EMPLOYMENT TRIBUNALS

Claimant: Mr L Lavelle

Respondent Peel Advertising Limited trading as Perfect Fit Media

HELD AT: Manchester, by video platform **ON:** 1 & 2 February 2021
25 & 26 August 2021

BEFORE: Employment Judge Batten (sitting alone)

REPRESENTATION:
For the Claimant: K Barry, Counsel
For the Respondent: K Anderson, Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that: the claim of unfair dismissal is well-founded and shall proceed to a remedy hearing on 9 December 2021.

REASONS

1. By a claim form dated 16 January 2020, the claimant presented a claim of unfair dismissal. On 19 February 2020, the respondent submitted a response to the claim.

2. The hearing of the evidence took place over 4 days. Whilst the case was originally listed for 2 days, the oral evidence and submissions were completed only at the very end of the fourth hearing day and so the Tribunal reserved its judgment.

Evidence

3. 2 bundles of documents were presented at the commencement of the hearing, a main bundle and a small supplemental bundle of performance reports which was then incorporated into the main bundle. A number of further documents were added to the bundle in the course of the hearing including a copy of the respondent's disciplinary policy. References to page numbers in these Reasons are references to the page numbers in the main bundle unless otherwise stated.

4. The claimant gave evidence himself by reference to a witness statement. The respondent called 2 witnesses, being: Diane Rhodes, the Sales and Development Director, and John Armitage, IT Director. All of the witnesses gave evidence from written witness statements and all were subject to cross-examination.

Issues to be determined

5. At the outset of this hearing, the Tribunal discussed the issues arising in the claim of unfair dismissal with the parties. It was agreed that the issues to be determined by the Tribunal were as follows:

Unfair Dismissal

1. **Was there a redundancy situation at the respondent in accordance with section 139 of the Employment Rights Act 1996 ("ERA")?**

2. **Was the reason for the dismissal of the claimant a potentially fair reason under section 98 ERA? The respondent avers that the reason for dismissal was redundancy.**

3. **Pursuant to section 98(4) ERA, did the respondent act reasonably in all the circumstances of the case in treating redundancy as a sufficient reason for dismissing the claimant? In particular, having regard to the following:**

    a. **Did the respondent adopt a fair basis (pool and selection criteria/process) on which to select the claimant for redundancy?**

    b. **Did the respondent engage in a fair and reasonable process of consultation with the claimant on an individual basis?**

    c. **Did the respondent take such steps as necessary to search for and, if available, offer suitable alternative employment to the claimant within the respondent and the wider Peel L&P Group?**

4. **Did the dismissal of the claimant by the respondent by reason of redundancy lie within the range of conduct which a reasonable employer could have adopted?**

5. If the dismissal is found to be unfair, was the dismissal procedurally unfair as opposed to substantively unfair?

6. If so, would the claimant have been dismissed in any event had a fair process been followed?

Compensation

7. If the claimant's claim succeeds, to what compensation is the claimant entitled?

8. Has the claimant mitigated his loss?

Findings of fact

6. The Tribunal made its findings of fact on the basis of the material before it, taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities. The Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts. The findings of fact relevant to the issues which to be determined are as follows.

7. The respondent is an advertising contractor selling digital advertising media space in retail and travel locations. It is a small company which employed around 12 staff and is part of a larger group of companies, the Peel group. The respondent handles advertising space across the UK in conjunction with large retailers and media partners.

8. The claimant was employed by the respondent from 27 February 2017 as Head of Operations. His contract of employment appears in the bundle at page 39a. Initially there were other staff working in operations alongside the claimant. By July 2018, the claimant was the only member of the operations team and he handled all the respondent's operational functions and advertising assets, with responsibility for the inspection and maintenance of advertising sites, and the project-management of installations/removals and new schemes. The claimant worked long hours, often at weekends and during his holidays to cover the operational functions. He was eventually line-managed by Ms Rhodes, the respondent's Sales and Development Director, and their relationship became difficult largely as a result of the repeated demands placed upon the claimant by Ms Rhodes, often at short notice, or late in the day or during his annual leave.

9. The respondent's finance report to July 2019 showed costs savings had contributed to the team's performance being at £86,000 ahead of budget with an annual forecast of £134,000 ahead of budget.

10. On 20 September 2019, the claimant was called to a 1-2-1 mtg with Ms Rhodes. The claimant was expecting to be offered additional support to fulfil operational tasks. Instead, he was told that, after an organisational review of the respondent, the role of Head of Operations would be removed from the respondent's structure. The claimant was given a document about the reorganisation which stated that sales revenue needed to be improved and operating costs reduced. The document declared that the operational function was 'over-resourced for the current business model' and that the focus should be on growing the sales team. No other roles were proposed to be removed from the structure. Instead, the respondent proposed to recruit one or 2 additional sales staff. The claimant was told he was therefore "at risk" of redundancy and that consultation meetings would start the next week and conclude by 11 October 2019.

11. On 23 September 2019, Ms Rhodes sent an email to the respondent's staff to announce that the respondent was considering making the Head of Operations position redundant due to a restructure. The email said that the respondent would begin a period of individual consultation. However, apart from the claimant, no other employees were engaged in the consultation despite that the respondent's proposal included a plan to spread the claimant's duties out amongst existing staff. In response to the email, one member of staff asked Ms Rhodes to reconsider, saying that the claimant's role was "a complete necessity to the running of the business".

12. On 27 September 2019, the claimant attended what the respondent described as a 'consultation meeting'. The claimant had prepared an aide-memoire and he put his case about his job responsibilities continuing. He disputed that there was a redundancy situation and said that the business could not operate without those jobs and tasks which he undertook being done and quite possibly increasing. In response, the respondent gave the claimant a list of alternative roles to consider, including fire fighter, chef, guest services assistant (nights) in Doncaster, customer services advisor in Gloucester, and Head of Finance. The list consisted only of job titles with no details of the role, and very little information about pay or location. The claimant did not believe that any of these roles were suitable and in any event the claimant was unable to find further details of many of the roles, which were said to be available either online or on the Peel group intranet. As a result, the claimant formed the view that the respondent no longer wanted to employ him. The claimant told the respondent that he thought the redundancy situation was not genuine.

13. On 4 October 2019, the claimant attended a second meeting with the respondent, at which the respondent addressed the points in part 1 of the claimant's aide-memoire. Ms Rhodes opened by reading out a pre-prepared statement to the effect that the respondent proposed to focus on sales and that the claimant's work would be shared out between herself and 3 identified members of the team together with other sales staff along with the

potential recruitment of “a lower level of operations support” and that, possibly, some duties might be outsourced as and when necessary. The respondent accepted that all the claimant’s duties would exist within the new structure. The claimant asked if the affected staff were aware and the respondent said that none of the staff had yet been told of this aspect of the proposal. The claimant was told that the restructure proposal had been decided by Ms Rhodes, as head of the team. HR commented the duties outlined by the claimant in his aide-memoire “seem relatively junior”.

14. The respondent refused to address part 2 of the claimant’s aide memoire, which comprised the claimant’s contentions that there was no redundancy situation and that the process was contrived to remove him in a manner which he said Ms Rhodes had adopted to remove other senior employees in the past. The HR representative declared that this was “not relevant to this particular process”. The claimant was given figures for his redundancy pay entitlement and termination payments and was offered outplacement support to find new employment.

15. On 11 October 2019, the claimant attended a third meeting with the respondent. The claimant continued to insist that his role was not redundant. The respondent asked if the claimant had any further suggestions to make, and if he wanted more time to come up with some suggestions. The claimant indicated that he did not see the point in a further meeting, and so the respondent said that the claimant was dismissed as redundant and was required to return his company car, telephone and laptop. The claimant’s internet and email access was terminated that day. The respondent’s staff were informed of the claimant’s departure shortly after the meeting and the claimant was told that he was not required to work during his notice period. There was no handover of the claimant’s work.

16. The claimant said that he wanted to appeal. Initially, the respondent said that they did not have an appeal process and that the claimant had “no statutory, contractual or procedural right to appeal” but, later that day, HR confirmed that the claimant could appeal.

17. On 14 October 2019, the claimant wrote to appeal the decision to make him redundant. His grounds were that his role was not redundant and that he considered he had been unfairly dismissed because of his working relationship with Ms Rhodes.

18. On 18 October 2019, the respondent wrote to confirm that the claimant’s redundancy was “due to changes in the focus of Perfect Fit going forward”.

19. On 21 October 2019, the claimant’s notice period ended, and his employment terminated.

20. On 24 October 2019, the claimant chased up his appeal because he had not heard from the respondent. On 25 October 2019, the respondent said that the claimant had no right to appeal but gave him 5 days to appeal, despite that he had already done so on 14 October 2019. The respondent then invited him to an appeal hearing on 29 October 2019, but the claimant's companion was not available, and the hearing was rearranged for 11 November 2019.

21. On 6 November 2019, prior to the claimant's appeal hearing, Ms Rhodes met with Mr Armitage together with HR personnel in order to provide a justification for the claimant's redundancy and the process followed, and to discuss the claimant's grounds of appeal – see ET3, bundle page 34.

22. On 11 November 2019, the appeal hearing took place, chaired by Mr Armitage. The claimant explained his duties, saying that there had been no reduction in his work but that he had refused to work on occasions during his holidays or late into the evening and that Ms Rhodes had taken against him because of this. Mr Armitage commented that his role was purely to look at the claimant's appeal and that he did not think the claimant's relationship with Ms Rhodes was linked, without explaining the basis for his view beyond saying "it's the position, not you".

23. On 21 November 2019, the respondent wrote to the claimant to say that his appeal was unsuccessful and that he was redundant following a change in the strategic direction of the respondent. The letter said that the claimant had not raised his issues about Ms Rhodes prior to the redundancy appeal process but that these would be addressed by the respondent internally.

The applicable law

24. A concise statement of the applicable law is as follows.

25. Under section 98 (1) and (2) of the Employment rights Act 1996, the Tribunal must first decide what was the reason for the claimant's dismissal.

26. The respondent has advanced redundancy as the reason for the claimant's dismissal. Redundancy is a potentially fair reason for dismissal under section 98(2)(c) of the Employment Rights Act 1996.

27. The definition of redundancy is set out in Section 139 (1) of the Employment Rights Act 1996:

… An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:-

(a) the fact that the employer has ceased or intends to cease –

(i) to carry on the business for the purposes of which the employee was employed by him, or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business –

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer

have ceased or diminished or are expected to cease or diminish.

28. If the respondent can show a potentially fair reason for dismissal, the Tribunal must then consider the test in section 98 (4) of the Employment Rights Act 1996: whether in the circumstances including the size and administrative resources of the respondent's undertaking the respondent acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the claimant; and the Tribunal must make its decision in accordance with equity and the substantial merits of the case.

29. In assessing the reasonableness of a dismissal for redundancy, the Tribunal must follow the guidelines laid out in Williams and others v Compair Maxam Ltd [1982] ICR 156 having regard to the question of whether the dismissal lay within the range of reasonable conduct which a reasonable employer could have adopted. The factors to be considered are:

29.1 whether employees were warned and consulted about the redundancies;
29.2 whether the pool for selection was drawn appropriately;
29.3 whether the selection criteria were objectively chosen and fairly applied;
29.4 the manner in which the redundancy dismissals were implemented; and
29.5 whether any alternative work was available.

30. The Tribunal must also consider whether dismissal falls within the band of reasonable responses available to an employer in the circumstances of the case.

31. In the course of submissions, the Tribunal was referred to a number of additional cases by the representatives of the parties, as follows:

- Bromby and Hoare Limited v Evans and another [1972] ICR 113
- Sutton v Revlon Overseas Corporation Limited [1973] IRLR 173

- Carry All Motors Limited v Pennington [1980] ICR 806
- Maund v Penwith District Council [1984] IRLR 24
- Noble v House of Fraser (Stores) Limited UKEAT 686/84
- McCrea v Cullen and Davidson Limited [1988] IRLR 30
- Whitbread v Mills [1988] ICR 776
- James W Cook & Co (Wivenhoe) Limited v Tipper and others [1990] ICR 716
- Sartor v P&O European Ferries (Felixstowe) Limited [1992] IRLR 271
- R v British Coal Corporation, ex parte Price (No. 3) [1994] IRLR 72
- Rowell v Hubbard Group Services Limited [1995] IRLR 195
- Safeway Stores plc v Burrell [1997] ICR 523
- Strathclyde Buses Limited v Leonard and others UKEAT 507/97
- Polkey v A E Dayton Services Limited [1998] ICR 142
- Murray v Foyle Meats Limited [1999] ICR 827
- Corus v Wilkinson [2004] UKEAT/0102/03
- Taskforce (Finishing & Handling) Limited v Love EATS 0001/05
- Capita Hartshead Limited v Byard [2012] IRLR 814
- Hawkes v Austin Group (UK) Limited UKEAT 0070/18

The Tribunal took these cases as guidance but not in substitution for the statutory provisions

Submissions

32. Counsel for the claimant made a number of detailed submissions both in writing and orally which the Tribunal considered with care but does not rehearse in full here. In essence it was asserted that:- there was no genuine redundancy situation because the claimant's duties were not expected to and did not cease or diminish; the redundancy process was a sham engineered by Ms Rhodes in order to remove the claimant from the respondent; alternatively, even if there was a redundancy situation, his dismissal was unfair because there had been no meaningful consultation and no consideration of suitable alternative employment for the claimant; that the appeal was tainted because of the pre-meeting between Mr Armitage and Ms Rhodes, following which Mr Armitage failed to question Ms Rhodes' restructure; that the respondent failed to address the claimant's contention that the reason for his dismissal was that Ms Rhodes had decided to remove him; and that, despite Ms Rhodes' proposals having an effect on other employees of the respondent there was no consultation with them nor any evaluation of their ability or capacity to undertake the claimant's work.

33. Counsel for the respondent also made a number of detailed submissions both in writing and orally which the Tribunal considered with care but does not rehearse in full here. In essence it was asserted that:- following regular reviews of the respondent's business, Ms Rhodes had identified that some

of the claimant's tasks had diminished and the remainder could be absorbed by the exiting team; that the respondent had put forward redundancy as the reason for the claimant's dismissal and there was an evidential burden on the claimant to produce evidence that casts doubt on the respondent's reason; there was no evidence that Ms Rhodes was disgruntled or annoyed with the claimant as he contended; the respondent followed a fair procedure, including 3 consultation meetings and an appeal hearing; the respondent's HR department took reasonable steps to look for alternative vacancies for the claimant but that he did not consider any to be suitable; and that the claimant had made it clear that he could not return to work under Ms Rhodes in any event.

Conclusions (including where appropriate any additional findings of fact)

34. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way.

35. First the Tribunal considered whether a redundancy situation existed at the respondent and found that it did not. Where a dismissal is asserted to be for redundancy, a respondent must show that what is being asserted is true, unlike in cases of capability or conduct where the ERA only refers to a reason which "relates to" either of those grounds. The respondent did not bring evidence, beyond Ms Rhodes' assertions, to show that its requirement for employees to perform work of the kind performed by the claimant had in fact ceased or diminished, or that such was expected to cease or diminish.

36. On the claimant's unchallenged evidence, the Tribunal considered that his duties had not ceased nor diminished and they were not expected to cease or diminish. In 2019, the claimant was busier than ever and working long hours and overtime to deliver operational support. By September 2019, he had expected to be given assistance to discharge the operational duties. In cross-examination, Ms Rhodes was unable to articulate how, despite a decision to focus on increasing sales, to be generated by an enlarged sales force, the respondent expected that the requirement to service and maintain advertising sites which host the results of increased sales would in fact diminish either over a period of time or at all. The respondent's evidence in relation to how a redundancy situation had arisen was confused; at one point it was suggested that the only aspect of the claimant's role that the respondent in fact expected to cease or diminish was in relation to new developments. However, this expectation was not mentioned in the claimant's appraisal in June 2019, nor since then, and the claimant had produced slides for the respondent's Board meeting in September 2019 which included new development opportunities, in response to which there had been no suggestion of any reduction in or ending of such work.

37. What Ms Rhodes proposed to happen was that the claimant's duties would be redistributed - she contended that the claimant's duties were no longer

required to be carried out by one individual alone. The proposal to redistribute the work, of itself, does not lead to a conclusion that the operational duties had, or were expected to diminish. There was no evidence of Ms Rhodes' rationale, nor of any analysis having been undertaken, nor any evidence of discussions with the respondent's Board or its partners in the Peel group or with key individuals, as would be expected. Ms Rhodes claimed to have discussed her proposals with Mr Lees, deputy chairman, but there was no evidence of when this discussion took place nor the substance of it beyond an email exchange referring to a discussion about the claimant, without mention of a restructure, and that discussion was said to have taken place several months beforehand. The Tribunal noted that the respondent's Board met on 17 September 2019, when it might have been expected that such an important matter as a restructure of the respondent's operations would have been raised and discussed/agreed and minuted, but the respondent brought no evidence of this either.

38. The Tribunal also noted that Ms Rhodes' draft proposal was dated the same date as the claimant's 'at risk' meeting on 20 September 2019. It is a basic document setting out what will take place - there is one organogram with the claimant in the structure and a second without the claimant, to show he will be removed from the respondent's structure. There is nothing to demonstrate how or to whom the claimant's operational work and responsibilities would be re-allocated and there was no evidence of any audit of the skills and capacity of the remaining employees to absorb such work, nor any explanation of the new sales personnel proposed to be recruited, what they might do or how such might impact on the re-distribution of operational support. Tellingly, the respondent admitted in its evidence that it did not consult any other employees about the proposed restructure despite the potential, on Ms Rhodes' evidence, for everybody to be affected by it.

39. In those circumstances, the Tribunal concluded, from the very limited evidence provided and unsubstantiated assertions of Ms Rhodes, that the respondent had not thought through matters in any meaningful way beyond making a decision to remove the claimant and it had not shown that the requirements of the respondent's business for employees to carry out work of the kind undertaken by the claimant had diminished or that it was expected to diminish. When the claimant challenged his potential dismissal for redundancy, in his aide memoire given to the respondent, subsequent emails between Ms Rhodes and HR support this conclusion; for example, on 1 October 2019, bundle page 97, HR asked Ms Rhodes to look at the claimant's aide memoire to identify what the claimant was said to be no longer doing. This is something which HR might be expected to have already known if they had been aware of and/or involved in the restructure proposals as Ms Rhodes suggested.

40. It was also suggested that the respondent's proposal was part of a drive to reduce operating costs, which was not explained. The proposal that one salary (the claimant's) would be removed was set alongside new salaries being introduced to budget when up to 2 additional sales personnel were taken on. The respondent provided no figures or accounts to illustrate its assertions as to the necessity for costs savings, which were contradicted by the respondent's finance report for July 2019. In those circumstances, the Tribunal accepted the submissions of Counsel for the claimant that the claimant's duties still existed but they were going to be carried out by other people.

41. In light of the above conclusion, that the respondent has not shown a redundancy situation existed at the material time or at all, it follows that the respondent has not shown that the claimant was dismissed by reason of redundancy. A reorganisation does not amount to a redundancy where the same work is required to be carried out. The respondent's case has always been that its reason for dismissal was redundancy. When the list of issues was discussed, at the beginning of the hearing, the respondent was asked specifically whether it pleaded in the alternative, for example "some other substantial reason" and Counsel for the respondent confirmed that such alternative reason was not pursued. As the respondent has not shown redundancy to be the reason for dismissal, a fair reason, it follows that the claimant's dismissal was therefore unfair substantively. Taking account of the totality of the evidence in the case, the Tribunal also considered, on a balance of probabilities, that the reason the claimant was dismissed was, as he contended, because Ms Rhodes disliked him and/or because he had challenged her management style and refused to undertake work during his annual leave, as he was entitled so to do.

42. The respondent, through Ms Rhodes, embarked on a 'redundancy process' by conducting a series of meetings with the claimant between 20 September and 11 October 2019. However, the Tribunal considered that this process of meetings was, to all intents and purposes, a sham initiated by Ms Rhodes to support and somehow justify the removal of the claimant. In evidence, Ms Rhodes relied upon a single email in the bundle at page 593 as supporting the notion that she had formulated a plan, several months ago, which involved the redundancy of the claimant. She decided to move upon her plan in mid-September 2019, with unexplained haste. Ms Rhodes' email to the deputy chairman states that "I believe the time is right to proceed with this" with no explanation why the time was right, what in fact was to be proceeded with, and without reference to any restructure more widely. The focus was simply on the claimant being made redundant.

43. In respect of procedural matters, the Tribunal found that the claimant was placed, in effect, in a pool of one, even though his duties were to be redistributed within the restructured sales team. He was however not pooled with the sales personnel nor was there any evidence that the claimant was

given an opportunity to apply for the new and/or revised sales roles which might have been suitable alternative employment if they included operational duties. Ms Rhodes demonstrated by her conduct towards the claimant at the material time and under cross-examination that she had only one objective, namely, to terminate the claimant's employment under the guise of a "redundancy" when it was nothing of the sort. The claimant's dismissal was followed by the respondent's initial refusal to acknowledge or offer the claimant a right of appeal until pressed to do so by the claimant, fitting the pattern of an intention to dismiss the claimant and to seek to afford him little opportunity to challenge a decision already made. In addition, to ensure that Mr Armitage understood the position from Ms Rhodes' point of view, on 6 November 2019, prior to the claimant's appeal hearing, Ms Rhodes met with Mr Armitage to brief him on her justification for the claimant's dismissal and to discuss the claimant's grounds of appeal. This meeting was never mentioned to the claimant at the time nor in the course of the appeal itself. In those circumstances, the Tribunal concluded, on a balance of probabilities that the pre-appeal meeting had been prejudicial to the claimant.

44. Ms Rhodes had embarked upon "consultation" without engaging with the claimant in any meaningful way. On 20 September 2019, the claimant was called into a meeting, without notice, and told that a decision had been taken to undertake a reorganisation and that the reorganisation had already been determined to the extent that his role was to be removed. The organisational "proposal" was given to the claimant as a fait accompli. He was not invited to contribute to it and the proposal was not reviewed thereafter, despite the numerous points raised by the claimant in the several meetings which followed. The decision had been taken and Ms Rhodes conducted the meetings by proceeding to announce matters. She did not discuss them with the claimant nor listen to his point of view. The notes of the various meetings evidence that discussions were used effectively as a means to justify what had already been decided and to shut down the claimant's challenges.

45. The list of purportedly suitable alternative roles which the claimant was given was insulting to him in terms of the apparent level of skill and lack of seniority that could be gleaned from job titles alone. The Tribunal considered that the respondent did not at any time expect the claimant to express an interest in any of the roles on the list given their skill sets and/or locations. Many of the roles were obviously unsuitable, suggesting that HR was disinterested in assisting the claimant or did not care to support him in this aspect. The claimant was unable to locate a number of the vacancies online or on the respondent's intranet. When he raised this issue, HR did not make efforts to assist the claimant in this regard and, to an extent, frustrated the claimant's efforts to review those vacancies that might have been suitable. The list produced by HR was of job titles with no or barely any details; it was incomplete, not up-to-date and some of the vacancies

appeared not to exist. When the claimant pointed this out, HR confirmed that certain positions would not in fact have been advertised.

46. The Tribunal also noted evidence which existed that, at the time of the claimant's dismissal, another employee was known to be about to leave the respondent. Her departure was not factored into the restructure, although email correspondence between Ms Rhodes and an HR Business Partner at the Peel group on 16 September 2019 (being prior to the first meeting with the claimant) indicates that there was a plan to replace her. There was no evidence that the claimant had been considered for this vacancy, it was not even mentioned to him and there was no evidence as to whether or not the role in question may have been suitable for the claimant. The Tribunal considered that this further underlined Ms Rhodes' determination to remove the claimant and not allow him a way back.

47. In light of all of the above matters, it follows that the Tribunal found that the 'procedure' adopted by the respondent, which led to the dismissal of the claimant, was itself unfair in several ways. The appeal, which had at first been resisted by the respondent, did not serve to correct any unfairness and instead perpetuated such - discussion of the claimant's relationship with Ms Rhodes had been impossible given that she was handling the dismissal process. Mr Armitage refused to consider that part of the claimant's appeal statement, ruling it as outside of the appeal altogether, as "not linked", despite that it was the claimant's principal point of challenge to his 'redundancy'. In those circumstances, the claimant's dismissal fell squarely outside the band of reasonable responses.

48. The Tribunal has found no evidence of a redundancy situation, and that the claimant's duties still existed, and that the process adopted to dismiss the claimant was a sham, consisting of several serious procedural irregularities. In those circumstances, the Tribunal did not consider that it could conclude that the claimant would have been dismissed in any event had a fair process been followed. No reduction shall therefore be made under *Polkey* principles.

Remedy

49. As the claim of unfair dismissal is well-founded, the case shall proceed to a remedy hearing on 9 December 2021.

_____
Employment Judge Batten
18 November 2021

JUDGMENT SENT TO THE PARTIES ON:
23 November 2021

FOR THE TRIBUNAL OFFICE