

EMPLOYMENT TRIBUNALS (SCOTLAND)

Case Nos: 4104948/2018 & 4104949/2018

Held in Edinburgh on 4,5,6,7 and 18 December 2018

Employment Judge: Michelle Sutherland (sitting alone)

5	Stephen Nelson	<u>Claimant</u> Mr K McGuire of Counsel
10	Edward Ferry	<u>Claimant</u> Mr K McGuire of Counsel
	Macfarlan Smith Limited	<u>Respondents</u> Mr S Rochester,

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Solicitor

The judgement of the Tribunal is that the Claimant was not unfairly dismissed.

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REASONS

Introduction

- 1. The Claimant presented a complaint of unfair dismissal and sought to be reengaged. His claim was conjoined with that of Edward Ferry, Case No. 4104949/2018.
- It was agreed by the parties that the Claimant was dismissed by reason of 25 2. redundancy. The Claimant was not challenging the fairness of the procedure adopted as regards the selection pool, individual and collective consultation, or the appeal process. His challenge was restricted to the Respondent's efforts to find the Claimant alternative employment. Specifically, the issue was whether the Claimant ought to have been offered work in Block 120. 30

- Safety, Respondent), Keith Laing (Plant Manager, Respondent), Katy Esplin (HR Business Partner, Respondent) and Stephen Lockhart (Head of Production, Respondent).
 - 4. The parties lodged a joint set of documents and made closing submissions.

10 Findings in Fact

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- 5. The Tribunal made the following findings in fact:-
- 6. The respondent manufactures pharmaceutical ingredients with a particular focus on opiates. The Respondent has around 300 employees and is a subsidiary of Johnson Matthey PLC. The Respondent has a dedicated human resource function.
- 7. The Claimant was employed by the Respondent as a Chemical Process Operator from 15 May 2006 until 29 January 2018. The Claimant was highly regarded by the Respondent as a very skilled, experienced and dedicated worker. The Claimant latterly received a basic salary of £32,491, with annual allowances of £13,098, fringe benefits of around £5,000 and a 3% employer pension contribution. The Claimant's employment was terminated without notice by reason of redundancy. The Claimant received a payment in lieu of notice.
- Work is organised into different Blocks by the Respondent. There are occasional changes in the work done in each Block. Not all work in the Blocks is continuous and some Blocks have periods of shutdown. The Claimant worked in Block 120 from 2007 until 2015. Block 120 was variously engaged in the manufacture of 14-Hydroxycodeinone ('14-OH'), Oxycodone, Naloxone, and Hydromorphone.
- In May 2007 the Claimant develop a skin rash on his hands and was referred to occupational health for skin patch testing. On 19 June 2007 occupational

health advised that the Claimant was sensitised to 14-OH, hydromorphone, hydroxymorphone, naloxone (all opioids) and other non-work related substances. In view of the marked positive response to 14-OH this was reported to RIDDOR as an incident of work-related contact dermatitis. The Claimant was initially restricted from working with 14-OH, condeinone, thebaine and oxycondone.

- 10. On 20 August 2007 Claimant was reviewed by Dr. Aldridge, Consultant Dermatologist who advised that he showed a positive response to hydroxycodeinone, hydromorphone, and naloxone and "there seems little doubt this man has become sensitised to these products at work and clearly should avoid future contact".
- 11. In 2008 the Claimant trialed working with oxycodone and 14-OH (opioids) and no new health problems were identified (J79). The Claimant subsequently began working with buprenorphine (an opioid) which was not part of the controlled trial.
- 12. On 6 December 2012 Dr Cattermole, Occupational Health, advised that "as he has been working with these products for a prolonged period without health effects, and as there has been an improvement in containment / controls / contamination since 2007, in my opinion it is safe for him to continue with his current work" (J61).
- 13. From July 2013 the Claimant was required to carry a restrictions card which detailed his sensitisations and was required to be reviewed by occupational health annually. Dr Cattermole, Occupational Health, undertook reviews of the Claimant in July 2013, January 2014, November 2014 and August 2015.
- 14. On 8 July 2013 Dr Cattermole advised that "as he has been working with these products for a prolonged period without health effects, and as there has been an improvement in containment / controls / contamination since 2007, in my opinion it is safe for him to continue with his current work" (J63).
 - 15. On 20 January 2014 Dr Cattermole advised that "He has been following good working practices and use of PPE. He has not had any problems attributable

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to the products to which he is sensitised. He is aware of the need to continue to follow good working practices".

- 16. In 2015 the Respondent was prosecuted by HSE for failing to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees under Section 2 of the Health and Safety at Work etc Act 1974. In particular they were charged with failure to adequately control Michael Halplin (MH)'s exposure to chemicals which were hazardous to his health following his diagnosis of allergic contact dermatitis as a result of a sensitization to 14-OH. The respondent pled guilty and was fined £27,000. HSE asserted that the respondent had failed to adequately control MH's exposure to 14-OH and other substances hazardous to health; that they had failed to prevent MH from working with 14-OH and other substances with a similar chemical composition; and that they had failed to insist upon regular skin checks.
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- 17. Sensitisation is specific to one substance or to a group of substances that are chemically similar. Sensitisation can develop overtime but once it has occurred it is permanent and irreversible. Once a person is sensitised further skin contact with the sensitizer substance is highly likely to cause allergic contact dermatitis.
- The 6th Edition of the Approved Code of Practice (ACOP) to the Control of Substances Hazardous to Health Regulations 2002 (as amended) (COSHH) provides as follows (ACOP extract): -

"Detection of an adverse health effect or identifiable disease

[1.] Where health surveillance shows that an employee's health is being adversely affected the employer should:

- review the risk assessment and, if necessary, modify control measures;
 - check the health of employees doing similar work;
 - take into account any advice received from an occupational health professional, and arrange for a suitably qualified person to explain to the employee(s) concerned:
- 30 the results of health surveillance;

 – any action taken to reassess the workplace controls and implement any necessary changes;

- the arrangements for any further specialist assessment of health;

- any arrangements which will be put in place for continuing health
- 5 surveillance;

 – any arrangements to transfer the employee(s) to alternative employment within the workplace.

[2.] The employer should be advised by any appointed doctor or occupational health professional concerned whether:

 it is necessary to transfer the employee to other work where there is no exposure to the hazardous substance concerned;

a medical examination of the employee concerned should be arranged and, if so, the person who should carry it out;

■ all other employees who have been exposed to the substance concerned

similarly to the affected employee should also be medically examined:

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 additional facilities should be provided and whether any other arrangements should be made.

The employee or their representative should be involved before any decisions on alternative work arrangements are made."

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- 19. On 18 August 2015 a meeting was held between Deborah Bonnie HR Director, the Claimant and Keith Laing, Plant Manager. The Claimant was advised that all employees who are sensitised are being reviewed. The Claimant was asked to stay at home for health and safety reasons until the review has been concluded.
- 20. In August 2015 a Sensitization Review was undertaken by Dr Cattermole of all employees known to be sensitised to determine if the risks to health were being adequately controlled. The review noted: "those with identified sensitizations are issued with a 'restriction card', listing the sensitizers in question and consequent restrictions. This is to allow the employee and line manager ... to ensure that they are not being asked to undertake work to which they are restricted..." The Review noted: "For those sensitized to opioids, it should be born in mind that, due to the nature of the sensitization

process, the potential for cross-sensitisation to different opioids, and the possibility of background contamination in many areas of the site, it will not be possible to absolutely remove any likelihood of any future exposure to the substances to which they are known to be sensitised or to which they may react". As regards the Claimant the Review noted: "One (Nelson) who is working directly with substances to which he has been proven to be sensitised. This appears to have arisen following a recommended trial of a return to work with a restricted range of products and subsequently working with additional products for reasons that are unclear. No health problems have been identified despite this. The likely health problem would be hand dermatitis." The Review further noted: "He is aware of the need to raise any health concerns at an early stage. In addition to the routine skin and respiratory health surveillance, he is reviewed annually by the occupational health physician to check that there are no new health concerns and to ensure that he is aware of his responsibilities in this regard...There would be clear business risks, particularly since the recent court case, should there be a return of this dermatitis".

- 21. On 21 August 2015 a meeting was held between David Payne, then Head of Production, Katie Esplin, HR Officer, the Claimant and his union rep where
 they discussed: the changes to the Respondent's approach following the HSE prosecution; that the provision of enhanced PPE (personal protective equipment) and containment was not sufficient for sensitised employees; instead the individual should have been assigned to alternative work in a different area "with no further risk of exposure to the sensitising product"
 (physical exclusion/ segregation); that the definition of an area has been reviewed; the Claimant's own sensitisations; the restrictions upon his work; and the proposal to move him to Block 7 pending a formal risk assessment. He was given the opportunity to ask questions and to voice any concerns.
- 22. At the meeting on 21 August 2015 the Claimant was shown the above ACOP 30 extract albeit with part 2 stated before part 1 and with the following words added: "The court took the view that the provision of enhanced PPE and preventing the injured party from working directly with the sensitising product

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was not sufficient. Instead he should have been assigned to alternative work where there was no further risk of exposure to the sensitising product i.e. restricted from working in that area, "taking into account any advice given by a doctor or relevant health professional. Therefor we were failings in out [sic] duties as an employer under the Health and Safety at Work Act 1974 and COSHH Regulations 2002."

- 23. At the meeting on 21 August 2015 it was noted by the Respondent that "he has worked with the products he is sensitised to for 8 years with no problems and the occupational health physician in place at that time was happy for the Claimant to work there. However, as we know you are sensitised, using controls such as better containment is not enough. You are not allowed to work with these products. Therefore you cannot work in Block 120." The Claimant objected strongly to the proposed transfer and was upset by it.
- 24. Following the HSE prosecution the Respondent adopted a consistent approach to employees who were sensitised. The Respondent undertook a review of the whole site with a view to classifying the relevant areas. No-one was allowed to work in areas potentially containing products to which they were sensitised. This approach to sensitised employees was not unique among other chemical companies.
- 25. On 26 August 2015 and in application of the policy of physical segregation/ 20 exclusion the Claimant was moved from Block 120 to Block 7. Block 7 was engaged in the extraction of opium poppy straw. David Payne, Head of Production, went to Block 7 to see the Claimant on his first day back after the initial discussions see how he was getting on. On 31 August 2015 the Claimant went absent with work related stress for a month as a result of the 25 transfer.
 - On 9 September 2015 David Payne, Head of Production wrote to the Claimant 26. to confirm the outcome of the meeting on the 21st of August 2015. The letter noted that "the way in which we define an area on plant has changed and the use of enhanced PPE and better containment is no longer sufficient to protect an individual who is already sensitised to a product. Therefore the individual

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must be removed from working with the products with immediate effect. Following a review from occupational health initial risk assessments have taken place on site and formal risk assessments will be carried out in due course to establish the areas within each department."

- 5 27. On 28 September 2015 a meeting was held between David Payne, Head of Production, Katie Esplin, HR Officer, the Claimant and his union rep where they discussed firstly that, contrary to the Claimant's understanding, there was no-one working in areas with products to which they are sensitised and secondly a change to working patterns to allow him to work shifts.
- 28. In 2016 the UK ceased opium poppy growing operations and the extraction of 10 morphine straw undertaken in Block 7 ceased to be part of the Respondent's long-term business strategy. In 2017 there were rumours amongst staff that Block 7 was closing following the depletion of existing stock. The Claimant understood that he could only work in Block 7 (and none of the other Blocks) because of his sensitisations and that his employment was therefore at risk. 15 In light of this risk the Claimant sought a meeting to discuss his sensitisations and restrictions. On 13 July 2017 a meeting was held between the Claimant, David Payne, now Director of Manufacturing and Alison Chisholm, HR Business Partner to discuss his sensitization. The Claimant noted that he had previously been working with the relevant products without issue and that he 20 was firmly of the belief that the patch testing had generated a false positive. David Payne agreed to refer him to occupational health to consider whether further testing was required.
 - 29. By September 2017 the Claimant was aware that Block 7 was ultimately going to close.
 - 30. On 2 September 2017 the Claimant was seen by Dr Reetoo, Occupational Health Physician. He did not recommend a repeat patch test or referral to dermatology. The Claimant advised Dr Reetoo that he has been advised that he can only work in Block 7 and he worried about his future employment prospects there. As regards his fitness to return to Block 120 Dr Reetoo noted that "The dermatologist reports that Mr. Nelson is sensitised to the above

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chemicals based on his assessment and the result of the patch test. He should clearly avoid future contact. This advice has already been there since 2007. Management in consultation with health and safety should also consider that Mr. Nelson still managed to work safely for another 8 years in Block 120 with the same chemicals with his diligent compliance to safe work practices, control measures in the workplace and an effective health surveillance program without any adverse health effects. This could be considered as a valid evidence of safe control system in the workplace so long as employee is fully compliant, and a robust health system remains effectively in place. I would thus recommend further engagement with Mr. Nelson to discuss this issue further especially given his concerns about his future job prospects in Block 7."

31. In September 2017 a Sensitization Risk Assessment was undertaken by John Armstrong, Health and Safety regarding possible transfer of the Claimant from 15 Block 7 back into Block 120. The Risk Assessment advised that samples had been taken in the Block 120 modules which found traces of the relevant substances. In most cases these were below the surface exposure limit which is adequate for people without sensitization to the substances but it noted that there is no safe limit for individuals who are sensitised. The assessment concluded that "the medical information has concluded that the operator is 20 sensitised to a number of substances which are used in Block 120 and the medical advice contained within the report is avoidance of future contact with the substances. Working in Block 7 complies with the medical advice and eliminates any potential exposure". The Assessment noted that "It is not advised at this time to recommend that the operator is allowed into the Block 25 120 facility without a full in-depth assessment being undertaken". He noted that "the output from a complete in-depth assessment would identify what remedial work and activities are required and what additional PPE may be needed for the operator to return to this area...an outcome may be that the 30 operator cannot be allowed to work in Block 120 if the risk cannot be controlled ... "

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- 32. The Risk Assessment was considered by David Payne, Director of Manufacturing who concluded that an in-depth risk assessment was not required because traces of the relevant substances had been found, it would be extremely difficult and expensive to further enhance PPE and containment (there had been improvements since around 2010 onwards), and such further enhancement may be insufficient to adequately control the risk of exposure to the relevant substances.
- 33. On 4 October 2017 a meeting was held between David Payne, Director of Manufacturing, the Claimant and HR to discuss his sensitisation and any potential for his return to Block 120 in light of the recent occupational health advice from Dr Reetoo and the internal risk assessment. David Payne advised the Claimant that in light of the HSE prosecution it was not appropriate for the Claimant to be put into a work area where there were traces of substances to which he was sensitised and that is accords with the legal advice that they have been given. He advised that it would be extremely difficult to further enhance PPE and containment, and such further enhancement may be insufficient to adequately control the risk. Further patch testing was not recommended and would put him at risk. The Claimant advised that his livelihood was at risk in Block 7 because of its potential closure.
- 20 34. On 9 January 2018 the Claimant and his colleagues were formally advised of the redundancy situation namely that Block 7 would close after processing the UK 2016 harvest following the decision to cease extraction of morphine straw.
- 35. On 11 January 2018 a formal redundancy consultation meeting took place between Keith Laing, Production Manager, Katy Esplin, HR Business Partner,
 the Claimant and his union rep to explore options for employment in alternative positions. The Claimant's redundancy policy requires that an employee at risk of redundancy is consulted in relation to "alternative jobs that are available". The Claimant was provided with a list of vacancies with both the Respondent and with the parent company. The Claimant was offered work in Small Scale Manufacturing ('SSM') which the Respondent regarded as the only suitable vacancy because of his restrictions. The Claimant declined because of the substantial decrease in pay and the belief that he was fit to

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work in Block 120. After the meeting vacancies arose in Block 120 and the Claimant sought to apply for that role on 16 January 2018.

- 36. On 25 January 2018 a further redundancy consultation meeting took place between Keith Laing, Production Manager, Katy Esplin, HR Business Partner, the Claimant and his union rep to further explore options for employment in 5 alternative positions. The Respondent was keen to secure alternative employment for the Claimant. The Claimant was reminded that he was restricted from working in Block 120, and that company had met with him on a number of occasions regarding this matter. On 11 January 2018 Keith Lang, Plant Manager wrote to the Claimant stating: "the only area out with Block 7 10 where it would be safe for you to work is SSM" and given that he had declined a role in SSM the company had no reasonable alternative but to terminate his employment on grounds of redundancy.
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37. On 2 February 2018 the Claimant submitted an appeal against redundancy on the ground that it was unreasonable to refuse to transfer him to a vacant role in Block 120 given that he has worked there without issue for a significant number of years and given that occupational health considered it safe for him to work there.

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38. On 14 February 2018 an appeal hearing was chaired by Steven Lockhart, Head of Production with HR present to provide support and take notes and with the Claimant and his union rep in attendance. Steven Lockhart considered whether there was scope to transfer the Claimant back to Block 120 in discussion with David Payne.

39. On 21 February 2018 Stephen Lockhart, Head of Production wrote to the Claimant to advise him of the outcome of his appeal. He noted that no suitable 25 alternative employment would have arisen even if he had worked out his notice period. He did not accept that the Claimant could have safely worked in a role in Block 120. The decision to dismiss by reason of redundancy was confirmed and the Claimant received the following payments: £22,493.74 redundancy pay; £11,173.39 notice pay; and payments in lieu of any benefits which would have accrued during the 12-week notice period. All other

employees working in Block 7 secured alternative employment with the Respondent (with the exception of the Edward Ferry).

- 40. The Claimant was unfit for work on account of work-related stress from his termination date until around May 2018. The Claimant was in receipt of Employment and Support Allowance of £73.10 a week from 5 April 2018. The Claimant did not apply for any jobs. Had he done so it would have taken him around 2 to 3 months to secure suitable alternative employment with another employer.
- 41. On 23rd May 2018 the Claimant emailed Dr R Aldridge advising that the Respondent has ignored 3 doctor's opinions that it is safe for him to work in 10 Block 120 and "due to them ignoring this I was made redundant in January 2018 and I am currently awaiting a date for taking them to a tribunal. I require a strong robust medical opinion in writing that it will be safe for me to go back and work in Block 120 to strengthen my case for reinstatement." On 18 July 15 2018 Dr Aldridge replied stating that "these reactions were brisk confirming unequivocally you had developed contact hypersensitivity following exposure to these chemicals at work... were you to be exposed in the future the sensitivity is likely to be reactivated...Given the enhanced hygiene at the factory, it seems very unlikely that you would be at any significant danger of 20 receiving such exposure, but were such exposure to occur for any prolonged period, recrudescence of your eczema would be in evitable which is why I suspect your employers are reluctant return you to that particular production line. The latter being said these things always require a balance of judgement and having been exposed over a long period of time without difficulties it does seem extraordinary that an employer should choose to terminate employment 25 rather than continue to monitor the situation particularly as it was their relaxed working practices which led to your initial sensitisation. As you worked safely in that unit under medical supervision for many years provided that supervision can be maintained I see no reason why you should not continue to do so". 30

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Observations on the Evidence

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- 42. The standard of proof is on balance of probabilities, which means that if the tribunal considers that, on the evidence, the occurrence of the event was more likely than not, then the tribunal is satisfied that the event did occur.
- 5 43. The Claimant asserts that he was unfit for work following termination on account of work-related stress. The Respondent asserts that there is no medical evidence to this effect. The Claimant gave evidence on his own account of the effect of the dismissal on his mental health and this is consistent with the independent evidence that he was absent with work related stress following his transfer to Block 7. Accordingly it is considered likely that the Claimant was unfit for work following termination of his employment on account of work-related stress.

Respondent's submissions

- 44. In summary the Respondent's submissions were as follows -
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- 45. Prior to 2015 the Respondent had adopted a policy of personal protective equipment and containment regarding exposure to hazardous chemicals. After the HSE prosecution in 2015 the Respondent adopted a policy of physical segregation/ exclusion for those who were sensitised to such chemicals.
- 46. It was reasonable in the circumstances for the Respondent to maintain that policy in a redundancy situation despite medical evidence that there was a safe system of work in place in Block 120.
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- 47. The duty to find alternative employment is to take reasonable steps and not every conceivable step – the Tribunal should not impose an unreal or Elysian Standard. The Respondent had taken reasonable steps to identify suitable alternative employment.
- 30 48. There was no medical evidence of stress and depression and that the Claimant ought to have secured alternative employment within 2-3 months of termination.

Claimant's submissions

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- 49. In summary the Claimant's submissions were as follows –
- 50. The Respondent's policy of physical segregation/exclusion was reasonable but an exception should have been permitted in a redundancy situation
 - 51. The Claimant had continued to work in Block 120 on substances to which he was sensitised from 2008 until 2015 without further skin reactions.
- 10 52. The medical advice supports the contention that the Claimant could work safely in Block 120 and that no weight was placed upon the recent medical advice (given by Dr Reetoo on 2 September 2017)
 - 53. The Claimant ought to have been considered for a role in Block 120 and their failure to offer that role rendered his dismissal unfair.

Discussion and Decision

- 54. Section 94 of Employment Rights Act 1996 ('ERA 1996') provides the Claimant with the right not be unfairly dismissed by the Respondent.
- 55. It is not in dispute that the Claimant was dismissed by reason of redundancy and that this is a potentially fair reason within the meaning of Section 98 (1) or (2) of the Employment Rights Act 1996.
- 56. If the reason for his dismissal is potentially fair, the tribunal must determine in accordance with equity and the substantial merits of the case whether the dismissal is fair or unfair, Section 98(4) ERA 1996. This depends whether in the circumstances (including the size and administrative resources of the Respondent's undertaking) the Respondent acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee.
 30 At this stage of enquiry the onus of proof is neutral.
 - 57. In determining whether the Respondent acted reasonably or unreasonably the tribunal must not substitute its own view as to what it would have done in

the circumstances. Instead the tribunal must determine the range of reasonable responses open to an employer acting reasonably in those circumstances and determine whether the Respondent's response fell within that range. The Respondent's response can only be considered unreasonable if no employer acting reasonably would have responded in that way. The range of reasonable responses test applies both to the procedure adopted by the Respondent and the fairness of their decision to dismiss (*Iceland Frozen Foods Limited v Jones [1983] ICR 17 (EAT)*.

- 10 58. The Claimant was not challenging the fairness of the procedure adopted as regards the selection pool, individual and collective consultation, or the appeal process. His challenge is restricted to the Respondent's efforts to find the Claimant alternative employment. Specifically, the issue was whether the Claimant ought to have been offered work in Block 120.
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- 59. The EAT in <u>Williams v Compare Maxam [1982] UKEAT/372/81</u> set out broad standards for the fair conduct of redundancy dismissals including: "The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment".
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- 60. In August 2015, and following the HSE prosecution, the Respondent adopted a policy of segregating/ excluding sensitised employees from work areas which were potentially contaminated with the hazardous chemicals to which these employees were sensitised. The Respondent no longer regarded PPE and containment as sufficient protection for employees sensitised to those chemicals. That policy was not unique amongst chemical manufacturers and was not unreasonable. That policy was applied consistently to sensitised employees following the HSE prosecution.
- 61. The recent medical advice (given by Dr Reetoo) was consistent with the 30 previous medical advice consistently given by Dr Cattermole, namely that because there had been an improvement in PPE and containment since 2007, there was a safe system of work in place which would allow the Claimant to work within Block 120. The Respondent took into account that medical advice but was not required to follow it. Any failure in that system of protection was

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highly likely to lead to exposure to a hazardous chemical to which the Claimant was sensitised resulting in further contact dermatitis and possible further prosecution by the HSE.

- 5 62. The decision to exclude the Claimant from Block 120 was taken with careful consideration and in consultation with the Claimant and his union. Both the Claimant and Respondent were aware of the risk of redundancy (albeit informally) when the decision to exclude him from Block 120 was reviewed and confirmed in October 2017 in light of the recent medical advice and the risk assessment.
 - 63. Respondent acted reasonably in upholding its policy. It cannot be said that no employer acting reasonably would have failed to make an exception to their policy of segregation/exclusion for a potentially redundant employee in those circumstances.
 - 64. The Respondent made reasonable attempts to identify alternative employment. The Claimant was advised of all roles within the Respondent and group company. In light of its sensitisation policy the only suitable role was within SSM albeit it at a substantially lower salary. The Claimant was offered that work but declined it. In the circumstances the Claimant had no reasonable alternative but to dismiss the Claimant by reason of redundancy.
 - 65. It cannot be said that no employer acting reasonably would have dismissed the Claimant in these circumstances.
- 66. The tribunal concludes that the decision to dismiss fell within the range of 30 reasonable responses and was accordingly fair. The tribunal therefore concludes that the Claimant was not unfairly dismissed and the claim is dismissed.

Employment Judge: Sutherland Date of Judgment: 08 January 2019 Entered into the Register: 10 January 2019 And Copied to Parties