



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs H. Redman

**Respondent:** Total Telephone Solutions Ltd

**Heard at:** Bury St Edmunds (by CVP)    **On:** 16 August 2022

**Before:** Employment Judge Saward (sitting alone)

## Representation

Claimant: In person

Respondent: Mr T Gardner (Director)

# RESERVED JUDGMENT

1. The complaint of unfair dismissal is well founded. The claimant was unfairly dismissed.
2. The Tribunal will decide the remedy for unfair dismissal at a further Hearing on 20 October 2022. This will include consideration of whether any reduction in the compensatory award for unfair dismissal will be made under the principles set out in *Polkey v A E Dayton Services Limited* 1998 ICR 142.
3. The parties will be sent a separate case management order setting out required steps for preparing for the remedy hearing.

# REASONS

## Claims

1. By a claim form presented on 6 January 2021, the claimant complained of unfair dismissal, age discrimination, disability discrimination, notice pay, holiday pay and for a redundancy payment.
2. By its response on 25 March 2021 the respondent resisted the complaint. Its case was, in essence, that the claimant was dismissed by reason of redundancy and that the claimant was paid all sums due including holiday and notice pay.

3. The claims for age discrimination, disability discrimination, notice pay, holiday pay and for a redundancy payment were dismissed when such claims were withdrawn by the claimant at the preliminary hearing on 5 May 2022.
4. The sole claim left outstanding is for unfair dismissal.

### **Issues**

5. The issues to be decided at the hearing were those identified at the preliminary hearing on 5 May 2022 and which were also discussed and agreed at the start of the hearing as follows:
  - 5.1 What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ('ERA')? The respondent asserts that it was a reason relating to the claimant's redundancy.
  - 5.2 If so, was the dismissal fair or unfair in accordance with section 98(4) ERA, and, in particular, did the respondent in all respects act within the so-called 'band of reasonable responses'?
  - 5.3 This issue may include consideration of the scoring system adopted by the employer and the application of the scoring system to her in all the circumstances.

### **Procedure, documents and evidence heard**

6. The Tribunal heard evidence from Mrs Redman, the claimant, and Mr Gardner, sole director of the respondent company. Neither party was represented.
7. Management Orders were given at the preliminary hearing on 5 May 2022. The claimant had not understood that she should provide her own witness statement. With her agreement, the written summary of case within the claimant's claim form was taken as her witness statement.
8. Mr Gardner had sent a letter to the Tribunal on 13 June 2022 which was headed up as a statement. Copies of some correspondence were also supplied by the respondent along with the completed scoring matrix used by the respondent for redundancy purposes. Mr Gardner letter of 13 June 2022 was taken as his witness statement and he gave oral evidence on behalf of the respondent.
9. There was no hearing bundle as such but the claimant had collated a series of documents and submitted them electronically to the Tribunal and respondent.
10. The witnesses gave evidence under sworn affirmation. Each confirmed the content of the documents, which were taken as their witness statements, to be true to the best of their knowledge and belief.

## Findings of fact

11. The claimant, Mrs Redman, was employed by the respondent company from 1 August 2014 until her employment was terminated on 8 October 2020. The claimant was paid 6 weeks' pay in lieu of notice i.e., up to 20 November 2020. At the date of her dismissal the claimant held the position of 'Telephone Critiquer'. She was contracted to work 18 hours per week but also undertook overtime. The claimant was one of seventeen members of staff holding that position.
12. The team of seventeen telephone critiquers was managed by four line managers/supervisors. The company also employed three field based trainers and a book-keeper. Apart from Mr Gardner, twenty five people in total were employed by the company.
13. The respondent operates a training and support business to retail businesses. The main service provided is a telephone critiquing service. This involves the Telephone Critiquer listening to recorded telephone calls provided by their customers and grading the quality of customer service by completing a visual matrix. Customers included prestige car retailers seeking feedback on the performance of their sales staff.
14. When national lockdown occurred from March 2020 in consequence of the Covid-19 pandemic, this had a significant adverse effect upon the business. The claimant and others were placed on furlough. According to Mr Gardner, in April, May and June of 2020 the company had raised no invoices and it had no income in those months. By September 2020 revenue was down 49% on the previous year and the respondent decided it had no option but to make redundancies.
15. The company had not been in a redundancy scenario before and did not have a redundancy policy. As a small business it did not have any Human Resources (HR) staff. Advice was therefore taken at each stage from a retired HR person who was known to Mr Gardner and who the company uses periodically for advice.
16. By letter dated 22 September 2020 the respondent was informed that the company was considering making redundancies within the telephone call critiquing team. The reason given was "*the significant adverse effects on the ability of the company to operate and carry out its usual day to day activities due to the ongoing Covid-19 pandemic.*" The claimant was advised that her post was one of those at risk of redundancy. The letter was emailed to the claimant at 4.09pm on 22 September 2020 with a covering message saying: "Please find attached a letter from Total Telephone Solutions Ltd regarding notice of Redundancy Consultation".
17. The same letter was sent to all seventeen members of the team.

18. The letter advised that the *“organisation will now start the consultation process”*. It specified four purposes of consultation, based upon a standard template published by ACAS, as follows:
- discuss and explore ways of avoiding or reducing the number of redundancies and reach agreement if possible.
  - give you the opportunity to make suggestions raise any questions you may have, this can be done face to face however could be potentially better via video call due to the current pandemic
  - consider the possibility if there are/is suitable alternative employment within the organisation
  - seek to agree criteria for selecting staff if redundancies
19. The letter goes on to make it clear that *“no decisions have been taken yet and no decision on this will be made until the consultation has concluded. We will keep you informed and involved throughout the process.”* The final paragraph states: *“In the next few days, we will write to invite you to an individual consultation meeting. This meeting can take place in person or on a video conference call, whichever you would prefer.”*
20. Two other members of staff who were also placed at risk responded to this letter. The claimant did not respond because she was expecting to be invited to an individual consultation meeting.
21. Over the following days there were internal discussions between Mr Gardner, the Office Manager (Ms Vines) and Assistant Manager (Ms Draper) on how to manage the redundancies and the steps to be taken. Ms Vines was the claimant’s line manager.
22. They decided that the best option was to utilise the ACAS scoring matrix. The respondent adapted the matrix for the purposes of selecting those to be made redundant from the pool of seventeen. The matrix scored each employee within the selection pool against ten criteria: (1) length of service; (2) skills/qualifications/training; (3) last performance review (if applicable); (4) experience; (5) KPI’s (calls scored per hour); (6) attendance; (7) time keeping; (8) disciplinary record; (9) future potential; and (10) flexibility (working hours and overtime). Scores were allocated between 1 to 5 with 1 being the lowest. The claimant was scored 33 out of 50.
23. There was no redundancy plan other than to utilise the selection criteria matrix.
24. The next letter from the respondent was sent by email to the claimant at 4.23pm on 5 October 2020. The letter referred to *“our most recent correspondence dated 22<sup>nd</sup> September 2020”* and invited the claimant to a meeting on either 7<sup>th</sup> or 8<sup>th</sup> October at a time to suit her. The meeting was arranged by telephone to take place on 8 October 2020 at 12 noon. The claimant was afforded the option of an in-person meeting at a venue hired

- by the respondent or internet based video call in light of the ongoing pandemic. The claimant chose the latter.
25. The claimant assumed the meeting would be the consultation meeting mentioned in the final paragraph of the 'at risk' letter of 22 September 2020. Mr Gardner confirmed that the purpose of the meeting to which the claimant was invited on 7<sup>th</sup> or 8<sup>th</sup> October 2020 was "*to let her know the outcome*".
26. At 11.54am on 8 October 2020 the respondent emailed the claimant with a letter attachment confirming that, after applying the organisation's redundancy selection criteria, she had been selected for redundancy. The letter stated that her employment would terminate on 8 October 2020 and a payment in lieu of notice would be made along with holiday pay and a statutory redundancy payment of £961.20. The letter advised of the right of appeal within 7 days to Mr Gardner and Ms Vines whereupon "*you will be invited to an appeal meeting so that the basis of your appeal can be discussed and considered.*" The completed selection criteria matrix for the claimant was attached to the email.
27. When the claimant entered the internet based meeting at noon on 8 October 2020 with Mr Gardner and Ms Vines the claimant was asked if she had seen the email sent 6 minutes previously. It was only at that point that the claimant became aware of the email which she then opened and was shocked to find that she was being dismissed. During the meeting the claimant's scores against the selection criteria were explained. The claimant expressed concerns over three of her scores allocated for attendance, time-keeping and KPI's but was in a state of shock.
28. The claimant appealed by an email to the respondent sent on 14 October 2020. The respondent acknowledged receipt on 15 October 2020. The claimant's evidence did not deviate from her appeal email. She mentioned being aware that her appeal should be made to a different and unbiased person but that was not an option available in the absence of an HR department. The initial letter of 22 September 2020 had advised of the commencement of consultations regarding redundancy and the stated purposes of consultation. This led the claimant to believe that the video link call was to cover all the points in that letter. The claimant was shocked to discover she had been selected for redundancy and believed that correct procedures were not followed or conducted fairly as no discussion on the content of the 'at risk' letter took place.
29. In her appeal document, the claimant disputed that her job was redundant because other staff doing the same or similar role were being retained. She also challenged the assessment criteria as subjective and not a true reflection of work ethic. The claimant expressed total disagreement with her score of 2 against timekeeping, calls per hour, and attendance.

30. There was no appeal meeting. Mr Gardner rejected the appeal by letter dated 19 October 2020. The response advised that as a small business, Ms Vines has always been responsible for all elements of HR and Mr Gardner was assisting as the Operational Director of the business due to the significance and nature of the changes. The response stated that the letter of 22 September 2020 offered opportunity for the claimant to be involved in the process by putting forward any ideas or considerations that she thought should be part of the process but "*We did not hear anything from you during this period of consultation.*" The letter goes on to say "*we did conduct a full consultation internally looking at many areas and aspects of the business.*" This was also the position taken by Mr Gardner at the Hearing.
31. However, Mr Gardner acknowledged in evidence that there was no consultation with any staff placed at risk. The consultation was internal only between the three managers involved in making the redundancy selections. He suggested that the letter of 22 September 2020 could have been worded better to reflect the fact that consultation meant internally but it was still open to the claimant to respond as two others had done.
32. The Tribunal finds that the letter of 22 September 2020 placing the claimant at risk of redundancy did not invite her to make suggestions or raise any questions. The final paragraph of the letter made it plain that the next stage of the process was to invite the claimant to an individual consultation meeting. On an ordinary and natural reading of the letter, the opportunity for discussion on options and to raise suggestions, questions and to seek agreement on the selection criteria was to occur during the individual consultation meeting. When the invitation came on 5 October 2020, it was the reasonable expectation of the claimant that the meeting she was being invited to attend on 8 October 2020 was intended to serve that purpose.
33. By the time of the meeting on 8 October 2020 the respondent had already decided to dismiss the claimant. The meeting of 8 October 2020 was not a consultation meeting prior to dismissal.
34. As Mr Gardner accepted, there was no consultation or discussion with affected staff over ways of avoiding or reducing the number of redundancies nor were attempts made to agree the selection criteria that was to be adopted.
35. When asked at the hearing if consideration was given to the possibility of suitable alternative employment, Mr Gardner stated that was not an option as it is such a small business. With hindsight he thought the third bullet point in the letter of 22 September 2020 should not have been included nor should the fourth bullet point regarding agreeing the selection criteria.
36. The claimant believes that she was singled out for redundancy because of her not 'fitting in'. She was older than others in her team and did not

socialise as much or use social media. The claimant stated that she had also been shouted at across the office by Ms Vines and Ms Draper, both of whom were involved in the selection process. There had also been 'a falling out' between the claimant and Ms Draper.

37. In refuting these claims, it was the evidence of Mr Gardner that in completing the scoring matrix, account was only taken of the previous 2 years of employment for each employee.
38. The Tribunal finds no evidence that matters besides those criteria in the matrix were used to make redundancy selection.
39. The parties disagree on whether the scoring matrix utilised fair selection criteria and was applied fairly.
40. There is disagreement between the parties over the claimant's time keeping for which she scored 2 in the matrix with the comment 'Frequently arrived to work on or just after shift was due to start'. The claimant maintains she was always 'logged on' before her shift commenced. Whereas others would arrive early and sit around with a coffee to chat, the claimant preferred to arrive in time to start her shift. The claimant believes that she only arrived late on one occasion due to a road traffic accident blocking the road. On that occasion she had telephoned the office to explain the situation.
41. Mr Gardner accepted that the claimant was 'frequently on time' but other people were ready 'in good time'. Based on his own observations, the claimant was generally one of the last people to arrive and the person he was most likely to bump into on the stairs on his way out. He would be in the office 3-5 times per month but the score also included the observations of Ms Vines and Ms Draper.
42. When asked if the claimant was ever late Mr Gardner replied "*lateness doesn't come into it*". If the claimant had been late then Mr Gardner would have marked it against the 'disciplinary' criteria for which the claimant scored 5. It was the respondent's expectation that staff arrived in good time, not rushing, and ready to work and those who did this were scored 3. Mr Gardner explained that a score of 3 meant being sat down ready to work, 5 to 10 minutes before the shift started. When asked what was needed to score 5, Mr Gardner replied that some staff came in 20 minutes early.
43. From the evidence heard, the claimant arrived in time for her shifts. There is no record or suggestion by Mr Gardner that she was ever late for work. There was no contractual requirement to arrive earlier than the contracted hours.
44. The claimant scored 3 against her last performance review with the comment 'acceptable and satisfactory'. The claimant had not in fact had a performance review in the previous 2 years. Mr Gardner confirmed that 13 of the 17 in the selection pool received the same score and comment. The

remaining 4 were all scored 4 against this criteria as there was recent data.

45. The KPI's were scored on the number of calls that the employee critiqued per hour taking the 'best' 3 month period. The calls were generally someone calling in to buy a car. The average call length was 5 to 8 minutes long. The claimant scored 2 for assessing an average of 5.5 calls per hour. The average was just over 6 calls per hour. The claimant believes that this was unfair because she would often be given the longer calls to critique as a more experienced member of the team.
46. The claimant also scored 2 against attendance for taking six days sick leave over the previous 2 years despite receiving hospital treatment for a serious medical condition. The claimant worked part-time and it is undisputed that she tried wherever possible to take time off for her appointments during her own time.
47. Whilst the claimant scored 3 against 'future potential' she believes that others who scored more were given opportunities to undertake other types of work not offered to her.
48. The respondent did not invite voluntary redundancies. Out of the selection pool of seventeen, eight members of staff were made redundant. One field based person was also made redundant.
49. All eight members of staff made redundant scored below 35 on the selection criteria matrix. Had the claimant scored 35 instead of 33 then she would have been tied with another member of staff who was not dismissed.

### **The Law**

50. Section 94 of the ERA confers on employees the right not to be unfairly dismissed. Enforcement of the right is by way of complaint to the Tribunal under section 111 ERA. The employee must show that s/he was dismissed by the respondent under section 95. This is also satisfied by the respondent admitting that it dismissed the claimant (within section 95(1)(a) ERA ).
51. Section 98 ERA deals with the fairness of dismissals. There are two stages within section 98.
52. First, under section 98(1), the employer must show that it had a potentially fair reason for the dismissal within section 98(2). Redundancy is a potentially fair reason within section 98(2)(c).
53. Second, if the respondent shows that it had a potentially fair reason for the dismissal, the Tribunal must consider, without there being any burden of proof on either party, whether the respondent acted fairly or unfairly in dismissing for that reason. That shall depend on whether in the circumstances (including the size and administrative resources of the



employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and shall be determined in accordance with equity and the substantial merits of the case.

54. Section 139(1)(b)(i) ERA provides that an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that the requirements of the employer's business for employees to carry out work of a particular kind, have ceased or diminished or expected to cease or diminish.
55. In **Murray v Foyle Meats Ltd [1999] ICR 827**, Lord Irvine approved the ruling in **Safeway Stores plc v Burrell [1997] ICR 523** and held that section 139 ERA asks two questions of fact. The first is whether there exists one or other of the various states of economic affairs mentioned in the section, for example whether the requirements of the business for employees to carry out work of a particular kind have ceased or diminished. The second question, which is one of causation, is whether the dismissal is wholly or mainly attributable to that state of affairs.
56. It is the requirement for employees to do work of a particular kind which is significant. The fact that the work is constant, or even increasing, is irrelevant; if fewer employees are needed to do work of a particular kind, there is a redundancy situation (**McCrea v Cullen and Davison Ltd [1988] IRLR 30**). Thus, a redundancy situation will arise where an employer reorganises and redistributes the work so that it can be done by fewer employees.
57. There is no requirement for an employer to show an economic justification for the decision to make redundancies (**Polyflor Ltd v Old EAT 0482/02**).
58. In **Williams and ors v Compair Maxam Ltd [1982] IRLR 83**, the EAT set out a number of steps that a reasonable employer might be expected to follow when dismissing employees by reason of redundancy, namely:-
  - a. Were the selection criteria used by the employer objectively chosen and fairly applied.
  - b. Were employees warned and consulted about the redundancy;
  - c. If there is a union, was the union consulted; and
  - d. Was there any alternative work available?
59. The EAT emphasised, however, that when the Tribunal decided whether the dismissals were fair or not, it was not for the Tribunal to impose its standards and decide whether the employer should have acted differently. Rather, the Tribunal should ask the question 'did the dismissal lay within the range of conduct which a reasonable employer could have adopted'?
60. The Tribunal should also keep in mind that the matters outlined in **Compare Maxim** are not a strict checklist and that a failure of the employer to act in accordance with one or more of these principles does not necessarily lead

to the conclusion that the dismissal was unfair. The Tribunal must look at the circumstances of the case in the round.

61. Where there is no customary agreement or agreed procedure then employers have a good deal of flexibility in defining the pool from which they will select employees for dismissal. In **Thomas & Betts Manufacturing Ltd v Harding [1980] IRLR 255** it was held that employers need only show that they have applied their minds to the problem and acted from genuine motives. Provided the employer has genuinely applied its mind to who should be in the pool for consideration for redundancy, then it will be difficult, but not impossible, for an employee to challenge it (**Capita Hartshead Ltd v Byard [2012] IRLR 814**).
62. Where the issue of alternative employment is raised, it must be for the employee to say what job, or what kind of job, they believe was available and give evidence to the effect that he would have taken such a job as this is something that is within their primary knowledge (**Virgin Media Ltd v Seddington and Eland [2009] UKEAT/539/08**).
63. The case of **Polkey v AE Dayton Services Ltd [1988] ICR 142** established the importance of procedural fairness in determining whether the dismissal was fair or unfair under section 98(4) ERA. In *Polkey* the House of Lords decided that a failure to follow a fair procedure was likely to render a dismissal unfair unless, in exceptional cases the employer could reasonably have concluded that doing so would have been futile. Lord Bridge concluded, in his judgment, that "*the employer will not normally act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select for redundancy and takes such steps as may be reasonable to avoid or minimise redundancy by deployment within his own organisation.*"
64. Therefore, procedural unfairness will make a redundancy dismissal unfair, but the question of whether the employee would have been dismissed even if a fair procedure has been followed will be relevant to the question of compensation payable to the claimant.
65. In redundancy cases the absence of an appeal does not of itself make the dismissal unfair, as per the Court of Appeal in **Gwynedd Council v Barratt and anor 2021 IRLR 1028, CA**.

### **Discussion and Conclusions**

66. The requirements of section 95 ERA are met as the respondent admits it dismissed the claimant within section 95(1)(a) on 8 October 2020.
67. The first issue is what was the reason or principal reason for the dismissal? Given the sudden and dramatic loss of revenue arising from the effects of pandemic, I accept that there was a genuine need for the respondent to save costs through a reduction in headcount. Due to the nature of the role servicing the retail sector, the requirements of the business for employees

to carry out work as 'telephone critiquers' had diminished. It is not for this Tribunal to interfere with a business decision and indeed it has no jurisdiction to do so.

68. There was a redundancy situation within the meaning of section 139 ERA. I am satisfied that the claimant was dismissed because of that situation. The reason for dismissal was redundancy.
69. The question turns to whether the respondent acted reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant. In this regard, it is necessary to decide whether the respondent warned and consulted the claimant.
70. Consultation is a key ingredient to a fair redundancy and an employer will not be taken to act reasonably unless it warns and consults any affected employees before deciding to dismiss.
71. The claimant was given advance warning of her potential redundancy by letter dated 22 September 2020. However, whilst that letter set out the process to be followed which included various ways to engage with staff and include them in the process, the respondent failed in all respects to adhere to those measures.
72. From Mr Gardner's evidence, the respondent wholly misunderstood what was required in terms of consultation. At the hearing Mr Gardner maintained the belief that consultation amongst the three managers sufficed. This resulted in there being no engagement whatsoever with the claimant. No discussion took place to explore ways of avoiding or reducing the number of redundancies and to attempt to reach agreement, as the letter indicated. Whilst the letter stated that staff would be kept informed and involved throughout the process, this did not happen. The respondent did not seek to agree the selection criteria and there was no indication of timescales. Quite simply, the respondent failed to enter into any meaningful consultation with the claimant. The fact that only the claimant has brought a claim to the Tribunal does not mean that a fair process must have been followed.
73. Although two members of staff volunteered feedback, there was no such invitation within the respondent's letter of 22 September 2020. The claimant cannot be criticised for waiting to receive an invitation to her 'individual consultation meeting' when that was what the letter stated would happen as the next step in the process.
74. The decision to dismiss was already taken before the claimant's first meeting with the respondent on 8 October 2020. The claimant had every reasonable expectation that the purpose of this meeting was to discuss all the matters bullet pointed in the letter placing her 'at risk' of redundancy. Instead, the meeting followed just minutes after the claimant was emailed a letter dismissing her that same day. The approach deprived the claimant of the opportunity to make suggestions, ask questions or feed into the process before a decision was made. Moreover, the respondent did not give adequate warning of her redundancy selection which came as a shock.

75. As a small company, the respondent did not have any in-house HR facility and the lack of such resources is a factor I take into account. Even so, the respondent did seek external advice and Mr Gardner explained how useful he found the ACAS material on making redundancies which he believed were followed.
76. Despite this, the substance of ACAS advice was not followed. ACAS recommends use of a redundancy plan which includes matters such as all the options considered before deciding on redundancies, timeframes to leave enough time for consultation, agreeing on fair selection criteria and an appeals process. ACAS specifies that an employer 'must hold genuine and meaningful consultation with you [the employee]'. It goes on to say: 'This means they must listen to your ideas [and] try to come to an agreement with you. They do not have to agree any ideas you suggest, but they should seriously consider them.'
77. The letter of 22 September 2020 said the right things as advocated by ACAS. However, the respondent did not apply in practice the measures that it said it would take. Individual consultation is fundamental and should allow for a meaningful exchange of dialogue between the parties. It should be done at a formative stage before any decisions are made. Having identified and set out how it would consult, the respondent acted in contrary manner. It chose instead to devise and apply its selection criteria to reach dismissal stage omitting all consultation with the claimant in between. No reasonable employer would have taken such approach.
78. The question turns to whether the respondent adopted a reasonable selection decision, including its approach to the selection pool. My focus must remain on the reasonableness of the respondent's actions on these points without substituting my own view.
79. All seventeen telephone critiquers were placed within the selection pool which was a reasonable choice as a starting point. An employer has a wide discretion in terms of selecting roles for redundancy and I accept that the respondent acted with the best of intentions in the criteria that were picked. It is not the role of the Tribunal to decide how the claimant should have been scored and it cannot re-score her.
80. It was not unfair to consider performance over the last 2 years. However, staff who had a recent performance review were scored higher than those, like the claimant, who had not had a review in the previous 2 years. The decision was taken to score everyone the same who had not had a recent review. That was fine but for the four staff who had received a recent review benefitted because of there being more recent data on their performance. This introduced inconsistency in approach and I cannot be satisfied that scores were applied on an objective basis.
81. The assessment of 'time keeping' in the matrix must logically mean whether the employee keeps to time, as contracted. The scoring described by Mr Gardner appeared to have nothing to do with time-keeping in terms of staff keeping to their contractual hours. Instead, staff were scored on how

early they arrived for work ahead of their shift (which could be for multiple reasons). It was so arbitrary and applied so subjectively that the criterion was not applied reasonably. The evidence heard was that the claimant kept to time in accordance with her contracted hours.

82. The claimant is aggrieved at her scores against KPI's and attendance. Whether the claimant fared badly on her KPI scores because of having longer calls to critique is unclear. The same approach was applied to everyone within the selection pool against these criteria and that also appeared to be the case on 'future potential'. There is no indication that application of these selection criteria was unreasonable.
83. Nevertheless, if proper consultation been undertaken, then the claimant could have raised all her concerns over the selection criteria and her scores with the possibility that changes could have been made.
84. As a small business, it may well have been the case that there was no suitable alternative employment for the claimant but that did not obviate the need to consider the possibility. I have been presented with no evidence that occurred. If consultation had taken place, then the respondent could have established if staff had any ideas or whether there was any possibility of voluntary redundancies. It was all too late by the time the claimant exercised her right of appeal.
85. It was not ideal that the appeal was to the same person who made the decision and that a meeting was not offered as per the identified appeal process. However, an appeal does not feature in the procedural requirements for redundancy dismissal. The small size of the business and management structure gave limited scope for review by someone previously uninvolved in the process. The appeal process was flawed but the claimant did at least receive a detailed written reply to her appeal. That did not cure the deficiencies that had by that time already occurred.
86. The Tribunal finds no evidence to support the claimant's belief that she was unfairly selected for redundancy for reasons besides those in the selection matrix.
87. In light of the above, the Tribunal concludes that the reason for dismissal was redundancy, but that the respondent's dismissal of the claimant for redundancy was not procedurally fair in all the circumstances of the case and did not fall within the band or range of reasonable responses.
88. Ultimately, whether the failure to consult and apply a fair process made any difference to the overall outcome cannot be ascertained on the information before me. This will be relevant to the question of whether any award of compensation is reduced. This issue will be considered at a remedy hearing before the Tribunal. The parties are encouraged to enter dialogue in the meantime with a view to reaching agreement if possible. Should agreement be reached, the remedy hearing will be vacated.

*Employment Judge Saward*

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Employment Judge

23 August 2022

Date

JUDGMENT & REASONS SENT TO THE PARTIES ON

4 September 2022

GDJ  
FOR THE TRIBUNAL OFFICE