



# EMPLOYMENT TRIBUNALS

**Claimant**

Mr I Gaddour

AND

**Respondent**

Pennyhill Park Ltd

**HEARD AT:** Reading Tribunal (via CVP)

**ON:** 9 February 2022

**BEFORE:** Employment Judge Douse (Sitting alone)

**Representation**

**For Claimant:** In person

**For Respondent:** Mr E Macdonald, Counsel

## RESERVED JUDGMENT

The Claimant's claim that he was unfairly dismissed is not well-founded and accordingly fails.

## REASONS

**Claims and issues**

1. The Claimant, by way of a claim form dated 17 January 2021, brought a complaint of unfair dismissal. The Respondent relies on the potentially fair reason of redundancy, or alternatively some other substantial reason, for the dismissal.

2. As the parties agree that there was a genuine redundancy situation, Mr Macdonald suggested that the issues to be determined by me were:
  - 2.1 Was there a failure by the Respondent to inform or consult the Claimant?
  - 2.2 Was the Respondent's consultation a sham?
  - 2.3 Was the Claimant's redundancy pool unfairly selected or chosen by the Respondent?
  - 2.4 Was there an unreasonable failure by the Respondent to look for alternative work for the Claimant?
  - 2.5 Having regard to the reason shown by the Respondent (Redundancy/SOSR) was the dismissal fair? In all the circumstances, did the Respondent act reasonably or unreasonably in dismissing the Claimant?
  
3. I confirmed these with the Claimant who understood that any evidence had to be limited to these issues.

**Procedure, documents and evidence heard**

4. The case was listed for 1 day. This was a remote hearing which has been consented to by the parties. The form of remote hearing was "V: video whether partly (someone physically in a hearing centre) or fully (all remote)". A face to face hearing was not held because it was not practicable due to the COVID-19 pandemic and no-one requested the same.
5. There was an electronic bundle of 254 pages, and a supplementary bundle of 65 pages. Two further emails were also provided by the Respondent at the start of the hearing. My attention was taken to a number of these documents as part of me hearing evidence - I refer to this bundle by reference to the relevant page

number (and where it is in the supplementary bundle the number is preceded by 'SB').

*Preliminary matters*

6. On 19 January 2022, the Claimant requested disclosure of a number of documents from the Respondent, specifically:
  - 6.1 Financial monthly packs from Themis from 2010 to 2020
  - 6.2 Financial packs from brasserie from 2014 to 2020
  - 6.3 Rotas for brasserie and banqueting from 2019 to 2022
  - 6.4 Numbers, names and titles, of the Exclusive Chef's Academy students and graduates employed by the Respondent from 2018 to 2020, and currently
  - 6.5 Company documents relating to the Exclusive Chef's Academy at the time of the redundancy process
  - 6.6 Copies of the Claimant's appraisals, carried out by Mr D. Atkinson, throughout his employment
  - 6.7 Outputs from Mr D. Atkinson, or any other Senior Chef, regarding combining kitchens before the redundancy proposals that are the subject of the Claimant's complaint
7. On 24 January 2002, the Respondent informed the Claimant that they did not agree to the disclosure request because it was made at an extremely late point in proceedings.
8. On 25 January 2022, by way of email, the Claimant made an application to the Tribunal for disclosure of the documents. Employment Judge Anstis determined that this application should be dealt with at the start of the hearing on 9 February 2022.
9. At the start of the hearing, I asked the Claimant if he wanted to apply for disclosure of the documents. He confirmed that he did, so I asked him to explain why he needed each document, and why he had not requested them from the Respondent by the disclosure deadline, or at any time between then and 19 January 2022. He provided the following explanations:

9.1 Financial monthly packs from Themis from 2010 to 2020 – this information is intended to contradict criticisms about the Claimant’s performance which were made in Mr Coleman’s witness statement.

9.2 Financial packs from brasserie from 2014 to 2020 – as above.

9.3 Rotas for brasserie and banqueting from 2019 to 2022 – this relates to the number of chefs and details of any rotations that had taken place.

9.4 Numbers, names and titles, of the Exclusive Chef’s Academy students and graduates employed by the Respondent from 2018 to 2020, and currently – this is intended to support the Claimant’s position that students/graduates continued to be employed during/post redundancy.

9.5 Company documents relating to the Exclusive Chef’s Academy at the time of the redundancy process – as above.

9.6 Copies of the Claimant’s appraisals, carried out by Mr D. Atkinson, throughout his employment – these relate to the Claimant’s suggestion that Mr Atkinson had treated him badly and that this influenced the redundancy process.

9.7 Outputs from Mr D. Atkinson, or any other Senior Chef, regarding combining kitchens before the redundancy proposals that are the subject of the Claimant’s complaint – these relate to the Claimant’s assertion that the proposal was not Mr Copeman’s idea (as contained within in witness statement), and Mr Atkinson had pushed for it previously.

10. The Claimant further explained that about a week before he sent the 19 January email, he had met with one of the Exclusive Chefs, which had caused him to realise that the Academy information would be useful to him. He said that this then triggered him to think about the other information which he then requested.

11. The Respondent opposed the application generally based on how late it was made, and the likely disruption to proceedings as many items were not readily available. Additionally, they stated that none of the documents were relevant to the claim, as they largely relate to whether the redundancy situation was genuine which was not in dispute. They made the following specific observations:

11.1 Documents from before the redundancy process – the older the documents the less relevant they are.

11.2 Documents from after the redundancy process are not relevant to the fairness of the process.

11.3 The Claimant has not pleaded that the redundancy process was tainted by Mr Atkinson. They drew my attention to the supplementary bundle, which included correspondence between the parties in August 2021, where the Claimant had raised issues related to Mr Atkinson, and the Respondent had advised that an application to amend the claim would be needed to include these allegations [SB30].

12. In relation to the potential disruption in proceedings, the Claimant stated that whilst he believed the documents were essential for him to have, he wanted the hearing to go ahead.

13. After a short break to consider the application, I determined that it should be refused of the following reasons:

13.1 All documents that pre-dated redundancy situation are not relevant to the process that R undertook, which is the basis of Claimant's complaints.

13.2 All requested documents from around the time of the redundancy relate to whether or not there was a genuine redundancy situation, which is not an issue in the case.

13.3 All requested documents from after dismissal relate to whether or not there was a genuine redundancy situation, which is not an issue in the case.

13.4 All requested documents related to Mr Atkinson do not relate to an issue in the case. The Claimant had been aware as early as August 2021 that he would need to apply to amend his claim to include this – he did not, and did not make that application today.

14. I heard from the Claimant on his own behalf, and from Mr Graham Copeman and Stephanie Ashfield for the Respondent. All witnesses gave evidence by way of

written witness statements that I read in advance of them giving oral evidence. Both witnesses were cross-examined.

15. Due to lack of time, having dealt with the preliminary issue, rather than making oral closing submissions the parties were asked to send written submissions by email to the Tribunal – the Respondent by 23 February 2022, and the Claimant seven days later by 2 March. Both parties provided written closing submissions in this way.

### **Findings of Fact**

16. From the evidence and submissions, I made the following findings of fact. I make my findings after considering all of the evidence before me, taking into account relevant documents where they exist, the accounts given by the witnesses in evidence, both in their respective statements and in oral testimony. Where it has been necessary to resolve disputes about what happened I have done so on the balance of probabilities taking into account my assessment of the credibility of the witnesses and the consistency of their accounts with the rest of the evidence including the documentary evidence. In this decision I do not address every episode covered by that evidence, or set out all of the evidence, even where it is disputed.
17. Matters on which I make no finding, or do not make a finding to the same level of detail as the evidence presented to me, in accordance with the overriding objective reflect the extent to which I consider that the particular matter assisted me in determining the identified issues. Rather, I have set out my principal findings of fact on the evidence before me that I consider to be necessary in order to fairly determine the claims and the issues to which the parties have asked me to decide.
18. The Claimant was employed by the Respondent as Themis Head Chef from 28 September 2010 to 28 October 2020.
19. The Respondent is part of the “Exclusive Collection” group, which has a portfolio of hotels across the south of England. Pennyhill Park, where the Claimant worked, is located in Surrey and currently employs approximately 248 people.

20. The Respondent's business had been impacted by the Covid-19 pandemic. During the first lockdown in March 2020, the business was closed and employees, including the Claimant, were placed on furlough leave.
21. On 25 June 2020, the Respondent's Managing Director sent a message via Hubhub – the internal communication system - to all sites, regarding the effect of the pandemic on the business. He advised that there had been a recruitment and promotion freeze, and a suspension of the use of casual staff, and that there would need to be a restructure which could result in redundancies [81A-C].
22. In response to this, at the start of July 2020 the Respondent began to look at the business structure. On 1 July the management team met to discuss the business generally, and on 2 July they spoke about the kitchens specifically. This included looking at each department, the personnel and their roles and responsibilities.
23. Until that point, each area of the business had separate kitchens, comprising of: Brasserie – serving the main restaurant, bar, and room service; Banqueting – serving events like weddings and conferences; Latymer – the Michelin star restaurant; Pastry – serving all bakery items, desserts, cakes, pastries and chocolate; and Themis – serving the spa.
24. Each kitchen had its own staffing structure, with a Head Chef who reported to the Executive Chef. The Claimant was the Head Chef in the Themis kitchen.
25. The restructuring proposal included moving the work of the spa kitchen into the Main and Banqueting kitchens, putting the following Themis roles at risk: Head Chef; Chef de Partie; Demi Chef de Partie; and two Commis Chefs.
26. In relation to the other kitchens, both the Latymer and Pastry kitchens were categorised as specialist environments. Changes were proposed to the other kitchens. All roles, except Head Chef, from those kitchens were pooled on the basis that the skills and responsibilities were interchangeable regardless of the current kitchen. This resulted in pools for: Chef de Partie; Demi Chef de Partie; Commis Chef; and Kitchen Porter.
27. In relation to the Head Chef roles, the position in Banqueting was already vacant so the Respondent turned its mind to what action to take with the Themis and Brasserie Head Chef roles.

28. Consideration was given to pooling the Brasserie Head Chef and the Themis Head Chef together. However, after taking into account skills and responsibilities, the Respondent determined that there was too much difference between the work for them to be comparable. This was based on:
- 28.1 Volume of work (100 covers for breakfast, lunch and dinner in Brasserie v. 46 covers between 11am and 7pm in Themis)
  - 28.2 Complexity of menus (a la carte at each sitting in Brasserie v. largely buffet style in Themis)
  - 28.3 Management responsibilities (team of eleven in Brasserie v. three in Themis)
29. On 14 July 2020, the Respondent held a meeting with the Staff Consultative Committee ('SCC') Representatives [106]. Sarah Frankland was the designated representative for Heads of Department ('HoD'), which included the Claimant. The representatives had a number of responsibilities, including: noting suggestions from staff; putting forward ideas in meetings on behalf of staff; and providing outcomes and minutes of meetings to staff after meetings.
30. On 16 July 2020, Ms Frankland posted on Hubbub, in a group titled 'HOD SCC meeting chat' which included the Claimant, asking members to complete a poll with the purpose of arranging a meeting [111].
31. The meeting took place on 20 July 2020. The Claimant is shown on the minutes as having attended the meeting [126], but when cross-examined denied having been there as he would not have attended the SCC meeting as this was for representatives only. However he confirms that he attended the HoD meeting, which did occur on that date, so it is more likely than not that the Claimant was there and any confusion over this was as a result of the description of the meeting as 'SCC' rather than 'HoD' during cross-examination.
32. In any event, after that meeting, Ms Frankland shared the following documents in the Hubbub chat: Redundancy Scoring Matrix; Redundancy Policy; Consultation Agenda from the 14 July 2020 meeting; and Meeting notes from the SCC meeting.
33. Hubbub shows that the Claimant read the messages containing the attachments for the Scoring Matrix, Policy, and Meeting notes.

34. The Respondent's Redundancy Policy [82] includes details of: how an employee can be involved in the consultation process, including suggesting ways to avoid redundancy if placed at risk; what the Respondent will do to find an 'at risk' employee alternative work; and an employee's right of appeal against a redundancy decision.
35. Ms Frankland further shared a link to a survey to gather information about the criteria that should be used for the Heads of Department scoring.
36. On 23 July 2020, a further meeting of SCC Representatives was scheduled – that morning Ms Frankland reminded members of the Hubbub chat that they could send her any list questions to raise. The meeting took place where, amongst other things, the timelines for the next steps were shared.
37. On 24 July 2020, Ms Frankland shared the meeting notes in the Hubbub chat – these included reference to Heads of Department being more likely to be in a pool of one because of their specific skills. She also suggested the members have “*a quick zoom call on Wednesday at 1pm for any further questions*” - the Claimant confirmed his availability for the zoom call.
38. The Claimant attended an individual meeting with Mr Copeman on 29 July 2020. Ms Ashfield was also present as note taker. Mr Copeman advised the Claimant that he was in a pool of one and that his role was at risk. He also outlined the timeline as set out in the SSC Representative meeting notes on 23 July.
39. In relation to ongoing consultation, Mr Copeman stated that there was an opportunity for the Claimant to come back to him, either directly or through his representative, by 4 August 2020 if there was anything that Claimant thought should be considered that changed the set-up.
40. The Claimant did not make any suggestions at that meeting. He requested something in writing and was advised that anyone at risk would receive written notification after 4 August, and reminded he would get information via his representative following the SCC meeting the next day.
41. A further HoD meeting was scheduled for 2pm on 30 July 2020. Although the minutes do not record the Claimant as in attendance [156], he did not say that he

was not there at any point in these proceedings, and when Ms Ashfield (in a later meeting) said she recalled him being there, he did not dispute that either.

42. A further SCC representative followed the HoD meeting at 3pm.

43. There was no evidence before the Tribunal that any notes or information following the 30 July meetings was shared within the Hubbub chat, or by any other means. Indeed, the Claimant asserts that he did not have sight of those minutes until Ms Ashfield showed him a copy at a later meeting on 13 August – I find that to be correct.

44. In cross-examination, the Claimant accepted that Mr Copeman had set out his intentions in the 29 July meeting, but maintained that he did not receive the specific level of information that he had requested.

45. The Claimant did not make any suggestions regarding pooling, or any other matter, directly to Mr Copeman or via his representative, before the 4 August deadline.

46. On 4 August 2020 another SCC Representative meeting took place. After this, Ms Frankland posted further information in the Hubbub chat, which was acknowledged by the Claimant.

47. On 5 August 2020 the Claimant was sent a letter confirming that he was at risk of redundancy. This advised that he had a chance to challenge the decision at that point. The Claimant did not challenge the decision – when cross-examined on this point, he stated that this was because no date was provided to do this and he was still waiting for the information he had requested.

48. On 7 August, after a further SCC Representative meeting, Ms Frankland posted more details in the Hubbub chat, which were seen by the Claimant.

49. On 10 August 2020, the Claimant was sent a letter advising him that his role had been made redundant. He was invited to a one-to-one meeting with his line manager – Mr Atkinson – and Ms Ashfield, on 13 August 2020.

50. At that meeting, the Claimant raised that he did not feel he had been given all of the information during the process. The meeting was therefore adjourned for Ms Ashfield to check this.

51. On 14 August 2020, the Claimant requested operational details regarding the merger of Themis with the Main kitchens. Mr Atkinson replied the next day, summarising the plans.
52. The adjourned meeting was due to reconvene on 16 August, but the Claimant requested it be moved as he was experiencing health issues that day. The meeting took place on 19 August 2020. The Claimant clarified that when he had previously said he had not been given enough information, he did not mean that if he had this he would necessarily have wanted to challenge the proposal. After some discussion, the Claimant confirmed he did not want to make a challenge and the conversation moved on to alternative work. Ms Ashfield reminded the Claimant that there was a recruitment freeze, but said there may be roles within the new structure. She specifically asked if he would consider a Sous Chef or Chef De Partie role if one became available – the Claimant said he would have to see it. Beyond a general indication from the Claimant that he would consider an opportunity if it was shown to him, as long as it was in the kitchen, he did not say what sort of roles he would or would not be interested in. Ms Ashfield advised that if any role came up she would let the Claimant know, and suggested they meet again the following week to look at things again.
53. The next meeting took place on 26 August 2020, when redundancy was confirmed as there were no alternative roles. The Claimant was advised that he still had access to Hubbub until the end of his notice period, and that any vacancies would be advertised on the company careers webpage. A letter confirming the situation was sent to the Claimant on the same day, along with a Department for Work and Pensions 'Redundancy factsheet'.
54. On 13 October 2020, the Claimant notified the Respondent that he was having issues accessing Hubbub. The Respondent replied acknowledging this was probably because he was marked on the system as redundant, but that if he wanted to access vacancies he could still do this on the company website and apply online. The Claimant confirmed that he did not look for vacancies in this way, and it did not occur to him. During evidence, he maintained that the onus was on

the Respondent to present opportunities to him. He also stated that he was exploring other connections.

55. In his claim form on 17 January 2021, the Claimant first raised issues with pooling, including that he could have been put in the pool with other chefs (not Head of Department) as his role was primarily to cook. He maintained this position during the hearing. When asked why he did not put this forward during the process he said that he assumed that the Respondent knew what his job role was. I asked Mr Copeman why pooling the Claimant with the Chef De parties was not considered – he stated that this is because the role was quite junior compared to Head Chef. However, he said that had this been put forward it would have been considered.
56. The Claimant alleged that the Banqueting Sous Chef – Mr Maxwell - had been eased in during redundancy, and that role could have otherwise been available to him. However, during cross-examination, the Claimant accepted that Mr Maxwell was in that role prior to the redundancy situation, and remained in that role.
57. Conversely, the Claimant also proposed in his claim form that he could have been pooled with the Brasserie Head Chef, suggesting that he had previously been offered that role in 2014 so must have been capable and had the right skills then and at the time of redundancy. He confirmed that this was a verbal conversation, nothing was received in writing, and in any event the Claimant was happy with how the Themis role was going.
58. In oral evidence the Claimant suggested that if he had received the information he requested, and there had been a one-to-one meeting with Mr Atkinson earlier, then he might have raised the pooling issues then. He separately stated that he did not feel his points would be heard, and that his brain was not able to process what was happening. He describes everything as being rushed.
59. In relation to the effect of restructuring in other departments within the Respondent's business:
  - 59.1 The Food & Beverage Manager was placed in a pool of one, and advised that they were at risk of redundancy - this was reviewed and later withdrawn.

59.2 The therapy team put forward information about the use of casual staff which resulted in three full-time equivalent redundancies instead of the planned five.

59.3 Overall, forty-two expected redundancies were reduced to eleven at the end of the process.

## Relevant Law

### *Unfair dismissal*

60. The right not to be unfairly dismissed is set out in s94 of the ERA. The Tribunal must consider whether the respondent is able to establish a fair reason for that dismissal (as defined by s98 of the ERA).

61. Section 94 (1)

An employee has the right not to be unfairly dismissed by his employer...

62. Section 98 (1)

In determining...whether the dismissal of an employee is fair or unfair, it is for the employer to show the reason (or, if more than one, the principal reason) for the dismissal, and that it is...a reason falling within subsection (2)...

(2) A reason falls within this subsection if it is that the employee was redundant...

63. 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) 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 shall be determined in accordance with equity and the substantial merits of the case..."

64. Section 98 identifies redundancy as a potentially fair reason for dismissal. Redundancy is defined by s139 of the ERA as follows:

Section 139

For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish...”

65. In **Murray v Foyle Meats Ltd [1999] ICR 827**, Lord Irvine approved of the ruling in **Safeway Stores plc v Burrell [1997] ICR 523** and held that section 139 of the Employment Rights Act 1996 asks two questions of fact. The first is whether there exists one or other of the various states of economic affairs mentioned in the section, for example whether the requirements of the business for employees to carry out work of a particular kind have ceased or diminished. The second question, which is one of causation, is whether the dismissal is wholly or mainly attributable to that state of affairs.
66. It is the requirement for employees to do work of a particular kind which is significant. The fact that the work is constant, or even increasing, is irrelevant; if fewer employees are needed to do work of a particular kind, there is a redundancy situation. See **McCrea v Cullen and Davison Ltd [1988] IRLR 30**. Thus, a redundancy situation will arise where an employer reorganises and redistributes the work so that it can be done by fewer employees. 16. There is no requirement for an employer to show an economic justification for the decision to make redundancies; see **Polyflor Ltd v Old EAT 0482/02**.
67. Where the employer has shown the reason for the dismissal and that it is for a potentially fair reason, section 98(4) states that the determination of the question whether the dismissal was fair or unfair 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 must be determined in accordance with equity and the substantial merits of the case.

68. In **Williams v Compair Maxam Ltd [1982] IRLR 83**, the EAT set out guidance to tribunals in relation to dismissal for redundancy. This includes:

- (i) Were the criteria for selection objectively chosen and fairly applied?
- (ii) Was the claimant warned and was there consultation?
- (iii) Were the trade union's views obtained?
- (iv) Was alternative employment discussed?

69. On pools for selection, it is generally for the employer to decide on an appropriate pool for selection. If the employer genuinely applied its mind to the question of setting an appropriate pool, the tribunal should be slow to interfere with the employer's choice of the pool. However, the tribunal should still examine the question whether the choice of the pool was within the range of reasonable responses available to a reasonable employer in the circumstances. In **Capita Hartshead Ltd v Byard [2012] IRLR 814**, having reviewed the case law, Silber J at para 31 gave this summary of the position:

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

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

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

*(c) "There is no legal requirement that a pool should be limited to employees doing the same or similar work. The question of how the pool should be defined is primarily a matter for the employer to*

*determine. It would be difficult for the employee to challenge it where the employer has genuinely applied his mind [to] the problem” (per Mummery J in **Taymech v Ryan EAT/663/94**);*

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

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

70. If the issue of alternative employment is raised, it must be for the employee to say what job, or what kind of job, he believes was available and give evidence to the effect that he would have taken such a job: that, after all, is something which is primarily within his knowledge: **Virgin Media Ltd v Seddington and Eland UKEAT/0539/08/DM**

71. The Respondent also referred me to the following case law, which I also read and considered:

*General*

71.1 The fairness of a redundancy dismissal is judged not only at the date on which notice of termination is given to an employee but also when an employee’s employment actually terminates: **Stacey v Babcock Power Limited (Construction Division) [1986] IRLR.**

*Consultation*

71.2 Seven days consultation with individuals is the “bare minimum”, but may nonetheless be adequate: **Rogers v Slimma Plc UKEAT/0168/06 & 0182/07**

*Pool selection*

71.3 It may be perfectly reasonable for an employer to confine the pool to those doing the same or similar work: **Green v A & I Fraser [1985] IRLR 55**.

*Suitable alternative employment*

71.4 In **Vokes Ltd v Bear [1974] ICR 1** the tribunal at first instance had found that the employer had not made all reasonable attempts to place the at-risk employee in alternative employment within the group of companies, and hence the dismissal was unfair. The National Industrial Relations Court found that this was a finding open to the first-instance tribunal, and said this at p 5:

“...The tribunal are entitled to take into account all the circumstances affecting both the employers and the employee at the time of the dismissal. In the present case, no doubt the time would have come when the employers would have to dismiss the employee for redundancy for the good of the company as a whole, but the tribunal were fully entitled to take the view that that moment had not yet arrived by March 2. The employers had not yet done that which in all fairness and reason they should do, namely, to make the obvious attempt to see if the employee could be placed somewhere else within this large group...

...If the employers had made all reasonable attempts to place the employee in the group and had failed, then the time might have come when it would be reasonable for them to regard the redundancy as a sufficient reason for the dismissal, but until that moment had come the tribunal were entitled to take the view that it was not reasonable to dismiss for redundancy and accordingly that it was unfair.”

71.5 The duty on the employer is not to make every possible effort to look for alternative employment but to make “reasonable efforts”: **Quinton Hazell Ltd v WC Earl [1976] IRLR 296**. In Quinton, the case of Vokes was distinguished on the basis that in Vokes “...nothing was done, not a

single reasonable step was taken.” But in Quinton the employer, as the appellant submitted

*“...did consider how to go about [the re-organisation]; they did have consideration for [the employee]; they did wonder whether he could be placed elsewhere; they did have in mind the possibility of other reduced pay jobs but ruled those out because they assessed...the situation along the lines that, with a man of his seniority, it would be a waste of time...”* (para 7).

71.6 Where an employee at senior management level who is being made redundant is prepared to accept a subordinate position he ought to make this clear at an early stage so as to give his employer an opportunity to see if this is a feasible solution: **Barratt Construction Limited v Dalrymple [1984] IRLR 385**

71.7 Where there is one or more possibilities of suitable alternative employment available to an employee who is to be made redundant, the employer should normally inform the employee of the financial prospects of those positions – although it might not always be practicable to do so: **Fisher v Hoopoe Finance Ltd [2005] 6 WLUK 36**.

71.8 Employers are under an obligation to try to offer the employee suitable alternative employment and to give the employee sufficient information on the basis of which that employee could decide whether or not to accept the offer: **Modern Injection Moulds Ltd v Price [1976] ICR 370, 374 6**

*“In our judgment it can be said that, inasmuch as there is this obligation on the part of the employers to try to find suitable alternative employment within the firm, it must follow that, if they are in a position, pursuant to their obligation, to make an offer to the employee of suitable alternative employment, they must give him sufficient information on the basis of which the employee can make a realistic decision whether to take the new job. It will, of course, depend upon the circumstances of every case how much*

*information, and information upon what subjects, must be given. Normally, at all events, and certainly in this case, it is necessary for the employers to inform the employee of the financial prospects of the new job. The test must always be (it has to be looked at from the point of view of the employee): has he been given sufficient information upon which he can make a realistic decision whether to take the job and stay, or whether to reject it and leave?"*

## Conclusions

72. Having regard to the findings of relevant facts, applying the appropriate law, and taking into account the submissions of the parties, I have reached the following conclusions on the issues the parties have asked me to determine.

*Was there a failure by the Respondent to inform or consult the Claimant?*

73. The Claimant was assigned a representative whose role was to liaise between the employees and management during the consultation process.

74. The Claimant was provided information at regular points throughout the process. The only time I have identified where he was not provided with minutes was in relation to the meeting of 30 July 2020. However, he had received that information verbally on that day, and the day before during his meeting with Mr Copeman and Ms Ashfield. He was aware that information was being shared by Ms Frankland via Hubbub, and could have requested any documents if they were not received in the usual way.

75. The Claimant was also already aware of the timeline as the details were shared at the 23 July HoD meeting, which he attended, and was in the documents shared by Ms Frankland the following day. He had access to that document, to refer back to when he needed.

76. Overall, the Claimant was not at a disadvantage from not having the written information from the 30 July meeting. The proposals for the kitchen were not complex, as indicated by the summary provided by Mr Atkinson.

77. In relation to consultation, at every stage of the process the Respondent gave the Claimant an opportunity to be involved in the process. He was invited to:

77.1 Contribute to the selection criteria

77.2 Provide questions to his representative before the SCC meeting on 23 July 2020

77.3 Challenge the proposals at his individual meeting on 29 July 2020

77.4 Challenge the proposals before 4 August 2020

77.5 Challenge the proposals at his individual meetings on 13 and 19 August 2020

78. Although the consultation process was not lengthy – the first meeting the Claimant had was 20 July 2020, and he was notified his role was redundant on 10 August – but as set out above there were numerous meetings during that time. Additionally, on an individual basis, the Respondent continued to meet with the Claimant even after the redundancy notification.

*Was the Respondent's consultation a sham?*

79. The Respondent assigned SCC Representatives to liaise between the employees and management during the consultation process. This group met multiple times during this time, and the Claimant's representative met with their group before/after each of these meetings.

80. During the consultation process, the Respondent changed their plans in response to suggestions received from staff, resulting in less overall redundancies than initially anticipated. Most notably, the changes planned within the Therapy Team were significantly changed as a result of information received directly from staff.

81. In relation to individual consultation, the Respondent met with and consulted the Claimant on two further occasions after the redundancy notification on 10 August 2020. Meetings were also adjourned to ensure the Claimant had the full information and was able to prepare.

82. For these reasons the Respondent's consultation was clearly genuine, and in no way a sham.

*Was the Claimant's redundancy pool unfairly selected or chosen by the Respondent?*

83. In assessing the pooling, I do not have to decide whether what the Respondent did was right or wrong – I have to determine whether or not what they did was within the range of reasonable responses. The simple existence of a different approach to pooling will not automatically make the approach the Respondent took unreasonable.

84. During these proceedings, the Claimant has raised two alternative options, which were not put forward at any point in the consultation process:

84.1 Pooling with the Brasserie Head Chef

84.2 Pooling with Sous Chefs/Chefs de Partie

85. The Claimant had ample opportunity to put these thoughts forward during the process, if he had concerns that his points would not be listened to directly, he could have raised them via his SCC representative. He was specifically asked if he wanted to challenge anything on multiple occasions and decided not to.

86. The written information from the 30 July meetings would not have changed anything. The pooling as this was based on the work being carried out – the Claimant has demonstrated throughout these proceedings that he had a good understanding of the work undertaken by other staff members. Additionally, after Mr Atkinson provided that information on 15 August, the Claimant still chose not to challenge the proposals.

87. The Respondent has described the thought process used to reach their decision which resulted in the Claimant being placed in a pool of one. This demonstrates that it genuinely applied its mind to the question of setting an appropriate pool. Although they could have pooled simply on job title - 'Head Chef' - their decision not to, based on the required skills and responsibilities, was reasonable.

88. In relation to the Claimant's suggested pooling with the Sous Chefs, I accept Mr Copeman's explanation as to why this was not done of the Respondent's own

accord. The Claimant presented as a proud man who had ambition – it is likely that he would have been offended at the suggestion his skills were comparable to others in that role. However, it was open to him to suggest this to the Respondent as an alternative – Mr Copeman indicated that this would have been considered – but at no point did the Claimant make that suggestion.

89. The Claimant's uncertainty about whether he should have been included in the pool with other Head Chefs because of his title, or in the Sous Chef pool because in fact his role mainly involved cooking, perhaps represents the situation encountered by the Respondent in pooling, and supports the outcome that the Claimant was placed in a pool of one because of his unique position.

90. Therefore, the Respondent was entitled to make the pooling decision in the way that they did – it was within the band of reasonable responses.

*Was there an unreasonable failure by the Respondent to look for alternative work for the Claimant?*

91. The Respondent sought to get the Claimant's views on other roles that he might be interested in. He stated that this would need to be cooking within the kitchen, but there were no available roles by the time the Claimant's redundancy was confirmed on 26 August.

92. Beyond a general indication that he would consider a kitchen opportunity if it was shown to him, the Claimant gave no specific information about what roles he would or would not consider. It is not reasonable to suggest that the responsibility lies solely with the Respondent when they have no parameters to work with.

93. The Claimant was told that he could look at and apply for any roles that might become available via the Respondent's career webpage. The Claimant did not look for any roles in this way, and stated that he was looking at other connections.

94. In the circumstances, the Respondent fulfilled their obligations in relation to looking for alternative work for the Claimant.

*Having regard to the reason shown by the Respondent (Redundancy/SOSR) was the dismissal fair? In all the circumstances, did the Respondent act reasonably or unreasonably in dismissing the Claimant?*

95. In all the circumstances, the Respondent acted reasonably in treating redundancy as a reason for dismissing the Claimant. The dismissal fell within the range of reasonable responses, and the Respondent acted reasonably throughout the process.

96. The Claimant's dismissal was therefore fair, and his claim for unfair dismissal fails.

97. The remedy hearing provisionally listed for 24 May 2022 is cancelled.

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Employment Judge K Douse

Dated: 16 May 2022.....

Sent to the parties on: 17 May 2022

For the Tribunal Office

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