EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100944/2016

Hearing Held at Aberdeen on 31 October 2016, 28 & 29 March 2017 and 12 May 2017

Employment Judge: Mr J Hendry
Members: Mr AW Bruce
Mrs D Massie

Mrs D Stewart	**Claimant** **Represented by:** **Ms M Gribbon** **Solicitor**
British Midland Regional Limited	**Respondent** **Represented by:** **Mr M Anderson** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Tribunal unanimously finds as follows:

(One) That the Claimant was unfairly dismissed by the Respondent and that the question of remedy shall be determined at a future hearing.

(Two) That the Respondent by their actions breached the terms of Section 18 of the Equality Act 2010 and by doing so illegally discriminated against the Claimant and that accordingly the Tribunal orders that the Respondent shall pay to the Claimant the sum of Seven Thousand Pounds Sterling (£7000) for injury to feelings.

(Three) That the Respondent shall pay to the Claimant the sum of Twelve Hundred Pounds Sterling (£1200) in reimbursement of the fees paid by the Claimant to the Employment Tribunal Service.

REASONS

1. The Claimant in her ET1 seeks findings that she was unfairly dismissed from her employment as an Operations Controller with the Respondent company and that she was also discriminated against on the grounds of her sex in particular that the respondents were in breach of the Maternity and Parental Leave Regulations 1999 (the "MAPLE" Regulations) by failing to offer her suitable available vacancies on her return to work and during a redundancy consultation period and that she had also been discriminated against directly contrary to Section 18 of the Equality Act ('EA') in that the Respondent had failed to consider or offer her suitable alternative employment, failed to invite her to a briefing and provide access to 'PACE' information/services. The Claimant also sought a declaration in terms of section 124 of the EA.

2. The Respondent denied that they had breached the regulations or had discriminated against the Claimant. They contended that the Claimant's dismissal was fair on the grounds of her redundancy. They argued that no suitable alternative vacancies had arisen.

3. The parties helpfully lodged an agreed statement of facts which are narrated herewith and shown in italics.

4. The Claimant gave evidence on her own behalf and called her husband, Keith Stewart as a witness. The Respondent led evidence from the Head of their HR department, Ms Tracey Umpreville and from Paul Schutz, their Chief Operating Officer.

5. A Joint Bundle of Documents were prepared and lodged by parties to which documents were added to by agreement in the course of the hearing.

6. The Tribunal found the following facts established or agreed.

Facts

7. The Respondent company is part of a group of airline companies which includes Loganair Ltd. The Respondent is a regional airline that operates passenger services across the UK and Europe. It formerly had its Operations Control Centre in Aberdeen but other administrative functions were based at East Midland Airport.

8. The Claimant had worked as Technical Assistant in the oil industry. Part of her duties was to put together Job Cards for offshore engineering projects. She became a Planning Assistant in the same project in April 2001 until December 2001. Thereafter she worked in a number of roles with Amec supporting their operations in the North Sea (JB 89-91).

9. *The Claimant originally applied to the Respondent for the post of Crewing Officer by email dated 19 November 2007. The Claimant commenced employment with the Respondent as a full time Crewing Officer on 21 January 2008.* She was hardworking and ambitious. She successfully fulfilled a number of roles with the Respondent gaining experience in different aspects of its operations. She was latterly on a gross salary of £26,500.

10. *In January 2011 the Claimant transferred to the position of Rostering Officer. In May 2014 the Claimant transferred to the position of Operations Controller. In or about April 2014 the Claimant transferred to the position of Operations Analyst, (a post she held until her redundancy in January 2016). The Claimant's job descriptions can be referred to for her duties. In or about April 2014 the Claimant became pregnant.*

11. *The Claimant confirmed to the Respondent by email dated 6 December 2014 her request that her period of maternity leave should commence on*

25 December 2014. The Claimant duly commenced a period of maternity leave on 25 December 2014.

12. The possible rationalisation of the Respondent's various administrative and engineering functions to the East Midlands had been the subject of ongoing discussions and speculation for some time and a matter of disquiet amongst staff particularly in Aberdeen.

13. The CEO Peter Simpson would periodically arrange to visit the various locations from which the business operated such as Aberdeen and during these visits he would often hold impromptu question/answer sessions with staff. He visited Aberdeen in July 2015 and mentioned during the session the illogicality of the split functions being split between East Midland and Aberdeen. He had done this in the past. He then attended meetings with management staff.

14. Following his visit rumours circulated that the business would be re-organised and that the main Aberdeen functions transferred to the office in the East Midlands. The Claimant, who was at home on maternity leave, became aware of these rumours. She was concerned about them. She contacted the Respondent's HR department which was headed up by Ms Tracey Umpreville. The Claimant was reassured that there were no plans to re-organise the business in this way. It turned out that senior managers had been working on such plans for some time and that a proposal was due to go to the Board in August recommending the transfer of functions from Aberdeen to East Midlands. The proposal was ultimately accepted.

15. *On or around the 27 August 2015 the Respondent made internal arrangements for the Respondent's CEO Peter Simpson to visit the Respondent's Aberdeen office on 2 September 2015 for the purpose of carrying out a CEO briefing.*

16. *On 2 September 2015 the Respondent's CEO Peter Simpson visited the Respondent's Aberdeen office and announced proposals to commence a consultation process with all employees based at the Respondent's Aberdeen office regarding the possible closure of the Aberdeen office and relocation of*

functions to the Respondent's offices at East Midlands airport. A similar discussion took place relative to the Respondent's Hanger facility, involving possible relocation of functions to Bristol.

17. *Mr Simpson followed up his verbal comments in terms of an email to all staff dated 2 September 2015. There then followed a period of collective consultation which involved meetings dated 10, 17 and 24 September 2015 and 2, 8, 13 and 19 October 2015.*

18. BMI operated a grading system for staff (R1-R5). Grade R1 covers everything below manager and included the Claimant's role. Grade R3 covered managers and R2 junior managers.

19. The Respondent's sister Company Loganair operated from Aberdeen Airport and from Glasgow Airport.

20. The Claimant received an employment contract (JB p50-56). She was also subject to the Respondent's various policies. The Claimant was given a further contract of employment when she became an Operations Analyst in May 2014 (JB p75-86). She worked as a Crewing Officer from January 2008 until January 20011. She was given a job description (JB p93) for that post. She then became a Rostering Officer and was given a job description (JB p94). In 2012 she became an Operations Controller. In May 2014 she became an Operations Analyst. She received a Job Description (JB p98-99).

21. On 27 August Paul Schutz advised staff in Aberdeen that there would be a meeting on 2 September. The meeting took place both in the hangar with the engineering staff and in the office with the operations and administration staff (JB p107-108).

22. On 2 September an announcement was made to staff (JB p109) following the meeting with staff that consultation was to begin in relation to relocating the engineering facility at Aberdeen to the largest operational base the respondents had in Bristol and moving operational and support functions to East Midlands. The internal communication noted *"we recognise that this proposal is a significant*

change that would have a material impact on you. Accordingly we look to consult on this proposal with 'appropriate representatives' of the affected groups of employees, as there are more than 20 people that may be affected and potentially face redundancy, meaning it falls within the scope of collective consultation. In compliance with our legal obligations and our wish to act fairly the first thing we need to do is establish who those 'representatives' are."

23. Following this announcement consultative committees were set up by the Respondent and collective consultation took place. The Respondent also arranged individual consultation meetings with staff members including the Claimant. At this time the Claimant was still on maternity leave.

24. The Claimant was very concerned to keep abreast of what was happening. She found that she had difficulty logging onto the Respondent's intranet from home and could not open attachments. She telephoned Mark Ross on the 10 September advising him of this and asking if emails could be sent to her private email address. She emailed him on the same date using her private email address. He responded that he would send her any updates (JB p125.1).

25. On the 13 September Loganair advertised for a Planning and Scheduling Engineer based in Glasgow. No formal qualifications were listed in the advertisement.

26. *On or before 23 September 2015 the Respondent made contact with the Claimant by telephone to alert her to the commencement of individual consultation in week commencing 28 September 2015. By email dated 30 September 2015 the Respondent confirmed an invitation to the Claimant to attend an individual consultation meeting on 2 October 2015.*

27. At this time the Respondent's HR department took advice from "PACE Partnership" an organisation set up with the Scottish government to assist staff facing redundancy. Information relating to PACE and the support it could provide to employees was given to the consultative committees for distribution. It was not passed to the Claimant nor was she provided with a digital link.

28. The Claimant found the initiation of the consultation process stressful given her situation and her imminent expected return to work after her maternity leave finished.

29. The Claimant received a letter on 30 September (JB127) advising her of an individual consultation meeting. *On 2 October 2015 the Claimant duly attended a consultation meeting with the Respondent's Tracy Umfreville and Paul Schutz.* Ms Umfreville completed a template or pro-forma consultation meeting form (JB128). She noted on it the Claimant's offer to help with training. The way in which the redundancy payment was to be calculated was raised. The Claimant's attitude to relocating was discussed and it was noted that she was not looking to move due to her family circumstances. The Claimant raised the issue of having difficulties with remote access to the company's intranet and difficulties accessing her e-mails and opening attachments. Ms Umfreville passed a comment that she too had experienced problems using her i-Pad.

30. *On 15 October 2015 the Claimant telephoned the Respondent's Laura McEntee (HR Advisor) to request a copy of the minutes of the Collective Consultation meetings of 2 and 8 October 2015. These were emailed to the Claimant on 15 October 2015. On 19 October 2015 a Consultation Close Off meeting was held.*

31. *By letter dated 19 October 2015 the Respondent advised the Claimant in writing of its decision to relocate the Aberdeen office and hangar facilities to East Midlands and Bristol* (JB132-134). Mr. Schutz indicated that the Operations Department, Operations Support, Airport Services, Chartered Administration, Quality Team, TCC, Technical Services Department and Senior Management will move to the East Midlands office and that Engineering and Maintenance would move to Bristol. An offer of £8000 was made to assist in relocation. The letter also stated *"We will continue to keep you abreast of any job vacancies that exist within the group, so that will include Loganair opportunities – current information on this is held in the ABZ public folder (T-drive). If you aren't relocating with your job and find alternative work in the meantime you should speak to your manager or the HR team to discuss your contractual obligations and how this will be affected."*

32. *On 1 November 2015 the Claimant completed a confirmation of decision form notifying the Respondent that she would not be relocating "to the new workplace". This was emailed to the Respondent on 4 November 2015.* (JB135).

33. *On 4 November 2015 the Claimant emailed the Respondent enquiring about her notice period and holiday entitlement.*

34. *An email was issued by the Respondent's HR department to all staff on 5 November 2015.*

35. *The Claimant emailed the Respondent again on 16 November 2015.*

36. *On 2 October 2015 and again on the 17 November 2015 the Respondent furnished the Claimant with details of her redundancy calculation.* (JB137) It amounted to £3325.

37. The Claimant during this period was in contact with Ms Sam Jordan an HR Adviser in the HR department in relation to discussing her return (JB138). Ms Jordan failed to advise the Claimant of any vacancies believing wrongly that she had access to the Intranet where they were posted. Ms Umfreville had asked her to keep the Claimant aware of vacancies and only discovered later that she had not done so assuming that the Claimant had access to the Intranet where they were posted.

38. *The Respondent's HR department sent an email to the Clamant on 17 November 2015.* It was from Laura McEntee an HR Officer with the Respondent. *The Respondent confirmed its decision to make the Claimant redundant*. (JB146-147) There was no reference in the letter to any steps being taken by the Respondent to redeploy the Claimant or match her to suitable vacancies. At this time as part of the re-organisation a new post was created that of Engineering Administrator.

39. *During the Claimant's notice period the Claimant remained on maternity leave until 23 December 2015 and for the remainder of the notice period the Claimant took annual leave.*

40. Following representations from engineering staff in Aberdeen *on 23 November 2015, Paul Schutz issued an email to all engineering staff. This email was, inter alia, confirming the Respondent's decision to retain the maintenance, stores and materials department at the Aberdeen hangar.*

41. *On the 22 December 2015 the Respondent internally advertised the vacancy of Engineering Administrator.* (JB149). *On 22 January 2016 the Respondent offered the post of Engineering Administrator to Kerry Fyfe, who took up the position with effect from 1 February 2016.* The job description is produced (JB150-151). It was an R1 grade attracting a salary of £19,000. It was later regraded to a salary of £25,000 as of the 1 August 2016. Ms Kerry Fyfe had worked with the Claimant in a more junior role to her. The Claimant was qualified for the role.

42. The Claimant became aware that Kerry Fyfe had been offered the post of Engineering Administrator when they met. Ms Fyfe told the Claimant that she was pregnant. She mentioned the 'MAPLE' regulations and said that she had the Respondent 'over a barrel'.

43. The Claimant thought that she should have been offered this post. She was upset about the matter. She later discovered that Ms Fyfe was in the early stages of pregnancy. The Claimant was upset that she had not been told about the job as she would have taken it if there was no other post available. She felt excluded and forgotten.

44. *The Claimant's employment with the Respondent came to an end on 6 January 2016. At that time, the Claimant earned a gross salary of £26,500 per annum.*

45. *On 10 March 2016 the Claimant emailed the Respondent's HR department (at 15:25 hours) lodging a formal grievance and appeal.* (JB152).

> *"I am writing to you to today to raise a formal grievance.*
> *I would have raised this much sooner but I have only just found out that while I was serving my notice period and still on maternity leave a suitable alternative position became available. This position was*

advertised on 15th December 2015 (Engineering Administrator – Aberdeen Hangar).

I am really disappointed that no-one contacted me about this position given I had previously asked the question and was told it was very unlikely that any suitable positions would be available in Aberdeen after the move had taken place but in the off chance one did become available someone would be in touch.

After speaking with ACAS this morning they informed me that a woman on maternity leave must be offered any suitable alternative position that exists or becomes available while she is at risk of redundancy during her maternity leave.

I believe I should have been given first refusal of any suitable alternative job I would not have even had to apply or attend an interview as I should have had priority over other workers being made redundant who were not on maternity leave. As this did not happen I feel I have been treated unfairly…..”

46. The grievance was acknowledged by Mr Schutz (JB153). *By letter dated 14 March 2016 from Paul Schutz (Chief Operating Officer) the Claimant was invited to attend a meeting on 18 March 2016.*

47. Prior to the grievance hearing Ms Umfreville reviewed the way in which the Claimant had been treated. She spoke to Ms Jordan who indicated that she hadn’t done this because the job information was available to staff on the Intranet. Ms Umfreville was annoyed and disappointed at this situation and concluded that the Claimant should have been told about the EA vacancy. She accepted at this time that the Claimant had not been able to access the Intranet where the information about the job had been kept. No steps had been taken to review suitable job vacancies and ascertain if they were suitable for the Claimant. The HR department had not spoken to the Claimant about her qualifications or experience including her experience working in the oil industry prior to joining the company.

48. *By e-mail dated 17 March 2016 (at 20:56 hours) Mr Schutz informed the Claimant that the Respondent “has made an error and that the position in question should*

have been offered to you" and requesting a meeting "to discuss the next moves and your return to work as soon as possible". (JB 156)

49. *The Claimant attended the grievance meeting on 18 March 2016 accompanied by Alistair Stenton. Mr Schutz was in attendance also along with Sam Jordan (HR Consultant with the Respondent). At this meeting, Mr Schutz confirmed at outset that the Respondent was prepared to accept that there had been an error, that the position of Engineering Administrator – Aberdeen Hangar should have been offered to the Claimant and that the Respondent was now prepared to offer the position to the Claimant. Mr Schutz then confirmed the salary which would be payable and the fact that the Claimant's continuous service would be maintained. The Claimant responded by stating that she would need to think about the matter prior to coming to a decision.*

50. The Claimant took notes of the grievance meeting that took place (JB157-160). The Respondent also minuted the meeting (JB161-162).

51. The Claimant was advised that the post would carry a salary of £19,000. She said that this was considered below what she had been on prior to maternity leave. She was told that she would have to return the redundancy payment. She indicated that she couldn't make an immediate decision and would have to think about the matter. She advised that she had some trust and confidence issues given the way she had been treated by the Respondent. She was asked if her wages would be backdated. The Claimant had discovered that other staff who were clearing the redundancy payment calculation had been told that she had raised this issue with the Company. The Claimant believed that there had been a breach of her confidence in using her name in this way that this might jeopardise her future relationship with her colleagues.

52. The Claimant indicated that the job offer would need to be the same or better than the one she had previously.

53. *By letter dated 21 March 2016 to the Claimant from Mr Schutz the Respondent repeated the offer of the position of Engineering Administrator and the terms upon*

which this post was being offered. (JB160-166). The letter indicated that the Company did not accept that the Engineering Administrator vacancy was a "suitable alternative employment" as envisaged by the MAPLE Regulations. However it accepted that the claimant had been disadvantaged because she had been on maternity leave. The Company indicated that it accepted that if she had been aware of the vacancy then she would have applied and as a "protected" worker she would have been appointed. The Company indicated that the claimant would be allowed to take up the post at £19,000 per annum but that she would have to repay her redundancy payment. The post was later regraded to a salary of £26,000.

54. The Claimant had used the redundancy payment following the birth of her child. They indicated that they would pay the claimant £130 by treating the period between termination of her employment and her re-engagement as a lay-off. They indicated that continuity of employment would be preserved.

55. The Claimant was also concerned that Kerry Fyfe might then lose her job if she accepted the offer. *By e-mail dated 24 March 2016 (at 14:23 hours) the Claimant declined the Respondent's offer of employment* indicating that the offer was not acceptable. She wrote:

> *"As a result of BMI regional decision to make me redundant on 6th January I have now been unemployed for over 2.5 months with no income. My loss of earnings during this period based on the new position I should have taken up on return from my maternity leave would have been greater than the redundancy payment I received. With childcare costs and a period of more than 2.5 months without pay through no fault of my own coupled with repayment of my redundancy, accepting this offer would be financially very difficult.*
>
> *During our meeting to discuss my grievance you acknowledged the Company had made an error in the way my employment had been ended at the end of my maternity leave. You went further on to say 'the position in question should have been offered to you and that position was very similar to the one you previously held'. In the letter I received*

from you on 21st March you have now advised the position is not similar and you do not agree this role should have been deemed as a suitable alternative role. This along with the breach in confidentiality when discussing my grievance with someone who no longer works for the Company gives me no trust or confidence in BMI Regional as an employer."

56. *The Respondent did not offer the Claimant the post of Engineering Administrator before the effective date of redundancy.*

57. *In the event that the Claimant had taken up the post of Planning & Schedules Engineer, the Claimant's net weekly wage would have been £511.*

58. *The Respondent is part of a group of companies, the other company in the group being Loganair Limited. In the period between September 2015 and January 2016 the Respondent and Loganair Limited advertised certain vacancies, namely:*

(a) *The posts of (i) Director of Engineering Projects in Glasgow; (ii) Director of Operations in Glasgow; (iii) Planning and Schedules Engineer in Glasgow; (iv) B2 Engineer in Sumburgh; (v) Head of Cabin Services in Glasgow; (vi) B1 or B2 Engineers in Inverness; (vii) Crew Controller (temporary) in Glasgow; (viii) B1 or B2 Engineers in Aberdeen; (ix) Engineer Line Supervisor in Aberdeen; (x) Procurement Manager in East Midlands; (xi) Mechanic in Aberdeen; (xii) Procurement Manager in East Midlands; and (xiii) Technical Services and Planning Manager in a then unconfirmed location; all with Loganair.*

(b) *Possible posts of (i) Procurement Manager; Engineer, Mechanic, Materials Controller, Stores & Logistics personnel, Support/Administration and Engineering Supervisor/Management personnel, all in Bristol; and (ii) Operations Controller, Operations Officer, Crewing Officer, Rostering Officer, Technical Controller (Licensed engineer), Planning Co-ordinator, Technical Service Engineer, Technical Information Officer, Airworthiness Engineer,*

Quality/Compliance/Security personnel and Operational Management, all in East Midlands; all with the Respondent.

(c) *The posts of (i) Senior Maintenance Controller in East Midlands; (ii) Maintenance Controller in East Midlands; (iii) Technical Information Officer in East Midlands; (iv) Senior Technical Services Engineer in East Midlands; (v) Technical Services Engineer in East Midlands; (vi) Office & Operations Administrator in Bristol; (vii) Airport Services Manager in East Midlands; (viii) Charter Administrator in East Midlands; (ix) Office & Operations Administrator in East Midlands; (x) Crewing Officer in East Midlands; (xi) Operations Controller in East Midlands; (xii) Operations Officer in East Midlands; (xiii) Rostering Officer in East Midlands; (xiv) Travel & Hotac Administrator in East Midlands; (xv) Flight Operations Support in East Midlands; (xvi) Compliance & Quality Auditing Engineer in East Midlands; (xvii) Revenue Accountant in East Midlands; (xviii) Engineering Administrator in Aberdeen; (xix) Mechanic in Bristol; and (xx) Management Accountant in East Midlands; all with the Respondent.*

59. *On 15 September 2015 and the 2 November 2015 Loganair Limited advertised for the post of Planning & Schedules Engineer.*

60. *On 30 November 2015 Nicholas Merchant was appointed to the role of Planning & Schedules Engineer with Loganair Ltd. Mr Merchant commenced employment with Loganair Limited on 4 January 2016 on a salary of £34,393 per annum.*

61. *In the period between September 2015 and January 2016 the Respondent made a total of 22 employees redundant.*

62. *On 11 April 2016 the Claimant lodged a Form ET1* with the Employment Tribunal.

63. *On 9 May 2016 the Respondent lodged a Form ET3* responding to the claims.

64. *Following on from termination of the Claimant's employment with the Respondent, the Claimant used reasonable endeavours to try to secure alternative employment.*

Witnesses

65. We found the Claimant to be a credible witness and generally a reliable one. The events around her redundancy had clearly had a considerable effect on her and we came to the conclusion that she had a good recollection of those events. She tried to give her evidence as honestly as she could. Her husband gave evidence. We also found him a straightforward although somewhat cautious witness. He was generally credible and reliable although his evidence was not critical to the Claimant's case he was clearly less emphatic than the Claimant that moving to Glasgow for her to take up a post there would have been a practical possibility. We gained the impression that any move there would be a reluctant one on his part and difficult given his work was mainly in Aberdeen.

66. We found Mr Schutz a credible witness and generally a reliable one although he had often to be pressed for his actual recollection rather than his belief in what would have occurred. We had some doubts about his recollection of detail and given the passage of time and the fraught period over which the events occurred, involving both redundancies and a major relocation of the business, then as Chief Operating Officer this was understandable. Ms. Umpreville was generally credible and reliable although we preferred the Claimant's recollection of events where it conflicted with hers as being likely to be the more accurate for the same reasons as we have noted regarding Mr. Schutz namely this was a very busy and no doubt stressful period for her and her department.

Submissions

67. Ms Gribbon provided the Tribunal with both an Outline of her submissions in writing and she supplemented these orally. We are grateful for the very clear and comprehensive way in which these were set out and for the Bundle provided to us containing copies of statutory provisions, Codes and legal authorities.

68. In relation to the factual background she asked the Tribunal to accept that the CEO had told staff in Aberdeen in July that the Aberdeen office was to close. This is

what first concerned the Claimant. Despite re-assurances from Ms Umpreville and a promised email clarifying the position no such email was sent. At this time the Claimant had told her line manager Mark Ross that she was having difficulty logging onto the Respondent's system and opening attachments.

69. The next area that Ms Gribbon touched on was the consultation process noting that the PSE post was advertised on 13 September 2015 and the Claimant not told about it at her first consultation meeting on the 2 October. At that meeting she had told Ms Umpreville that she had trouble accessing the intranet and opening attachments. Ms Umpreville made a comment about difficulties accessing it using her iPad mini. The Claimant was reassured that she would be told of suitable vacancies. It was in her view significant that the Respondent admitted that they failed in this. The Claimant was also not provided with any PACE information. The redundancy process was badly and ineptly handled by the Respondent's HR department. At this time they only had one member of staff, the Claimant, who was on maternity leave facing redundancy.

70. The solicitor then turned to the grievance process . The Claimant had found out by accident that a junior colleague Kerry Fyfe was pregnant and had been given the post of Engineering Administrator. This was a post she could have carried out but she was not told about it. The Respondent accepted the error and that the post was 'similar'. The Respondent offered her the post but only if she repaid her redundancy money which by that point she had used. The Claimant would otherwise have accepted the post. The grievance process was submitted Ms Gribbon badly and insensitively handled.

71. Ms Gribbon suggested that the Tribunal should accept the Claimant and her husband as credible and reliable. She spent some time over the evidence of Ms Umpreville suggesting that she was simply not a credible witness. Her department had handled matters poorly. As an example the Claimant had not been asked to refresh her CV so the HR department were using a seven year old CV that did not fully reflect the Claimant's skills and experience. The ET3 inaccurately listed the Claimant's work history. There was no documentary evidence that any exercise had taken place to match the Claimant to suitable posts. She had called

the Claimant a liar. Mr Schutz's evidence could best be described as 'wooly'. The Claimant's confidentiality had been breached when he had spoken to John Stewart.

72. Turing to the various claims Ms Gribbon took the Tribunal to Section 18 of the EA listing the basis for that head of claim and then to the 'MAPLE' Regulations and finally to the claim for unfair dismissal and claims under the EA. There were she said well founded claims under Section 18 of the EA namely the failure to advise her of the CEO briefing, offer her the post of SAE and failure to forward the PACE material. Under the MAPLE Regulations the claimant was entitled to suitable alternative employment .She wasn't offered the post PSE post, the new Engineering Administrator post or the Crewing post in Glasgow. The Claimant also sought to invoke section 124 of the EA and broadly to have the Respondent overhaul the way in which they deal with women the Claimant's position to minimise the risk of a repeat of the situation. An amended Schedule of Loss had been presented to the Tribunal.

73. Finally she addressed the Tribunal on the terms of a declaration she wanted the Tribunal to make in terms of Section 124 of the EA. SH reiterated the criticisms of the HR department and the failure to deal properly with the Claimant's return from maternity leave and the rights she had. There had been a complete failure to recognise her rights.

74. In reply Mr. Anderson took the position that he would concentrate of the facts as these did not support the claims being made. Much of the background to the case was undisputed and straightforward. Neither the EA nor PSE posts were suitable alternative employment for the reasons spoken to by the Respondent's witnesses. There was no obligation to advise the Claimant about these posts and no claims arises. Mr Anderson then considered the meaning of suitable alternative employment in this context. The PSE post was one that the claimant was not qualified to hold. She did not have the requisite training or in depth experience. It was two grades above the Claimant's grade and was based in Glasgow. The Claimant's position was no higher than she 'may have taken' the post. This is contrary to the clear evidence pointing to her indicating at the time she could not

move to Glasgow leaving friends and family and the necessary support network she had here in Aberdeen. Similarly the EA post was not a suitable vacancy although the Respondent accepted that she was qualified for it was on a salary 30% lower than her own salary. This was an important factor (**Simpson v Endsleigh Insurance Services Ltd (2011) ICR 75**. It was a matter for the employer's judgment rather than that of the Tribunal. In summary there was no legal obligation to offer these posts to the Claimant.

75. In relation to suffering any detriment in Mr Anderson's submission none was proven to have occurred. The CEO briefing was no more than part of an ongoing communication about the longstanding issue of having split head offices. When a proposal was actually made to close the Aberdeen site then the Claimant was involved and both collective and individual consultation took place.

76. In relation to the Claimant's access to the internal I system the Respondent's HR department made an error in believing that she had not had access and it can now be shown that she did. It was in an effort to address this that the offer of the EA post was made. This issue turns on its own facts. The Claimant makes no reference to access problems to the IT system in her ET1 or at the PH that took place or later. There was no evidence that the Claimant raised the problem. It was not recorded in the Minute of the meeting that took place on the 2 October (JB p128/129). The PACE information was available through a link in the IT system.

77. The dismissal had to be seen as fair in all the circumstances. If the Tribunal were to hold that there had been any detriment suffered by the Claimant then Mr Anderson suggested it was very minor and would attract a lower end award**.** He saw no need for a Declaration. The facts did not show any lack of concern for the Claimant or other women's rights.

Discussion and Decision

Evidence

78. The issue of relocating functions from Aberdeen given the historic split headquarters had been an issue which had been concerning the staff in Aberdeen for some time and had been mentioned at previous informal briefings. Unknown to all but the most senior managers like Mr Schutz there had been continuing discussions between senior managers about the matter for some months and plans were being developed for the relocation of functions from Aberdeen to East Midlands. It was planned to put the proposal to the Board for approval in about August. This was a major and difficult restructuring exercise which would trigger collective consultation. It was against this background that the CEO visited Aberdeen. We suspect that he may have gone further than he initially in some comment he made at the staff meeting in July than he had intended as he seems to have effectively confirmed to those in the audience that the relocation announcement was imminent. It may be that the information about the proposal to the Board leaked out perhaps in discussion with senior staff. We do not really know from the evidence as it is vague and unclear. Whatever the exact cause there is no doubt that the concerns of the staff were so great as to quickly reach social media and the Claimant who was at home on maternity leave.

79. The Claimant immediately she became aware of the rumours contacted the HR department. We would add here that we think that it is almost inconceivable that Ms Umpreville as head of the HR function wasn't aware of the proposals given that her department would have to be heavily involved in the process. The members of the department, including Ms Umpreville, were probably unaware of what had happened in Aberdeen when the Claimant contacted them. The Claimant was re-assured that there was no proposal to relocate and they would confirm the position by email. It was significant that no promised email was sent to her or to other staff about this issue as it is likely that once the upshot of the meeting in Aberdeen was considered by managers they realised that the 'cat was out of the bag'. The Claimant felt, understandably, both upset at the proposal and that she had been misled by the HR department. The Claimant lost some trust in the HR department because of this incident.

80. The first conflict in evidence was that at the first consultation meeting neither Mr Schutz nor Ms Umpreville recalled or recorded that the Claimant had told them

that she had difficulty remotely accessing the IT system. Ms Umpreville faced some robust cross examination about this matter. We noted that no evidence had been led from the Respondent's IT department (even in the form of a Report) about their understanding of the matter although Ms Umpreville now claimed that they had told her that the Claimant had in fact been able to access the system.

81. On balance we accept that the Claimant has a much better recollection of the situation. We accept her evidence that she both told Ms Umpreville about the problems and in fact she had encountered such difficulties. This was certainly accepted by the Respondent's managers at the time. We also noted that she had contacted her line manager Mr Ross in September asking to be kept informed of developments and significantly giving him her personal email address for that purpose. It is important to realise that from this point the Claimant did not think that she had to access the Intranet to stay informed. We also took the view that it was likely that Ms Umpreville tasked a member of her staff to ensure that the Claimant was kept informed was probably triggered by the Claimant raising with her the problems she had with access.

82. We would add that the Claimant impressed us as a careful and thoughtful individual who would have weighed up carefully what was being said to her at these consultation meetings. She feared for her job and was disappointed that the issue of relocation had arisen just as she hoped to return to work. It should also be borne in mind that no doubt Ms Umpreville and Mr Schutz had many such meetings and although each was important their recollections cannot be expected to contain the detail of each one.

83. What seems particularly disappointing is that the Respondent's HR department despite being aware that the Claimant was on maternity leave and had rights on her return failed either to fully recognise the importance of ensuring that she should participate fully in the whole consultation and redundancy process or successfully put in place a system to allow her to do so. Given that the Claimant had undertaken a number of roles in the company and might have either gained additional relevant experience or qualifications since her initial employment, that might not be fully recorded in her personnel file, we found it surprising that she was

not consulted about these matters by someone in the HR department so that suitable vacancies could be identified. Not only was this not done but we were given no evidence that the Respondent's managers actually turned their minds to such matters until the Claimant's grievance. The Claimant was we understand the only employee absent on maternity leave at this time.

84. The Claimant had initially argued that she had not ruled out re-locating to Glasgow as noted by Ms Umpreville (JB p128). The note correctly recorded that the Claimant offered to carry out training for the Respondent. We accept her evidence that she had not ruled out relocation, if a suitable job, she had referred in evidence to one with prospects, became available. In our assessment an assumption was made that the Claimant would not want to move because of her personal circumstances and that this caused the note to be so categoric as to suggest no move was possible. The matter was not confirmed in writing as perhaps would have been wise. Having heard evidence from the Claimant's husband we formed the view that it probably would have been unlikely that the Claimant and her family would have moved to Glasgow even if an attractive role had been identified.

85. It was significant that the Claimant was not told that the opportunity had opened up for a Planning and Scheduling Engineering post with Loganair in Glasgow. This was advertised on the 13 September. We do not believe that any thought had been given to whether the Claimant was a viable candidate or were the employers in possession of enough information to discount her as such. She had some experience in engineering matters through putting together job cards from her time in the oil industry. The depth of her knowledge and whether she could have fulfilled this role was never canvassed with her. In the event after hearing evidence about the post and the need for lengthy experience in engineering maintenance the Claimant was probably not in our view as qualified for the post as the successful candidate but the matter is discussed later in the Judgment.

86. Returning to the consultation meeting that took place on the 2 October 2015 (JB p128-129) we would record that the standard template on which the note was based somewhat surprisingly makes no reference to redeployment or alternative roles in Aberdeen being a possibility to avoid redundancy. This reinforced our

impression that the Claimant's particular situation was not kept in mind as the process unfolded.

Application of the Law

87. The Claimant does not contest that a redundancy situation existed nor did she appeal the decision to make her redundant. Redundancy is a potentially fair reason for termination of employment. We will now go on to consider the circumstances around the redundancy and whether the other claims made are made out.

88. Section 18 of the Equality Act ('EA') is in the following terms:

> ***Pregnancy and maternity discrimination: work cases***
>
> ***(1) This section has effect for the purposes of the application of Part 5 (work) to the protected characteristic of pregnancy and maternity.***
>
> ***(2) A person (A) discriminates against a woman if, in the protected period in relation to a pregnancy of hers, A treats her unfavourably —***
>
> ***(a) because of the pregnancy, or***
>
> ***(b) because of illness suffered by her as a result of it.***
>
> ***(3) A person (A) discriminates against a woman if A treats her unfavourably because she is on compulsory maternity leave.***
>
> ***(4) A person (A) discriminates against a woman if A treats her unfavourably because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.***
>
> ***(5) For the purposes of subsection (2), if the treatment of a woman is in implementation of a decision taken in the protected period, the treatment is to be regarded as occurring in that period (even if the implementation is not until after the end of that period).***
>
> ***(6) The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—***

(a) if she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;

(b) if she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

(7) Section 13, so far as relating to sex discrimination, does not apply to treatment of a woman in so far as—

(a) it is in the protected period in relation to her and is for a reason mentioned in paragraph (a) or (b) of subsection (2), or

(b) it is for a reason mentioned in subsection (3) or (4).

89. We noted that the Respondent's managers' motives were not relevant, that there was no need for a comparator and that a breach was 'automatic' discrimination.

90. The Claimant had the protections provided for in the section. The issue is whether she has been treated unfavourably. We did not accept that there was any demonstrated failure on the part of the Respondent company in relation to the CEO's briefing. We had no reliable direct evidence about what had occurred. To call it a briefing makes it sound rather more formal than it was meant to be namely a topical question and answer session. It was not a planned start to any consultation process. The Claimant came to hear very quickly on social media as to how staff were interpreting the situation. Given that a formal consultation process was later entered into we cannot conclude that any prejudice or detriment to the Claimant actually occurred although we accept that being at home and on maternity leave it must have been upsetting and unwelcome to hear the news that the long anticipated move to East Midlands was now happening.

91. We are also not convinced that the failure to alert the Claimant to the PACE information, although poor practice amounted to any significant detriment in the circumstances. The Claimant was alert to her rights. She did not point to any particular difficulty that this failure had caused her. Nevertheless, as she was absent from the workplace on maternity leave and this information was

disseminated to or accessible by those at work then especially given that the Respondent had been alerted to her difficulty in accessing information on the Intranet we hold that there was a failure here and that she was treated less favourably. The Respondent must have assumed it was a benefit to staff given their eagerness to contact the organisation for assistance.

92. What is more significant is the failure to advise the Claimant about suitable alternative employment namely the Engineering Administrator post and the temporary Crewing Officer posts in Glasgow although the Claimant was unlikely to have taken up any interest in the latter. These actions were not intentional but as we have discussed due to a lack of focus on the Claimant's particular position. She was entitled to know about them and was understandably upset when she discovered she had not been alerted to their existence and these failures amount to a detriment. We considered the level of the award. It was difficult to disentangle the Claimant's upset at the situation in which she found herself more generally namely facing redundancy just as she hoped to return to work and having the responsibility of a young child with the various acts of the Respondent which added to an already upsetting situation. Given the nature of these breaches and the additional hurt feeling it caused we were of the view this falls just in the middle band of the so called 'Vento' scale and that a modest award of seven thousand pounds would be appropriate.

93. We considered the question of a declaration under section 124 of the EA. We have a wide discretion. We concluded that nothing would be served by making such a declaration. We are sure that lessons have been learned. In taking this stance we do so having regard to the particular circumstances here. This was a large reorganisation which is the sort of situation that does not occur regularly and to that extent it is unusual. There appears to be no history of any such problems as highlighted by the Claimant's situation or any engrained problems. We accept the treatment of the Claimant and the proposed treatment of Kerry Fyfe was poor but the Respondent had got itself into somewhat of a mess. This is a far cry from the sort of situation that arose in the case of **Lycee Charles de Gaulle v Delambre** EAT/0563/10/RN to which we were referred .What we have simply is a stretched HR department failing badly to deal with the Claimant's unique situation against a

background of what otherwise appears to be good practice namely an appropriate and full collective consultation.

94. We then considered the Claimant's rights under what are commonly referred to as the 'MAPLE' Regulations. The Respondent's solicitor argued that there were no suitable vacancies and that the claim could not succeed. The Regulations state:

> ***Redundancy during maternity leave***
>
> ***10.—(1) This regulation applies where, during an employee's ordinary or additional maternity leave period, it is not practicable by reason of redundancy for her employer to continue to employ her under her existing contract of employment.***
>
> ***(2) Where there is a suitable available vacancy, the employee is entitled to be offered (before the end of her employment under her existing contract) alternative employment with her employer or his successor, or an associated employer, under a new contract of employment which complies with paragraph (3) (and takes effect immediately on the ending of her employment under the previous contract).***
>
> ***(3) The new contract of employment must be such that—***
>
> ***(a) the work to be done under it is of a kind which is both suitable in relation to the employee and appropriate for her to do in the circumstances, and***
>
> ***(b) its provisions as to the capacity and place in which she is to be employed, and as to the other terms and conditions of her employment, are not substantially less favourable to her than if she had continued to be employed under the previous contract.***

95. Mr Anderson submitted that the judge of whether there was a suitable vacancy lay with the employer and that they had ascertained that there were none. The Claimant's solicitor arguing that there were suitable vacancies namely Planning & Scheduling post, the Crewing Officer posts and the Engineering Administrator position ('EA').

96. The Regulations provide that where an employer through redundancy can no longer employ a woman returning from maternity leave that they must offer her suitable alternative employment if such a vacancy occurs. The Regulations as we have seen at Sections 10 (3)(a&b) indicate that the work has to be suitable and appropriate for the employee and are not substantially less favourable than the old contract. If an employer fails in this then the dismissal is automatically unfair.

97. If as in this case there is a dispute as to whether a post is suitable then the Tribunal must look at the situation from the perspective of an objective employer rather than from the Respondent's particular perspective (**Simpson v Endsleigh Insurance Services Ltd (20110 ICR 75**).

98. The first post at issue was the Planning and Scheduling post. The Job Description (JB P227) makes it clear that the post holder should preferably have a minimum of five years' maintenance planning experience and a working knowledge of aircraft maintenance programmes. We had no doubt that possibly with training or experience the Claimant could fulfill this role. She no doubt had the aptitude and was not unfamiliar with engineering matters having been involved in this sort of work when in the oil industry. That, however, is quite different from being in the situation where the role was suitable alternative employment. The maintenance of aircraft is a serious and important matter. It was clear to us that the post was one that someone involved in the maintenance and engineering department in a more junior capacity would aspire to after gaining some years' appropriate experience to a depth that the Claimant did not have. In addition the salary of some £34,303 was considerably in excess of the claimant's salary then £26,400. It would have in effect been a promotion for the Claimant in relation to salary and responsibility. Ms Gribbon argued that the grade was the same as the Claimant's but this is not really to the point given the wide grading system employed by the company. We concluded with little difficulty that it was not a suitable alternative employment and that no breach of either the 'MAPLE' Regulations or EA occurred.

99. We then considered the short term Crewing Officer posts. The Tribunal did not hear much evidence about these. The Claimant had been a Crewing Officer in the

past and no issue was raised that the post attracted a significantly lower salary than the Claimant's current one or that any other factor made them unsuitable. There were two difficulties that were focused upon. The first was that the posts were temporary and for a short duration and the second was that they were based in Glasgow. We agree that an employer would probably regard these short term posts as unsuitable because of their short term nature. Even if we are in error then we concluded that we had to take account of our conclusion that the Claimant would not have taken any such job offer up because of their location alone. It would have meant a huge upheaval for her family without any compensating increase in salary and possibly only for a short duration. A reasonable employer who had accurately recorded the Claimant's views at the consultation meeting, namely that she was reluctant to move unless to a better job, would we believe have discounted these posts as being unsuitable for these reasons alone.

100. We now turn to the Engineering Administrator Post. There was again no doubt that the Claimant was suitably qualified and experienced to fulfill the role. The issue raised by Mr Anderson was that it was in effect a demotion and carried a much lower salary than the Claimant was being paid. His clients did not regard it as suitable alternative employment. The post had been advertised with a closing date of the 22 December 2015 (JB p222). It seems clear to us that there is no evidence that the Respondent's staff specifically considered whether this was suitable alternative employment for the claimant. The salary was £19,000. It transpired that the post was regraded following a reorganisation to a salary of £26,000. The evidence we had about when and why the regrading occurred was brief and not detailed. We do not know if it was being considered at this time. Ms Gribbon pointed to the fact that the salary band was not advertised and that the Respondent's evidence on this was frankly poor. We agree. However, we accept that the salary was £19,000 at the time the post was advertised and at the grievance appeal hearing in March (JB p158). It is also stated as such in the letter dated 21 March. We suspect that if there had been a regrading 'on the cards' at or about this time or if the salary was higher the chances are that the Claimant would have got to know about it. There is no reference to the regrading either in the ET1 or ET3. We therefore accept that the regrading occurred in August.

101. We accept that it seems that at the date of the Claimant's redundancy which was the 6 January 2016 comparing her current post with that of the EA post the significant factor was that the salary was almost 28% lower. This is a significant sum. If there were plans to upgrade the salary then that might have been significant but we have no evidence that this was the position and somewhat reluctantly we concluded that a reasonable employer would have formed the view that the EA post was not a suitable alternative because of the significant drop in salary. The job was on terms considerably less favourable than the job the Claimant was leaving and as such is not suitable alternative employment in terms of section 3(b) of the Regulation.

102. The Claimant had also made an application for what could be called 'ordinary' unfair dismissal. It was accepted that a redundancy situation arose through the partial closure of the business in Aberdeen. Redundancy is a potentially fair reason for dismissal and accordingly we went on to consider the fairness of the dismissal.

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

104. We were referred to the well known case of **Williams v Compair Maxam Ltd (1982) IRLR 83.** In that case, referring to a situation where an independent trade union was recognised, it was held that for a redundancy to be fair the employer had to give as much warning as possible of impending redundancy to allow consideration of alternative solutions, agree criteria for selection and look at alternative employment.

105. We would observe that these are not principles of law but of standards of expected behaviour and much will turn on the particular circumstances of each case. n the present case the Respondent's managers came up with a plan for the relocation of the business. We are firmly of the view that there were good business reasons to

formulate the proposal first, announce it and then consult on the process. This is by no means an unusual practice in the Tribunal's industrial experience. The delay between the proposal coming to light in late July and formal consultation beginning on 2 September was not something that caused us concern and was perfectly reasonable given that the proposal had to go before the Respondent's Board in about August. Consulting before there was any proposal in place seems to us to be taking matters too far. The respondents appeared to have undertaken a generally comprehensive collective and individual consultation process.

106. Ms Gribbon argued that no alternatives to redundancy appear to have been considered. This is not strictly the case as the main alternative to redundancy that was considered and proposed was in fact relocation. The case for relocation seems to have been accepted in principle although the Respondent altered its proposal during consultation to retain some engineering services in Aberdeen. We were not convinced that any unfairness arose in relation to the broad way in which consultation was conducted or that the process was in any way procedurally flawed.

107. That does not mean that we accept that the Claimant as an individual was treated fairly in the process. Things went wrong at an early stage as we have seen and despite asking to be kept informed, through her personal email, and someone in HR being apparently tasked to do this the claimant was not told about the EA vacancy that arose in late 2015. She was entitled in the circumstances to expect that she would have been told.

108. We considered this matter carefully and it seems to us that even if the claimant had not asked to be kept informed of vacancies that the employers here would have been under a duty to tell the claimant about the post. Although we accepted that in terms of Regulation 10 the EA post was not suitable alternative employment it has to be borne in mind that the purpose of the Regulation is to provide particular protection to someone in the claimant's position namely someone returning from maternity leave. The Regulations provide a statutory test by which alternative suitable employment is to be assessed. We do not accept that in all circumstances

this test would necessarily be the same as the test of reasonableness for an employer's actions in offering alternative employment.

109. The first question to ask is what the extent of the employer's duty is. The answer depends on the circumstances but in this situation we believe there was a clear duty to tell the Claimant about the EA post irrespective of whether it had a lower salary. It was an option that a reasonable employer would have her to in the hope of keeping a more experienced employee albeit in a lower role. The failure to do so cannot be retrospectively justified with reference to the test in Regulation 10. It was up to the Claimant to decide if she would accept the post and the respondent would gain an employee with a proven track record and the necessary skills. An employer can also decide to 'bump' another more junior employee from a post to open up a vacancy for the more senior employee and this is what they attempted to do themselves in suggesting that Ms Fyffe should be removed from the Engineering Administrator's post. We also noted that offering a job in a subordinate position may be reasonable (**Barrett Construction Ltd v Dalrymple (1984) IRLR 385**).

110. We accepted the Claimant's evidence that even given the lower salary her priority was to stay employed and she would have applied. There was no suggestion that she was not qualified for it and bearing in mind that the post was ultimately offered to her we conclude that if she had been told about the post she would have applied and almost certainly been successful. There was no evidence of any competition for the post. The Claimant returning as she was from maternity leave would as the Respondent's witness conceded would have been offered it in preference to an open selection.

111. The Claimant was also not told about the P&S vacancy and would have been entitled to apply although we held that she would have been unlikely to have been successful given her lack of the required maintenance experience. This matter does not add much to the whole picture but it highlights the unfairness to the Claimant about not telling her about vacancies. This also applies to the Crewing posts in Glasgow. The Claimant was entitled to be told about them and to consider them.

112. The unanimous judgment of the Tribunal was that the dismissal was unfair for these relatively narrow but important reasons that the respondents failed to keep the Claimant advised of vacancies in particular the EA post and in addition failed to offer her that post when it became available.

113. The Tribunal had the benefit of a detailed Schedule of Loss. The Claimant had received a redundancy payment so no basic award arises. The question for the Tribunal is what is just and equitable compensation for the Claimant's losses post dismissal. There was no doubt that the Claimant had taken steps to mitigate her losses and had sought employment. We were of the opinion that the fact that an offer of the post was ultimately made to the claimant, who rejected it, did not mean that she had failed to mitigate her loss. The offer of employment was made in circumstances where the Claimant already felt badly let down, she was not to be compensated for loss of earnings in the interim period and was being asked to repay her redundancy payment. The duty to mitigate is a reasonable one and the Claimant was in our estimation entitled to reject this offer coming as it did after she had been dismissed and that acceptance would have meant Ms Fyffe's possible dismissal.

114. The Claimant if she had taken the EA post which we believe she would certainly have done would have returned to work in that post. Her initial salary would have been £19,000 increasing to £26,400 in August 2016. From the 7 April 2016 until the date of the Tribunal on the 21 April is a period of 66.5 weeks.

115. The Claimant is a capable and talented individual and in the Tribunal's view she should at some point, even considering the difficulties in the job market in Aberdeen, obtain comparably well paid employment. The period of future loss will be nine months from the date the Tribunal made its determination on the 12 May to reflect the weak jobs market in the Aberdeen area.

116. Regrettably we cannot go further as we do not have a net figure for the Claimant's wage in the EA post although agreement was reached between parties as to the net wage she would have earned in the P&S. We would hope that the net wage

loss can be agreed quickly without the need for a hearing or if matters are in dispute the issue can be resolved though written submissions. It must be possible for the Respondent's payroll department to calculate what the Claimant would have received as wages from the 7 April onwards taking into account the regrading of the salary in August 2016. That would then have to be considered in the light of the Claimant's personal tax position. If it had not altered then the calculation could be made on the basis of her tax coding at the time of her dismissal.

117. Having set out the basis for our decision we invite parties to agree the net wage that is applicable. Given the length of time the case has taken we would hope that agreement could be reached quickly. If not a remedy hearing on the issue solely of the appropriate figure to be used as the net wage will be fixed.

118. Together with the wages loss making up the bulk of the compensatory award the Claimant will be reimbursed her fees of £1200 paid to the Tribunal service.

119. Finally the claimant seeks a payment for 'long notice'. We considered the cases to which we were referred. The premise for the award is that where an employee such as the claimant on dismissal loses her notice entitlement and that is a valuable right. The award if made reflects the possibility that the dismissed employee even if they obtain work will have to build up their notice entitlement again. The award is only made in exceptional circumstances where there is a possibility of this contingency. The Tribunal looked at this matter broadly. The claimant has a number of skills and appropriate experience for oil related and other work. Although the economic situation is hardly ideal the oil industry in particular seems to have stabilised somewhat. The chances are that if the claimant gets a new job she will not be entering a job market where there are waves of redundancies which would have been the situation pertaining in this area a couple of years ago. We concluded that the claim was too remote and that £300 should be the award for loss of statutory rights.

Employment Judge: James Hendry
Date of Judgment: 30 June 2017
Entered in register: 30 June 2017
and copied to parties