he believed he should be and this "suggested to me you did not want a different answer". Ms. Armstrong was also concerned that the Claimant "hadn't sought other avenues to seek different answers". She denied that what she said in this meeting amounted to a threat. She stated that she was "concerned about a member of the team feeling valued and this [the grievance] would not give you what you desire". Although it was noted that the Claimant focused on one element of the email, where she referred to the fact that the process may

"prove damaging" she referred to the tribunal to the final sentence of that email where she stated, "I am happy to accompany the grievance process, and hope it will help, as nobody in the team should feel devalued". The Claimant conceded in cross examination that on hearing the evidence given by Ms. Armstrong in cross examination, that she had no malicious intent but still felt that the grievance process was unfair. The Tribunal find as a fact that on reading this email as a whole, it was honest and balanced and did not amount to a threat.

9. The Claimant decided to proceed with his grievance and the tribunal were taken to his formal grievance email dated 8 May pages 46 to 48 of the bundle. The thrust of the grievance was to seek a change in his salary group from salary JG3 to JG 2 with immediate effect. Ms. Armstrong dealt with the Claimant's grievance and although he was unsuccessful, she recommended in the outcome letter dated 31 May at page 63 of the bundle that "in the reorganisation announced on the 25th May your role, which has again been mapped as a project role, be formally evaluated to ensure that the JG is clear" (see page 65 of the bundle). Ms. Armstrong in answer to the tribunal's questions confirmed that she agreed that the Claimant's role should be formally evaluated and confirmed that the job mapping that took place resulted in a change in the job description. She explained that although the

   Claimant's role used to be described as BOM which stood for Bill of Materials, the abbreviation can also be used interchangeably for Business Opportunity Manager, which had the potential to cause confusion, she therefore changed the title of the role to "MM Inventory Optimisation Lead" (see page 72-3 of the bundle). She also confirmed that she did not consider that the changes made to the job description was more than a 30% change, she stated it was a strategic role and therefore there was no change in scope in relation to status. In practice, it was her understanding that her predecessor had delegated significant tasks to the team and the job description was a formalisation of what had happened on the ground. Ms Armstrong described it as "a change in implementation, not in content". She denied when it was put to her that it was an abuse of process, it was a continuation of a process of job role at JG3 and when the Claimant declined it, they pushed no further. Although the Claimant was disappointed in the way in which his role had been mapped, he raised no objection about it at the time.

The Business Reorganisation.

10. Mr Hoekstra emailed the Claimant on the 27 June 2016 to warn of a potential redundancy due to a proposed restructured of the organization (pages 8081). The email confirmed that they would attempt seek to identify appropriate alternative of employment for all employees who are in a similar situation, either within the company or other appropriate business or companies in the Shell group, the email contained an assurance that appropriate support was available for affected employees. The letter stated that there would be oneto-one discussions during that month and they would continue to consult with individuals throughout the process. The Claimant confirmed that a fair process was followed, and he had no complaints about the consultation process generally and also accepted that even though the letter offered to discuss the process and how the changes would impact on the employee, he could not

recall taking up the opportunity of discussing the process with anyone. The Claimant confirmed that he applied for about 10 roles within the Respondent company at both JG2 and JG3 grade but was unsuccessful. Again, he made no complaint about process followed in his applications for suitable alternative employment.

11. The Claimant confirmed in an email to Mr Hoekstra on the 22 July 2016 (page 79) that he did not wish to be job mapped to the role if it was graded at JG3 and wanted this confirmed before 30 June and would only accept if it was regraded at JG2. The Claimant clarified that he was aware of the impact that this decision would have on his job security as he stated, "for the avoidance of doubt, I request not to be mapped to the BOM lead role (or any other role) at JG3 and I acknowledge that this does put me at risk of redundancy".

12. It was put to the Claimant in cross examination that it was unreasonable to refuse a job at the same grade and the Claimant disputed this saying that he "could not be appointed to any role, it must be sufficiently similar to be mapped"; he clarified that he did not object to all roles at JG3, he just did not want to be stuck at JG3. He felt that he was stuck in a dead-end role and there were policies within Shell that prevented this from happening. He confirmed that he raised the grievance because he knew that there would be redundancies and he felt that he would be "encouraged to apply for the role not to be mapped for it". He felt that if he did not apply people may feel he was being unreasonable, but the grievance procedure allowed him to explain and place the facts before them however he accepted that the "circumstances turned out completely different" as he was "truly surprised to be mapped for the role". He accepted in cross examination that he did not raise his concern with the Respondent that he was being pushed into a deadend role, he was giving this explanation to the Tribunal as background evidence

13. The Claimant then applied for a role in QGC of Materials Manager Lead in Brisbane; the job description was at page 101 bundle. The Claimant contacted Mr Wheeler on 22 September and this communication was page 102 of the bundle. This was a JG3 role, the same salary grade as his current role. It was noted in his email he indicated that he was keen to make this job work, he indicated that he was aware that Shell is inflexible on location. "*Unless the hiring manager can afford an expat*". He went on to state, having met his wife in Australia and had a young family, he was keen to pursue this opportunity. However, he went on to recognise that "my friendly HR contact (who has experience of trying to get people moves to Oz) has told me Shell Australia are unlikely to support me applying locally as an external allowing me to transfer Base country now. He suggested that I try what Shell called local non-national (LNN) terms now". He suggested in his email that he could live with the extra cost and confirmed to the tribunal that this meant giving up his pension rights and foregoing a relocation payment. The Tribunal finds as a fact that even at early stage, the Claimant recognised that the policy in relation to Base Country made it unlikely that he would be able to take advantage of the opportunity and was seeking to make a special case by attempting to trade-off his benefits make his application look financially viable to the Respondent.

14. The problems associated with this application were also recognised in the Claimant's email to Mr Gorton in the bundle at 113 dated 20 September, where he stated that "Shell's normal policy options for an internal transfer (local non-national or expat terms) are unlikely to be practical or economic for me of (sic) the company. Resigning in the UK and starting afresh in Shell Australia are also unlikely to work unless endorsed by HR".

15. The Claimant then wrote to Mr Hoekstra on the 22 September 2016 as part of the redundancy process (page 114). The Claimant recognised that he had not been successful in his applications for JG2 roles stating that "it is tough to seek promotion into a new capability in the current climate..". In his email he also referred to leads he was pursuing which included the QGC (Australia) MM Lead role which he referred to as within his target segment and within his relevant experience. He stated that *"If the hiring manager is supportive I may need some support to make this work. I am prepared to move mountains and make any sacrifice myself to make this work if there is a will on Shell side*". It was clearly evident that the Claimant was keen in pursuing this role.

16. The reply from Mr Hoestra was supportive and stated that the QGC role would be an "ultimate match" (see page 119 of the bundle dated the 27 September 2016). Mr Hoestra went on to confirm that the formalities with the Stage 1 notice was complied with on the 27 June 2016 and the stage 2 letter would be sent on the 1 October . The letter of termination was seen at page 124 of the bundle and the termination date was confirmed to be 30 November. The Claimant was given seven days in order to appeal the notice of dismissal but did not appeal at the time because he told the Tribunal he had no reason at this stage to appeal. He confirmed that he had no complaints about the process followed by the Respondent. He confirmed that the only grounds that he would consider appealing was the failure to consider him for the QGC role and this was the only criticism he made of the redundancy process.

17. What transpired in relation to the QGC role was that the Claimant was informed in an email on the 4 October 2016 that "in the grand scheme of things, relocation costs is not a deal breaker" (page 129) and the more relevant issue was whether the Claimant had "the mandate to go for LNN vs local external hiring". This appeared to be the policy standing in the Claimant's way. The Claimant made contact with Mr Wheeler and he was informed that QGC had a "very good response" to their advert for the role from candidates in the Base Country. It was clear from the email chain on the 4-5 October (see page 131) that a number of managers in the Respondent Company were indicating support for the Claimant pursuing this role. Mr Schmitz indicated that if "he is the best person for the job then we need to explore how and or if we can make it work with HR" he also indicated that this should be left to Mr Wheeler to form his own opinion of the Claimant after conducting an interview.

18. The Claimant emailed Mr Wheeler on the 6 October 2016 (page 134) stating that if he was the "preferred candidate and were taken on as Local NonNational, the biggest extra costs are relocation and UK pension. On the relocation side I am happy to self-fund. I also have confirmation from the UK Shell Pension Advisory Unit that I can give up pension accrual and I'd be happy to do that..".

The Tribunal also saw an email from the Claimant to Mr. Gorton dated the 10 October (page 135) accepting that "ultimately I may not be James' preferred candidate. If that is the case, then I'd understand. I just don't want him to reject me because of a perceived cost and complexity that could be mitigated".

19. On the 10 October 2016 Mrs Lee addressed the LNN policy issue with Mr Wheeler. It was her view that "as this role was broadcast for as a local position and [the Claimant's] base country is not AU he is not eligible to apply". She then went on to accept that if there was a strong business case to demonstrate that there was no available talent in the local market and "this candidate has a strong talent background and experience fit there is an option to request approval for a Local Non National or expat assignment".
    She confirmed that this required approval from the VP HR and Country Chair. She advised Mr Wheeler that as there were a number of local candidates being screened from the local market, he should not progress the Claimant's application at this time.

20. Even though it was Mrs Lee's view that they should not advance the Claimant's application at that time, Mr Addison in Shell Australia advised Mr Wheeler (page 145 dated the 13 October 2016) that they should interview the Claimant first prior to progressing with external candidates. However, it remained Mrs Lee opinion that the Claimant was not eligible to apply and expressed her views to Mr Addison on the same day.

21. Mr Wheeler made the decision to interview the Claimant after he had had received endorsements from Ms. Armstrong, Mr Gorton and Mr Schmitz. It was noted that the Clamant had asked Ms Armstrong to 'intervene' to help him be considered for the role (see page 153 dated the 23-26 October), her reply was that she was "happy to act as an honest referee". Although the Claimant put to Ms Armstrong that he did not want a reference she confirmed in re-examination that he did not reply to her indicating that he did not wish to be provided with a reference.

22. It was agreed that the Claimant would be interviewed and Ms. Chinkin HR in QGC advised that if the Claimant was considered to be the approved candidate they would need to request LNN which involved the provision of the cost/budget implications which were outlined in the email. The Claimant was interviewed on the 10 November 2016.

23. The Claimant received no feedback from his interview. Ms. Armstrong emailed Mr Wheeler on the 11 November 2016 (page 169) asking for an update on his application as she indicated that they were in the process of "offboarding" the Claimant by reason of redundancy. She asked for an update of whether he was considered to be the preferred candidate as if he was then she would stop the process. She also clarified that she was happy to provide a reference should one be required. The Claimant accepted in cross examination that this was done to try and help him.

24. Mr Wheeler asked Ms. Armstrong for feedback on the 19 November which she provided on the 20 November (page 176). It was noted that Ms. Armstrong had been asked to provide details of his ability to lead and manage a high-

performance team. Her response was detailed, and she highlighted a number of positives (high intellectual capacity and rational with a good subject matter knowledge) and also a number of negatives (fixed in his interpretation of HR policies and his challenge in relationship skills area); she also included highlights and areas where he could improve. In cross examination Ms. Anderson said that this was a fair balanced and unbiased feedback; the Tribunal find as a fact that this was an honest reference and was evidence based. Although the Claimant stated that she should not have provided him with a reference as she was biased due to her involvement with the grievance process, this was considered to be rather disingenuous as she had been asked to intervene to support his application and this she had done. The Claimant also put to Ms. Armstrong that she should have referred to his IDP, she disagreed. The Claimant accepted in cross examination that he provided Mr Wheeler with a copy of his IDP prior to the interview. The Claimant clarified in answers given in cross examination that he was not suggesting that Ms. Armstrong's reference was malicious or retribution for raising the grievance, but he was suggesting (having heard all the evidence) that it was unfair and clarifying that the comment made in the reference about the interpretation of HR policies came out of the grievance process.

25. On the 22 November 2016 (page 178) Mr Wheeler received confirmation from QGC that they would not be proceeding with the Claimant's application. Unfortunately, the Claimant was not informed of this prior to the termination of his employment. There was no evidence that QGC's failure to inform the Claimant of this decision was due to any act or default of the Respondent. Although the Claimant took issue with the phrase used in the email of "seems that we will not be proceeding.." which he stated was highly suggestive that someone else had made the decision, there was no evidence before the Tribunal that this was the case. An appointment was made into the QGC role from a local hire which appeared to be consistent with the base Country philosophy.

26. The Claimant's employment was terminated on the grounds of redundancy with an EDT of the 30 November.

Submissions

27. Both parties produced written submissions and then made oral submissions. They were taken into account and referred to in the decision, as appropriate.

The Law.

Section 98 Employment Rights Act 1996

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show--

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

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

(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)--

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) [Where] the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)--

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.

Decision

28. The Claimant did not dispute that the reason for dismissal was redundancy, not did he suggest that this was anything other than a genuine redundancy. There was also no challenge to the fairness of the consultation process applied by the Respondent, the Claimant accepted that he had the opportunity to consult and to apply for other roles. He applied for 10 roles but was not successful; there was no suggestion that there was any procedural or substantive failure in the process adopted by the Respondent when considering applications for roles in his Base Country.

29. The Claimant made two specific complaints that, in his view rendered the process unfair; the first of which was that Ms. Armstrong treated him unfairly because he raised a grievance. He described her actions as showing enmity towards him. Having seen all the evidence in this case, it appeared that Ms. Armstrong acted professionally and in a measured way during the grievance process and in her involvement in the Claimant's application for the QGC role. The Tribunal noted that she supplied a reference to Mr Wheeler, after reaching out to him and the reference provided was balanced and fair. It may not have been precisely the reference the Claimant wanted but it was evidence based and balanced. There was no evidence that she had disclosed what the Claimant described as privileged materials in relation to the comment about HR policies. Although the Claimant asked the tribunal in closing submissions to count every line in this reference to see how many positive and negative comments there

were, this would be inappropriate as the important issue for the Tribunal is whether the Respondent acted fairly and within the band of reasonable responses. As this was a factual and balanced reference, it is concluded that the reference was fair and reasonable.

30. Even though the Claimant suggested that Ms. Armstrong refused to intervene to request that the policies of Base Country and LNN be waived, the Claimant's approach to the role in Australia appeared to corroborate her view of the Claimant about his attitude to HR policies. It was noted in the Claimant's oral submissions he confirmed that if the Respondent had asked QGC to waive their policies "we would not be here". That is what this case is really about for the Claimant. The Claimant clarified in cross examination that he felt it was unreasonable for the Respondent to refuse to grant him an exemption to the policies.

31. It was not the Respondent's duty to encourage an entirely separate legal entity to waive global policies, Ms. Armstrong was not in HR and did not work for QGC, her only involvement in the redundancy process was to provide a reference and to offer to provide support to the Claimant, which she did. It was also noted that she chased up his application shortly before the termination date. It is difficult to understand what more she could have done. Although the Claimant accepted in closing submissions that it was not Ms Armstrong that was culpable, it was an organizational culpability laying the blame at the door of the parent company; this was the first time that this has been raised as an issue and there was no evidence to suggest that this was the case.

32. The Claimant claimed further that the decision to dismiss on the 30 November was procedurally unfair because the Respondent was aware on the 22 November that he had been unsuccessful for the QGC role. He stated that had he been aware of this, he would have appealed against his dismissal. He submitted that as a result he was denied the opportunity to appeal. Evidentially there was nothing to suggest that the Respondent was aware of the decision of QGC not to continue with the Claimant's application at that time. The tribunal found as a fact that Ms. Armstrong had communicated with Mr Wheeler on the 11 November informing him that the offboarding process was underway and then providing the reference; she could have done no more. It was Mr Wheeler's decision not to communicate with the Claimant to inform him that he had not been successful, and he was not an employee of the Respondent. This default was not because of any act or omission of the Respondent or their employees, they are therefore not culpable.

33. In any event even if the Claimant had appealed the decision to dismiss, he was firstly out of time as the right to appeal the decision to make him redundant was finalized on the 1 October when the letter was sent to him giving him 7 days to appeal. The Claimant confirmed to the Tribunal he had no reason to appeal at that time. The only thing that had changed after the time limit had expired was that QGC had decided not to proceed with his application; this decision was taken by employees employed by QGC in respect of an HR process operated entirely separately and distinctly from the Respondent company. The only complaint the Claimant wished to pursue was about QGC's decision to reject his application and to pursue a local hire. If he wished to complain about QGC's

conduct, he was entitled to communicate with them directly, but there was no evidence that the Respondent had any involvement or control over the decision taken by Mr Wheeler or anyone else at QGC.

34. The Claimant challenged the fairness of the parent company to apply the policy to him with the result that it made him more expensive than a local candidate. He described in closing submission to the Base Company and LNN policies as "Shell constructs" which are imposed on QGC. This was a complaint about Royal Dutch Shell Group who are not party to these proceedings; the tribunal has heard no evidence from them and no findings of fact have been made about this matter. This is an argument that is unsupported by any evidence. It is also entirely a matter for the employer to decide how it will organize its business and these policies had sound business functions and made financial and organizational sense to the way in which they developed their business; it is not for the Tribunal to interfere with strategic business decisions.

35. The next issue is whether the Respondent considered suitable alternative employment. It was not contested that the Claimant applied for 10 roles during the redundancy process and the Claimant did not challenged the fairness of the process. He also did not criticise the redeployment process operated by the Respondent. His only criticism was in relation to the QGC
role in Australia, however this was not a role within the Respondent's corporate structure or within their jurisdiction. Having been referred to a number of authorities by the Respondent, I have found as a fact and have noted that QGC and the Respondent are entirely separate legal entities. Can the Claimant therefore refer to the QGC role as suitable alternative employment? I have been reminded that the corporate veil can only be raised in very exceptional circumstances, where for example there is evidence of perjury. There are no circumstances in this case that suggest that raising the corporate veil would be appropriate in this case.

36. Turing to the case referred to by both the Claimant and Respondent of Perfums Givenchy v Tabaquin Finch UKEAT/0157/09 where it was confirmed that limited companies operate autonomously "and where they have their own HR and line managers, it would be unusual for one limited company to be able to impose its will on another or for the controller of the group to be able to do that". The factual matrix in the case before the Tribunal was that QGC and the Respondent were entirely separate legal entities with separate HR functions, the evidence was clear that the decision not to proceed with the Claimant's application was made locally after seeking advice from local HR teams, there was nothing to suggest that the Respondent played any part in the decision making process or that they had any influence over QGC's hiring decisions. I also considered the case of Prest v Prest and others [2013] 4 All ER 673 and Adams v Cape Industries PLC [1990] 1 Ch.

37. The evidence provided by the Respondent was consistent that it was impossible for them to appoint the Claimant to a role in a different legal entity within the group; it would be outside of the principles advanced in the Base Country and LNN policy, which was designed to attract and build on a strong regional talent, hired locally. It was also noted that QGC appointed a local hire

to the role, a decision that appeared to be consistent with the policies applied locally and consistent with the views expressed by Mrs Lee in emails to Mr Wheeler.

38. Having considered the factual matrix in the Givenchy case, it is concluded that it is entirely different to the case before me, in the Givenchy case the same HR person was involved and there was a suggestion of bad faith. In the case before the Tribunal, the Claimant claimed that the parent company placed undue pressure on QGC to comply with the policies but there was no evidence to suggest that this was the case. There was no evidence in this case to suggest that the Respondent could allocate the Claimant to a position in QGC.

39. The duty on the Respondent in a redundancy situation is to consider alternative employment to avoid a dismissal on the grounds of redundancy. This they did. They also tried to assist the Claimant in his application for the QGC role; it was found as a fact that Mr Hoestra was supportive of the Claimant's application (see above paragraph 16) as was Mr Schmitz and Ms. Armstrong. This indicated that the Respondent took positive steps to assist the Claimant, but it was apparent that despite this assistance, QGC decided to proceed with a local hire based on their analysis of the candidates before them. This decision appeared to be fair and reasonable and showed that the policy was applied and interpreted on the ground by local HR. The Respondent did all they could to assist the Claimant's application, but the decision made to reject the Claimant for the role in Australia was taken by QGC and not the Respondent.

40. On the facts of the case it would not be appropriate to raise the corporate veil to consider the fairness or otherwise of the actions of QGC a completely separate entity, not under the control of the Respondent.

41. I conclude that the Respondent acted reasonably in dismissing the Claimant for redundancy and concluded that they did all that was reasonable to assist the Claimant in securing an alternative role. The test is within the band of reasonable responses for a reasonable employer, it is not for me to substitute my views for that of the employer. Although I understand that the Claimant felt aggrieved by the application of these policies to him, this was a decision made by an entirely different legal entity, it was not a decision made by the Respondent and was not a decision they sought to influence adversely.

42. I conclude the Respondent acted reasonably in firstly conducting a fair process, giving due warning, they assisted the Claimant in his job search and provided positive support for the external QGC role. Despite the support offered, the Claimant was unable to secure a position and was made redundant. As I have found the dismissal to be procedurally and substantively fair I need not proceed to consider Polkey.

43. The Claimant's claim is dismissed.

Case No: 2301203/2017

25 February 2019

RESERVED JUDGMENT & REASONS sent to parties on: 25 February 2019

Hadijatou Nyang

For the Tribunal Office