EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mr C Byrne	V	**Agema Engineering Ltd**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Birmingham (by CVP and in person) **ON 1 & 2 September 2021**

EMPLOYMENT JUDGE DEAN sitting alone

Representation
For the Claimant: in person (assisted by Ms Grierson)
For the Respondent: Mr Hignett, of counsel

JUDGMENT

The judgment of the Tribunal is that :

1. The claimant's employment with the respondent was terminated by reason of redundancy
2. The claimant was not unfairly dismissed.

REASONS

Background

1. The Respondent manufactures plastic moulding and had around 170 employees at the material time. The Respondent operates from 4 plants on Bayton Road in Coventry. Each plant works on different orders, and different delivery schedules. The four Plants are numbered 1,2,3 and 4 with Plant 2 being a separate toolmaking company under the Agema Group.

2. The Claimant was employed as a Material Handler from 27 May 2013, working in Plant 3. Following the Covid-19 pandemic which struck in March 2020 the respondent placed all its employees including the claimant on furlough. The business began to recall employees from furlough on a phased basis and He was dismissed by reason of redundancy on 2 December 2020. The claimant complains that he has been unfairly dismissed having been unfairly selected for redundancy.

Issues

3. The issues to be determined in this case relate to a complaint of unfair dismissal and in particular unfair selection for redundancy.
    a. What was the reason or principal reason for dismissal? The respondent says the reason was redundancy.

    b. If the reason was redundancy, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. The Tribunal will usually decide, in particular, whether:

        i. The respondent adequately warned and consulted the claimant;
        ii. The respondent adopted a reasonable selection decision, including its approach to a selection pool;
        iii. The respondent took reasonable steps to find the claimant suitable alternative employment;
        iv. Was the dismissal within the range of reasonable responses.

4. Remedy for unfair dismissal

4.1 Does the claimant wish to be reinstated to their previous employment?

4.2 Does the claimant wish to be re-engaged to comparable employment or other suitable employment?

4.3 Should the Tribunal order reinstatement? The Tribunal will consider in particular whether reinstatement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

4.4 Should the Tribunal order re-engagement? The Tribunal will consider in particular whether re-engagement is practicable and, if the claimant caused or contributed to dismissal, whether it would be just.

4.5 What should the terms of the re-engagement order be?

4.6 If there is a compensatory award, how much should it be? The Tribunal will decide:

4.6.1 What financial losses has the dismissal caused the claimant?
4.6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

4.6.3 If not, for what period of loss should the claimant be compensated?
4.6.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
4.6.5 If so, should the claimant's compensation be reduced? By how much?
4.6.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
4.6.7 Did the respondent or the claimant unreasonably fail to comply with it by [specify alleged breach]?
4.6.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
4.6.9 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?
4.6.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
4.6.11 Does the statutory cap of fifty-two weeks' pay or £88,519 apply?

4.7 What basic award is payable to the claimant, if any?

4.8 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

The Law

Unfair dismissal – reason for dismissal

5. The relevant legislation is found at s98(1), (2) and (4) **ERA**.

6. It is for the employer to show the reason for dismissal and that it is a potentially fair one, such as conduct: this is not a high threshold for a respondent. In **Gilham and ors v Kent County Council (No2) 1985 ICR 233**, the Court of Appeal held as follows:

> *The hurdle over which the employer has to jump at this stage of an inquiry into an unfair dismissal complaint is designed to deter employers from dismissing employees for some trivial or unworthy reason. If he does so, the dismissal is deemed unfair without the need to look further into its merits. But if on the face of it the reason could justify the dismissal, then it passes as a substantial reason, and the inquiry moves on to [s98(4)] and the question of reasonableness.*

Unfair dismissal – fairness

<u>Substantive fairness</u>

7. Section 139 Employment Rights Act 1996 provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:-

   (a) The fact that has ceased or intends to cease to carry on business for the purpose for which the employee was employed or in the place where the employee was so employed or

   (b) the fact that the requirements of the that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish.

8. The tribunal has applied the test and guidance in Murray-v- Foyle Meats Ltd 1999 ICR 827

9. Determining the pool for selection for redundancy is principally a matter for the employer and it is difficult for the employee to challenge it Taymech Limited v Ryan [1994] UKEAT 663. I am reminded by Mr Hignett that any attempt by the Tribunal to embark on a rescoring exercise creates a risk of substitution, Russell v Colle of Northwest London UKEAT/ 0341/13/MC.

Procedural fairness

10. Following the case of **Polkey v AE Dayton Services Ltd [1988] ICR 142**, it is well established that fairness in procedure is a vital part of the test for reasonableness under s98(4) **ERA**. It is not relevant at this (the liability) stage to consider whether any procedural unfairness would have made a difference to the outcome: that is a matter for remedy (the issue in **Polkey** is set out below).

11. If there is a failure to adopt of fair procedure, whether by the ACAS Code's standards, or the employer's own internal standards, this will render a dismissal procedurally unfair.

12. Regarding dismissal for conduct issues, the reasonableness of the procedure rests fairly heavily on the reasonableness of the investigation, and the provision of opportunity for the employee to make his position, explanation and mitigation heard and understood.

13. Procedural and substantive fairness do not stand as separate tests to be dealt with in isolation – **Taylor v OCS Group Ltd [2006] ICR 1602**. It is, ultimately, a view to be taken by the tribunal as to whether, in all the circumstances, the employer was reasonable in treating the reason for dismissal as a sufficient reason to dismiss. It may therefore be that in a serious case of misconduct, it may be fair to dismiss, even if there are slight procedural imperfections. On the other hand, where the conduct charge is less serious, it may be that a procedural issue is sufficient to tip the balance to make the dismissal unfair.

Polkey reduction

14. The decision in **Polkey v AE Dayton Services Ltd [1987] UKHL 8** permits the reduction of compensation when, even if a fair procedure had been followed, the Claimant would have been dismissed in any event.

15. Compensation can be reduced as a percentage, if a tribunal considers that there was a percentage chance of the employee being dismissed in any event. Alternatively, where it is found that a fair procedure would have delayed dismissal, compensation should reflect this by compensating the employee only for the length of time for which dismissal is found to have been delayed.

16. The Tribunal has to consider what difference a fair procedure would have made, if any. It is for the Respondent to adduce evidence on this point. It is always the case that a degree of uncertainty is inevitable, unless the process was so unreliable it would be unsafe to reconstruct events. However, the Tribunal should not be reluctant to undertake the exercise just because it requires speculation – **Software 2000 Ltd v Andrews [2007] ICR 825**.

Contribution

17. Under s122(2) ERA, the relevant test is whether it is just and equitable to reduce compensation in light of conduct of the Claimant prior to the dismissal. The conduct need not contribute to the dismissal. The EAT has confirmed that the same test of "culpable or blameworthy" applies to the s122(2) reduction question as to s123(6) ERA – **Langston v Department for Business, Enterprise and Regulatory Reform UKEAT/0534/09**.

Evidence

18. I have heard evidence from the claimant Colin Bryne and for the respondent have heard from Liliana Attrill, Human Resources manager and Jonathan Stringer, managing director. I have been referred to an indexed bundle of documents extending over 135 pages prepared by the respondent and a small bundle of documents from the claimants which in large part replicated the documents within the respondent's bundle. References in large part are to pages within the larger respondent's bundle. Witness statements and the documents that are referred to in them have been adopted as the evidence in chief of the witnesses subject to cross examination and clarification.
19. The claimant has included in his witness statement significant detail about a background of grievances he has previously had in his employment. The supervisors about whom the claimant previously had complained are not those who had influence over the selection process in the redundancy exercise and that evidence is not relevant to the issues to be determined in this case.

Findings of Fact

20. The respondent company manufactures and supplies injection moulding parts and assemblies across all industries. It also specialises in metal components, injection back moulding, chroming, painting and carpet wrapping, it operated four plants in Coventry and employed 170 employees across those plants in March 2020 before the outbreak of the COVID-19 pandemic. Each plant works on different types of orders received from customers.

21. The claimant was employed by the respondent initially as an operator assembler and latterly as a material handler and began employment with them on the 27 May 2013 the claimant worked at Plant 3 under the respondent's standard terms of employment [37-44]. When the pandemic struck in March 2020 all of the Respondent's workforce including the claimant were initially furloughed.

22. The impact of the Covid-19 pandemic and the significant downturn in orders arising from it meant that as the government restrictions for lockdown lifted the respondent sought gradually to reopen the business when the demand justified the reopening of the operations on a phased basis.

23. As the business began to receive new customer orders in response to a slow and gradual increase in demand the business began the phased return of furloughed employees to operations. It had been the respondent's intention gradually to bring back all employees at the end of May 2020 however the business was not performing as well as would ordinarily be the case and customer demands and the requirement for production fluctuated significantly. The most radically affected of the plants businesses was that at Plant 3 at which the claimant was employed as a Material Handler. At Plant 3 customer orders were significantly reduced and in the period August through to September 2020 the respondent business concluded that there was so significant drop in production requirements that it would be necessary to enter a redundancy process within its workforce across all four operating plants.

24. During the period of furlough the claimant did from time to time make contact with Ms Attrill to ascertain when he might be recalled from furlough [60-66]. The claimant was told that while Plant 3 was slow in returning to significant production the second phase may return after the return from the summer shutdown.

25. I have heard evidence from Ms Attrill who was appointed to the respondent as human resources manager in January 2020. I accept the evidence led by Ms Attrill that in considering redundancies the respondent had regard to the Redundancy Policy issued on 16 January 2020 [46-47]. The respondent considered that in light of significantly reduced production forecasts in light of the reduced order book with only 65% of production levels in all plants with the result that it needed fewer staff [58-59] and redundancies would need to be considered and an announcement was sent to all staff at the start of September 2020 [69]. The respondent had applied the operation of furlough for as long as it was feasible to do so and, in the face of the Governments then stated intention to end the furlough arrangements the respondent sought to implement a fair redundancy procedure The respondent considered that the reduction in the order book impacted the roles of Machine Operation and Materials Handling in particular. The role of Machine Operator was diminished because the business

was running fewer machines. Where there was a lot of product required moving there was still a need for Materials Handlers though a significantly reduced need and as the role of Material Handler was diminished, because Supervisors and Setters had more time to move the product and material between machine and stores [67] the tasks previously carried out by Material Handlers could now also be undertaken by the Tool Setters and Supervisors.

26. On 24 September the claimant was sent a letter informing him that his role as Materials Handler was one of those roles the need for which was seen to have diminished. The letter confirmed that individual consultation would take place and that:

> *"The organisation will now begin its consultation process. Please note that all consultations will be carried out remotely in order to adhere to social distancing requirements. The purpose of consultation is to explore ways of avoiding redundancy. If necessary, we will also discuss other options, such as suitable alternative employment within the organisation and other internal roles. It is also an opportunity for you to make any suggestions or proposals as to how redundancies could be avoided or minimised, as well as raising any other concerns or questions. Additionally, consultation is an important way for the organisation to identify your needs and offer any support or assistance you may require."* [70]

27. Also on 24 September 2020 Ms Attrill wrote to the claimant inviting him to a first individual consultation meeting on 29 October 2020. [71] Unfortunately the letter contained a typographical error and when Ms Attrill telephoned the claimant on 29 September to discuss the redundancy situation and to consult with the claimant upon it he was not expecting her call. Mr Attrill acknowledged the error made by Ms Attrill and agreed that he was ready to discuss the potential redundancy situation with her and was happy to proceed without his trade union representative.

28. During the course of her discussion with the claimant Ms Attrill informed him that as a result of the impact of the pandemic the future demands within Plant 3 remained uncertain and the forecast was for the business was of only 65-70% production as a result of which the requirements of the business for employees who were solely carrying out Material Handling and Machine Operations had ceased.

29. At the meeting on 29 September Ms Attrill explained to the claimant the purpose of the meeting and discussion was to assist the respondent with the pooling and selection procedure and to infirm the affected individuals hat the respondent foresaw at least 13 roles being made redundant.

30. I have been referred to the notes of the consultation meeting [71-74] which detail the discussion and confirmed that the scores would be reviewed by his supervisor and manager and be approved by the General Manager so that a number of people would be involved in the scoring procedure. The claimant was told of the criteria to be applied and the claimant was asked to suggest any ways in which the company might reduce or avoid redundancies. The claimant has stated he was a very experienced employee who had worked his way up in the business ands held good skills that he could offer to the company. I find that Ms Attrill canvased the

claimant's skills and gave him an opportunity to raise any suggestions he might have to avoid redundancies. Although the claimant indicated he would be prepared to consider job sharing, reduced hours or voluntary redundancies he was clear that he was not willing to do any other jobs than material handling.

31. The claimant was told that at the first consultation stage there were 70-80 employees across the four Plants that were potentially affected and that following meetings with all of them the matrices would be scored and those prospectively selected for redundancy would attend further meetings.

32. The claimant was informed of the basis of the scoring process 1 to 5 with 5 being the highest score based upon the last 12 months prior to the assessment. The claimant was told the seven criteria against which employees would be scored namely:
    32.1. Technical ability;
    32.2. Flexibility;
    32.3. Knowledge;
    32.4. Handling Instructions;
    32.5. Attendance;
    32.6. Punctuality and
    32.7. Disciplinary action

33. Following the first individual consultation Ms Attrill sent blank scoring matrix to supervisors to complete. Ms Attrill made enquiries into the claimant's concern that the claimant had pictures of others doing his job while the claimant was on furlough.

34. It is evident that Mr Bryne at the meeting raised his concern that he had received pictures and video of other employees carrying out his job during the furlough period [67-68] and Ms Attrill on investigation was able to ascertain that during September 2020 Agema had had a Covid-19 outbreak of 11 out of 35 employees working at Plant 4 testing positive for covid and as a result of the entire production of Plant 4 being lost it was necessary to transfer the manufacture of the parts temporarily to Plant 3. As a consequence it was necessary for Tomasz Kaziak a machine operator to complete such Material Handling that was required in addition to his other duties. The arrangements had been temporary and lasted for two weeks before the return of the C-posts to Plant 4.

35. In the event the notes of the consultation meeting together with a copy of the Respondent's Redundancy Policy were sent to the claimant on 30 September [75].I find that the claimant did not suggest that the notes were incorrect or incomplete and they are a contemporary note of the discussion.

36. As a result of the scoring undertaken the information in respect of Attendance, Punctuality and Disciplinary Action was scored by reference to personnel data files and directions were given for the transparent scoring of the remaining criteria by supervisors and managers [77].

37. The selection criteria adopted by the respondent are clear and objective. The scores for all the Material Handlers across the various sites were completed and the claimant scored 24, the lowest.

38. The claimant was invited to attend a final consultation meeting on the 13 October 2020 [88-89] and was informed that the purpose of the meeting was to consult with him further. The claim was told of his right to be accompanied to the meeting if he so chose the claimant was informed that a possibility of the outcome of the meeting may result in him being served with notice of termination of his employment on the grounds of redundancy.

39. A second individual consultation meeting was held over Skype with the claimant on 13 October. The meeting lasted approximately 40 minutes. In attendance were the claimant, Ms Attrill and Mr William Rylance, General Manager, notes were taken of the meeting to which I have been referred [93-102]. It was made plain to the claimant that the scores were based upon his ability and performance in the job that he was engaged to undertake at the material time as a Materials Handler. The claimant was told that, in answer to his query at the previous consultation meeting about Tomasz Kaziak doing the job of Manual Handling in September, it had been as a temporary measure while covering the C-Post work transferred from Plant 4 to Plant 3.

40. It is plain that the claimant was understandably frustrated that he was being scored for the work he did as a Manual Handler and did not take account of the fact that previously he had undertaken a range of other jobs while working at the respondent's business. Mr Rylance who chaired the meeting endeavoured to explain to the claimant that the job upon which the scores were marked was that of Material Handler and it was not an assessment of any of the jobs he may previously have undertaken. The claimant in his evidence plainly felt that his scores were low. The claimant had perceived that his low scores were biased against him however he has accepted at this hearing that the supervisor who he claimed biased against him, Kirk Price, was not involved in the scoring.

41. The claimant expressed his frustration that he had not been brought back from furlough though other employees had been, Mr Rylance confirmed that the majority of those who had been called back from furlough had been those working at Plant 4 which had lost the least amount of production. Mr Rylance and Ms Attrill made efforts to explain the rationale for the scoring to the claimant during the meeting however, as recorded in their extensive notes of the meeting unfortunately the claimant talked down their explanations and informed Mr Rylance of his intention to appeal the decision to terminate his employment. The claimant sought to compare his attendance and performance to employees who were not Material Handlers and who were in a different selection pool.

42. I find that the respondent business applied an objective criteria to select people within a pool of Material Handlers of which the claimant was one of a group of seven working across the 4 Plants within the business. The claimant was informed that the matrix scores had been completed by their supervisors and assessed by their managers. The final matrix score were those upon which the redundancy selection was made [80]. In light of the evidence that is before me I find that at the date of termination of the claimant's employment the respondent had determined that three of the seven Materials Handler jobs were redundant as the need for that job to be done within the business and in particular at Plant 3 had significantly

diminished. The respondent applied an objective set of criteria and the claimant was selected as redundant having scored the lowest score within the pool.

43. Following the Skype meeting Ms Attrill sent a letter to the claimant confirming his selection for redundancy [104] as amended 6 November 2020 [126].The letter confirmed the redundancy and the claimants right of appeal against the decision and attached a financial Statement of his redundancy and termination payment.

44. The claimant on 19 October presented an appeal letter [112-113] setting out the grounds against his selection for redundancy and dismissal.

45. An appeal hearing was held on 27 October 2020. The meeting was chaired by Mr Jonathan Stringer Managing Director of the company and Ms Attrill was in attendance and took notes [119 – 122]. The appeal meeting had been scheduled to be held over Skype however the claimant advised the respondent his Skype was not working and it was agreed the discussion would be held over telephone loudspeaker. The claimant Mr Bryne was in attendance accompanied by his partner and his brother.

46. The claimant expressed his frustration that he had been on furlough for six months and had not been regularly contacted by the company however he acknowledged that the business had been closed for three months and that production had been affected. It was explained to the claimant once more that the redundancy was as a result of not needing the same number of Material Handlers in the business and that meant that as a result of the scoring he had been selected as redundant. It was explained to the claimant that over the months of furlough the material handling needs were on average 37% of normal and up to only 42% at best. Only a few machines were running and such material handling that needed to be done could be completed by the reduced number and where need arose by the Supervisors or setters.

47. At the appeal hearing the claimant complained that the scoring was inaccurate as his supervisor Andy Wade has been mistaken in marking the scores believing 1 was the highest mark and 5 low Mr Stringer agreed to investigate the claimants understanding. As it drew to a conclusion the claimant acknowledged to Mr Stringer that he had enjoyed the material handling job as it was doing more than button pressing and that:

    " I understand the company is not in a great position. The country is in a bad state. It's not about me coming back. I 've got to be honest with you Johnny. I couldn't go back to a different job. I can't do button pressing. I'm better than that. You know me. I can't do machines. I worked my arse off, but I won't do machines. I'm not going backwards."

48. Having heard all of the claimant's arguments Mr Stringer agreed to investigate a number of the claimant's concerns over his scoring. On 3 November 2020 [124] Ms Attrill wrote to the claimant to arrange a final meeting to take place on 5 November, the meeting which took place by telephone. Mr Stringer apologised that following his investigations there was no alternative to redundancy and the appeal was not successful. At this tribunal hearing I have heard an account from Mr Stringer of the investigations he undertook following the appeal meeting. He

confirmed with Graham Weir the Plant 3 manager the basis on which the scores had been collated and the justification for the claimant's score of 2 for flexibility related to his not being prepared to go on machines or to do assembly work, a sentiment echoed by Mr Bryne both to Ms Attrill in her first discussion with him and with Mr Stringer at appeal. It was plain that the scores taken to determine the selection had been adjusted before the final scores were reached [80].

49. Mr Stringer has very honestly in answer to cross examination confirmed that the telephone discussion when he conveyed the appeal decision was one for which he could have been better prepared to articulate his reasons for the decision. Though not put to Mr Stringer by the claimant in cross examination the claimant has suggested in his evidence, paragraph 13 of his witness statement that Mr Stringer told him in the Appeal outcome telephone discussion that Graham Weir had been out of the office all week and said that "*I'm going to take this scoring completely out of it ,out of the case.. erm so its just the position Colin*". In his explanation of his outcome discussion with the claimant and his rationale to this hearing Mr Stringer has explained that he was trying to explain, were the selection criteria scores ignored or improved by a point, that the claimant would have been selected for redundancy in any case. The claimant has not accepted the account given by Mr Stringer that he informed the claimant that his scores were verified. In answering my own questions of him to clarify the respondent's procedures Mr Stringer confirmed that even if the claimant had been scored with an additional point for his knowledge and attendance it would not have lifted him out of the selection band. Mr Stringer has confirmed that although Mr Weir was on holiday he had spoken to him before the final appeal decision was taken to confirm the assessment of the matrix scores were recalibrated when Andy Wade the supervisor had initially reversed the order of ranking score.

50. In light of the evidence before me I find that based on the information before them the respondent implemented an objective redundancy exercise and the claimant was selected as one of those within the pool of Material Handlers who was selected for redundancy. The procedure adopted was a fair one including two individual consultation meetings to confirm the claimant selection for redundancy and the conduct of an independent appeal. The second lowest scoring Materials Handler accepted as an alternative to redundancy redeployment to an alternative position in the business as an assembler. The claimant had made plain his disinterest in any job other than Materials Handler.

51. I find that the appeal conducted by Mr Stringer was a fair and independent one which although the reasons articulated to the claimant were not as clear as they may have been were honestly given.

Argument and Conclusion

52. The circumstances which led to the termination of the claimant's employment in this case are regrettable. Following the lockdown in response to the Covid-19 pandemic the respondent company was faced with a diminished order book and faced the need to implement a redundancy programme for the first time. This is a case in which the Tribunal has sympathy with both the respondent a family

business facing redundancy for the first time and with the claimant an employee of eight years standing.

53. The business in contemplating the depletion of their orderbook and the loss of significant contracts employed a Redundancy Procedure and process which in contemplating redundancies scored individuals within a pool of potential redundant staff over an assessment period of 12 months prior to September 2020. The scoring procedure was undertaken by those who had the best knowledge of the relevant employees experience and applied a scoring system, criteria and marking method which was administered in an objective and fair manner. The claimant has argued that the assessment of his abilities was not fair, he had been employed for eight years and the respondent ought to have had regard to the length of his service and the breadth of his previous experience. He has referred to his scores being less favourable that others within the business who did not fall within the selection pool of Materials Handlers. The determination of an appropriate pool of people from whom to select those to be considered for redundancy is that of the employer. In this case the employer has taken a standard approach of grouping together the individuals who undertook the same role within the organisation and it is not for the Tribunal to interfere with such a selection that is made on a reasonable basis even if an alternative pool for selection could have been justified.

54. The respondent has engaged in meaningful consultation with all affected employees within the group and the consultations with individuals and this claimant in particular was reasonable in the circumstances. The respondent has sought to consider alternatives to redundancy and there were none available in this case. The claimant was plain in identifying that he did not wish to undertake any role within the business other than as Materials Handler and furthermore the only alternative position that did become available was offered to the individual identified as redundant above the claimant in the selection pool.

55. To the extent that the claimant has asserted that his technical ability and knowledge ought to have had an increased score the respondent has given an account that even were the score to have increased by 2 he would still have been within the range to select him as redundant. It is not for an Employment Tribunal to undertake an exercise of rescoring the criteria lest they fall into the trap of substituting it's view for that of the reasonable employer. The claimant asserts that his length of service ought to have led to his being retained in preference to employees elsewhere in the business who had shorter service history. The respondent properly has not sought to apply the outdated and potentially discriminatory criteria of last in first out but to have identified a pool for selection that related to the jobs for which there was a diminished need in the business at the relevant time.

56. The claimant in this case has feared that the assessment of his skills was biased against him tainted by the view of supervisors against whom he had previously brought grievances. It is clear that none of those the claimant alleged were biased against him had involvement in scoring his assessment and the background to the claimant's employment history before the assessment is not relevant to the issues in this case.

57. This case is one in which there plainly existed a state of affairs where there was a diminishing need for an identifiable number of jobs to be done. The respondent had applied the operation of furlough for as long as it was feasible to do so and, in the face of the Governments then stated intention to end the furlough arrangements, the respondent implemented a fair redundancy procedure which led to the fair selection of the claimant as redundant.

58. The claimant was dismissed by reason of redundancy. The claimant was fairly dismissed by the respondent and his complaint before this tribunal fails.

Employment Judge Dean
27 June 2022