EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr M Wallace	**v**	**Apple Europe Limited**

Heard at: Cambridge **On**: 4, 5, 6 December 2017

Before: Employment Judge Ord

Representation

For the Claimant: Mr O Isaacs, Counsel

For the Respondent: Mr T Ogg, Counsel

RESERVED JUDGMENT

1. The claimant's complaint that he was unfairly dismissed by the respondent is not well founded and the claimant's claim is dismissed.

REASONS

1. The claimant was employed by the respondent as a wireless baseband architect from August 2014 until 31 January 2017 when his employment terminated by way of dismissal. The respondent says that the claimant was dismissed for a potentially fair reason, namely redundancy. The claimant says that his dismissal was unfair.

2. After hearing all the evidence the claimant accepted that there was, at the relevant time, a redundancy situation within the respondent's undertaking. He also accepted that the claimant was part of a pool which was a reasonable pool for redundancy.

3. The bases for the claimant's complaint were therefore that the respondent failed to take adequate steps in relation to consultation and failed to make a reasonable search for alternative work for the claimant.

The hearing

4. Evidence was heard from Mr Christian Mucke (at the relevant time the manager responsible for the team in which the claimant worked); Sarah McIntyre (employee relations senior manager); Cameron Kato (UK recruiter); Tali Treivish (recruiter); John Metcalfe (senior director ASIC hardware design) and Amanda Underwood (employee relations business partner) on behalf of the respondent. The claimant gave evidence, as did Mr Simon Duggins (former senior manager with the respondent and the claimant's line manager at the relevant time).

The issues

5. The issues for the tribunal to determine, given the admissions made by the claimant regarding the existence of a redundancy situation and the redundancy pool were as follows:

    5.1. Was the consultation process which the respondent undertook with the claimant reasonable in the circumstances?

    5.2. Did the respondent act reasonably in its efforts to assist the claimant to find alternative work when at risk of redundancy and before the termination of his employment?

    5.3. In the event that the answer to either of the above questions is "no", were the deficiencies in consultation and/or the search for alternative work sufficient to render the dismissal unfair?

    5.4. In the event that the answer to question 3 above is "yes", was any such defect cured on the hearing of the claimant's appeal against dismissal?

The facts

6. Based on the evidence presented to the tribunal I have made the following findings of fact.

7. The claimant began employment with a company known as Qasara in 2008, which business was in 2010 acquired by Blackberry. In 2013 Blackberry approached Apple with a view to selling the part of the business within which the claimant worked, and whilst that deal did not proceed the claimant was then approached in 2014 by Apple to work for them. He declined an opportunity to work in the United States of America and in due course Apple recruited the claimant to work in Cambridge along with three colleagues. The claimant was employed as a wireless baseband architect.

8. The claimant says that it became apparent to him very quickly that the work he had been recruited to do was different to that which he anticipated. He had understood that he would be working in silicone development but was working for the wireless systems engineering division dealing with third party silicone evaluation, standardisation, patents and software development.

The claimant was assigned to a project known as "Project Apollo" dealing with the development of a simulation platform for a wireless modem.

9. In August 2016 the claimant and others were advised by email that the leadership of the group within which they were working was changing. Mr Jason Chi was to lead the 8CI Firmware and Software Charter teams whilst Christian Mucke would head the Wireless Systems and Standards initiative and teams (including the team within which the claimant worked).

10. That announcement was made on 19 August 2016 and on 26 August Mr Mucke and Mr Chi visited the Cambridge team. The claimant and the remainder of the team prepared a presentation to the new managers to demonstrate their experience and their current work. They described their role as "to provide siliconised design and implementation knowledge into the group".

11. Mr Mucke confirmed in evidence that the team in question had been hired to work within Project Apollo on the development and design of low power LTE which is a mobile phone technology to deliver data to mobile devices. He acknowledged that the claimant would not have been aware when he was hired that he was hired for that project, a situation which was not unusual within the respondent as when a new product was under development workers were aware only on a need to know basis the implications of the work they were doing and its potential applications so new product development was kept as secret as possible.

12. Mr Duggins led the team in which the claimant was based and asked Mr Mucke on 6 September 2016 for his view on what work the team would be undertaking as he was aware that the current activities and skills base might not be a direct fit for the group Mr Mucke was leading. By this stage it was known that Project Apollo was to be discontinued and Mr Mucke's unchallenged evidence was that Mr Duggins was aware that his team of hardware engineers did not sit naturally within his organisation, focused as it was and is on software design.

13. Project Apollo was being discontinued because the respondent did not seek to pursue its aim of developing its own low power LTE technology and had chosen instead to procure this from outside suppliers. That decision was taken in early September 2016. Mr Duggins had collated the CVs of his team members (including that of the claimant) and had sent them to Mr Mucke whose evidence was that for any employees who might be put at risk of redundancy he was exploring with other managers within the respondent whether there would be roles for them elsewhere. On 8 September he forwarded the CVs of the claimant and other team members, together with Mr Duggins' presentation, to two other managers, namely Mr Adler (platform architecture) and Mr Chen (silicone engineering group).

14. Those CVs were considered by both individuals. Mr Adler considered that the team's CVs suggested that Mr Chen's work was much closer to baseband hardware and Mr Chen thought that the individuals might be better suited to work with his team rather than Mr Adler's. Mr Chen enquired

through Mr Duggins whether any of the team would be willing to move to the United States of America and discussions proceeded with Mr Duggins and one other employee about that possibility. The claimant did not wish to relocate to the United States.

15. On 23 September 2016 the claimant was formally advised that his role was to be discontinued and that he was therefore at risk of redundancy. He had a telephone call with Mr Mucke and was then sent a letter the same day setting out the position.

16. The claimant was called to a first consultation meeting on 26 September at 12 noon. That took place by telephone with Mr Mucke and was also attended by a representative from human resources (Sarah McIntyre). The claimant was advised of his right to be accompanied by a colleague or a trade union representative at all meetings. The claimant was told that the meeting would discuss his potential redundancy, ways of avoiding it and the possibility of alternative employment.

17. The claimant chose not to be represented at the meeting. The rationale behind the decision was explained to the claimant and given that the claimant now accepts that a redundancy situation existed within the respondent at the relevant time and does not question the "pool" for redundancy it is not necessary to find further facts in relation to those matters.

18. The claimant was advised that his CV had been sent out to teams both in the USA and Israel. Sarah McIntyre was looking at a London based team to see if they were interested in the claimant. The claimant was also told that the respondent could not guarantee that there would be a role for the claimant but that the company was looking. He was advised that there would be a likely two or three further meetings with him and that the employee relations team would support the claimant in his search for work.

19. The claimant was also directed towards the "Cooljobs" section of the Apple internal website showing vacancies within the company on a "live" basis and Ms McIntyre advised that if the claimant found a role he was interested in he should tell her so that she could ensure the recruiters prioritised his application as a potentially redundant employee. The claimant was told there was no defined timescale for the process and that he would be given some time to find a new role but if there were no roles available and for which he was in the interview process, the respondent would then consider issuing notice of redundancy.

20. The claimant was told that he could keep looking for roles up until the last day of his employment and there was a general discussion around a package to be offered by Apple which could be enhanced above the level of the statutory redundancy scheme but no figures were discussed.

21. The claimant was asked about working in the United States of America, which he said was "not for me" but he did agree to look at other parts of the United Kingdom.

22. The claimant's second consultation meeting was held on 4 October 2016. Again there was discussion regarding the business rationale which in the light of the claimant's admissions do not require further determination by the tribunal.

23. Ms McIntyre confirmed that she had involved Cameron Cato from the UK hardware tech recruiting team who was looking for roles in a number of teams within the UK and Internationally to see if there was anything which would be a fit for the claimant. The claimant had found some graphics jobs on the Cooljobs site and felt that "a few" of the roles were "basically what he had been doing previously" and that he was a good match so that further investigation was to take place about those roles. There was discussion around possible training in the area of graphics as the claimant did not have substantial experience in that field.

24. On 6 October 2016 the claimant and other members of his team met Mr Jeff Lent and Mr John Metcalfe. Mr Lent was the leader of a modelling team from a hardware group within the respondent who had plans to recruit a number of people in London within a year. As a result of this, Mr Lent considered that the claimant might be suitable for a modelling role and decided that he should move forward to an interview panel for that role. The claimant was also to be interviewed for a wireless hardware design engineer role.

25. In relation to the wireless hardware design engineer role the claimant had an interview split into two days. This prospect of alternative employment had come about as a result of Mr Mucke forwarding the claimant's CV to Mr Chen who in turn had passed it to others until it eventually reached Mr Branscome, a recruiter working within the wireless hardware engineering team in the USA. Following those interviews a prospect was raised of the entire team within which the claimant worked forming a satellite team or group working in the United Kingdom. The claimant said that this was dependent upon the whole of the team staying together. There was further discussion about the possibility of this happening in November 2016 but it did not progress. By 12 December 2016 Mr Duggins was told by Mr Mucke that the proposed project had been cancelled by the senior vice president of hardware technologies (Mr Chen's manager) but in fact there was some continuing discussion during January 2017 before the project was finally terminated.

26. The claimant had been interviewed for the wireless role on 3 November 2016 but ultimately the proposal to have a team based in the UK did not proceed and there was therefore no role that the claimant could be offered.

27. The claimant was interviewed for the modelling role on 25 October 2016. The interviewers were reminded that the claimant (like Mr Duggins who they had interviewed the previous week) was at risk of redundancy by email from Cameron Kato. In her evidence she said that she would have explained to the interviewers that special consideration should be applied to internal candidates at risk of redundancy and I accept that evidence.

28. Ms Kato received feedback from the interviewers. Each interviewer gives a rating scale of 1 to 10 for a candidate, with 10 being the highest along with an indication of whether the person should be a "hire" or a "no-hire". All four of the interviewers scored the claimant a 6 out of 10. The decision was taken that the claimant was not suitable to be hired into the role. Ms Kato gave the claimant this feedback by telephone on 3 November.

29. Ms Kato had been told, and communicated to the claimant, that the lack of graphics experience which the claimant had was a key factor in the decision and that the interviewers all felt that the claimant had not demonstrated an in-depth knowledge of the skills they were seeking in either coding or programming. It was confirmed to Ms Kato that the claimant and his team members had been given more consideration than an external candidate would have been given based on the lack of graphics experience but that in the circumstances the claimant was not considered suitable for the role.

30. On 4 November Ms Kato began a period of maternity leave and the person responsible within the recruitment team for assisting the claimant in finding alternative work became Ms Treivish.

31. Given the claimant's unsuitability for the modelling role and the lack of progress in relation to the wireless hardware design role the respondent took the decision, given that the claimant was not engaged in any other job application or interview process, that he should be issued with notice of redundancy. The claimant was therefore called on 15 December to a final consultation meeting where he was issued with notice of redundancy. He was told that his employment would terminate on 31 January 2017, that he could continue to look for work up until that date, and that he had a right to appeal against the decision.

32. That meeting was held on 19 December and on the same day the claimant told Ms McIntyre about a role which had been on Cooljobs since 23 November, namely for a graphics RTL design engineer which he was interested in. Ms McIntyre forwarded this information to Ms Treivish on 23 December and she in turn forwarded it to the hiring manager (Simon Nield). Mr Nield's reaction was that the claimant did not have experience which was sufficiently relevant to his team's needs and in particular said that there was a significant proportion of experience in software projects in the claimant's CV which he did not see as any benefit. He also highlighted other areas of the claimant's work (FFT design and IP integration work) which was not applicable to the work of his team and thus overall considered that the claimant did not meet the requirements of the role.

33. On 13 January 2017 this feedback was given to the claimant by Ms Treivish. The claimant disagreed with the feedback and she therefore suggested that he tailored his CV towards the job that was available whereupon Mr Nield could be invited to look again.

34. The claimant did so but accepted in an email to Ms Treivish that he did not have any specific graphics experience. Mr Nield considered the CV again

but maintained his position that the claimant was not suitable for the role in question.

35. The claimant was unhappy with this outcome and asked for confirmation that "despite my 25 years of RTL experience… the hiring manager believes I am incapable of performing this junior RTL role". Ms Treivish relayed Mr Nield's view to the claimant advising that:

> "The manager's preference is for someone who is doing RTL design and that this is the main and only focus of the candidate's career… so although you have 25 years of RTL experience working on RTL the manager did not feel that you have the depth of knowledge he is looking for for this role as this has been done alongside other fields and areas of technical expertise."

36. The claimant had lodged an appeal against dismissal on 10 January 2017 and his appeal hearing was held on 23 January. The appeal manager was Amanda Underwood.

37. Ms Underwood confirmed to the Tribunal that it was clear to her that the claimant was convinced he should have been given an alternative role at Apple, complained that the project he was recruited to was not that which he had expected and revisited the rationale for the redundancy. He then said that there were a number of graphics roles available which he thought he could do whilst acknowledging he was not a graphics expert. He said that such expertise was not needed at his level because his skills in wireless were very similar to the skill requirements in graphics. He revisited with Ms Underwood the history of his interviews and applications.

38. Following the meeting Ms Underwood spoke at length to Ms Kato, Mr Lent, Mr Mucke and Ms Treivish. She had already spoken to Ms McIntyre.

39. Ms Underwood set out the findings on the appeal in a lengthy report which was sent to the claimant on 20 February 2017. There has been no criticism of the extent of her enquiry or of the outcome of her investigations save in one area.

40. In her report Ms Underwood set out a list of 14 questions which it had been agreed with the claimant she would investigate, she identified the people she had interviewed and the emails which she had considered.

41. The one area of criticism of the report which the claimant makes is that Ms Underwood had stated that she believed Mr Nield had interviewed the claimant when in fact he had merely reviewed his CV on two occasions. The claimant pointed this out to Ms Underwood on 21 February and said that at the centre of issue to his complaint was that despite his having 25 years of experience of writing RTL's his suitability for the RTL role had not been properly assessed. Ms Underwood's response was that the decision would remain unaltered, as she did not believe that the error in her report was fundamental. She submitted on 21 February an amended letter and report to reflect the fact that Mr Nield had not interviewed the claimant.

42. The claimant's last date of employment had been 31 January 2017. The final feedback for the RTL role was not given to the claimant until 6 February, during the currency of the appeal process (ie before the appeal outcome was issued).

43. It is against that factual background that the claimant brings his claims.

The law

44. Under s.94 of the Employment Rights Act 1996 every employee has the right not to be unfairly dismissed. Under s.98(1) it is for the employer to show the reason, or if more than one the principal reason, for the dismissal of the claimant and that it is a reason either within sub-section 2 or some other substantial reason of a type which justifies the dismissal of an employee holding the position which the employee held.

45. Under s.98(2)(c) redundancy is a potentially fair reason for dismissal.

46. Under s.98(4) where an employer has fulfilled the requirements of sub-section 1, the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) depends on whether in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

47. In Williams v Compair Maxam Ltd (1982) IRLR 83 it was established that the legal question in determining whether a redundancy dismissal is fair or unfair is whether the dismissal fell within the range of reasonable responses (ie within s.98(4) as it now is) and set out a number of general applicable principles. Some of those are more relevant in situations of collective redundancies but they bear repetition:

    47.1. The need to give as much warning as possible of impending redundancies so as to enable employees and their representatives to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and if necessary find alternative employment in the respondent's undertaking or elsewhere;

    47.2. The requirement on employers to consult trade union representatives as to the best means by which the desired management result could be achieved with as little hardship to the employees as possible and in particular by agreeing selection criteria and their application;

    47.3. Ensuring so far as possible that such criteria are not the subjective opinion of one person but are capable of objective checking;

    47.4. Making selections fairly in accordance with those criteria; and

    47.5. Determining whether instead of dismissing an employee he could be offered alternative employment.

48. In Polkey v AE Dayton Services Ltd [1988] AC344 the House of Lords confirmed that in the case of a redundancy an 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 redundancies by redeployment within his own organisation.

49. It is long established that a tribunal must not substitute its own view for that of the employer when assessing the issue of reasonableness, including in relation to the reasonableness of any redundancy procedure and the decision to dismiss under s.98(4), see for example Foley v Post Office [2000] ICR 1283.

50. In relation to the search for alternative employment, the case of Thomas & Betts Manufacturing v Harding [1980] IRLR 255 confirmed that an employer should do what it can so far as is reasonable to seek alternative work for an employee.

51. In Morgan v Welsh Rugby Union [2011] IRLR 378 the Employment Appeal Tribunal confirmed (in a situation which related to selection from a pool) that a tribunal is entitled to consider how far an interview process was objective but should keep in mind that an employer's assessment of which candidate will best perform in a new role is likely to involve a substantial element of judgment and that a tribunal is entitled to consider as part of its deliberations whether an appointment was made capriciously or out of favouritism or on personal grounds

Conclusions

52. Applying the facts found to the relevant law I have reached the following conclusions.

53. The claimant admits that there existed within the respondent's undertaking at the relevant time a redundancy situation. He had previously criticised the "pool" for selection but accepts now that the "pool" of those who were at risk of redundancy were the members of the team within which he worked and all of them, as a result of the decision to no longer pursue project Apollo. Thus the question of a pool for selection fell away and questions for determination by the tribunal were agreed to be limited to:

    53.1. Whether the respondent made reasonable efforts to find the claimant alternative employment; and

    53.2. In relation to the posts for which the claimant was considered, whether the respondent acted reasonably when the claimant was not appointed to any of them.

54. These questions being set in order to determine whether or not the respondent had acted reasonably within the meaning of s.98(4) when dismissing the employee.

55. The first part of the efforts made by the respondent to find the claimant alternative work can best be described as a general "trawl" through the respondent business. Mr Mucke and Ms Kato made enquiries around the respondent's businesses to see whether the team or any members of it within which the claimant worked were of interest to other sections of the business.

56. Further, the claimant was directed towards the Cooljobs website, being an internal recruitment website within the respondent's organisation which set out all available posts within the respondent.

57. The process had in fact begun before the claimant was at risk of redundancy because as early as 8 September 2016 Mr Mucke had contacted his appropriate managers with the CV's and details of the entire team within which the claimant worked as a result of which the claimant was considered for a wireless design engineer position.

58. It is notable that the consultation period during which the respondent and the claimant were both seeking alternative work for the claimant ran from 23 September 2016 to 19 December 2016, a period of almost three months. At his second consultation meeting on 4 October 2016 the claimant was advised that the final meeting would take place within one or two weeks but in fact did not occur for almost two months. The claimant's period of notice was extended from the one month to which he was entitled under his contract of employment by a further 13 days to see whether any alternative employment which was suitable for the claimant would emerge.

59. A number of people were involved in the efforts to find the claimant alternative work. In relation to the wireless role this included two recruiters, a hiring manager, a senior manager and a member of the human resources team. For the modelling role for which the claimant was considered, three senior managers and six interviewers considered whether or not the claimant could be offered that role. Finally the claimant's application for the graphics RTL design engineer role was considered by two senior managers, Mr Metcalfe and Mr Nield.

60. Mr Mucke's email to Mr Lent and Mr Loschke about the entire team referred to them as being strong performers who wanted to remain within the respondent and Mr Mucke asked for careful review of each CV to see if they could fit into any available roles. This approach led directly to the graphics modelling engineer role being identified as one for which the claimant might be suitable and for which he was interviewed. Mr Mucke also arranged with Mr Duggins on behalf of the entire team within which the claimant worked, to liaise with a Mr Sudak to explore possibilities within Mr Sudak's team but the team was not a good fit to meet Mr Sudak's requirements.

61. Ms Kato sent the CVs to the entire team to recruiting managers on 27 September 2016 asking that they be carefully reviewed to see if there was any potential fit for any UK or US roles for which recruitment was being carried out.

62. On 6 October 2016 the entire Cambridge team met the GPU hardware team in London as a result of which a modelling role was identified by the business as the role that was most appropriate to consider the claimant for.

63. On 10 October 2016 the entire team's CV's were circulated to managers by a hardware technology recruiter.

64. The claimant was interviewed for the wireless role on 13, 19 and 20 October 2016. Although all those who interviewed the claimant recommended that he be hired, the roles in question did not ultimately materialise and thus there was no position which the claimant could be offered.

65. The claimant was also interviewed for a graphics modelling engineer role on 25 October 2016. The claimant's experience was such that an external candidate without graphics experience would not have reached the interview stage. The respondent's interviewers were advised that special consideration needed to be given to an employee who was at risk of redundancy within the organisation but it was concluded, after interview, that the claimant did not have sufficient relevant experience to be hired into the role.

66. The claimant's final consultation meeting took place on 19 December 2016 by which time it was clear that the wireless role was not going to materialise. The claimant expressed on that occasion an interest in the graphics RTL design engineer position which he had previously not pursued because he said he was focusing on the potential wireless role. His CV was reviewed by Mr Nield not once but twice, that manager concluding that the claimant's experience was not sufficiently relevant to the business needs which he was trying to meet.

67. It is clear from that chronology that the respondent took substantial steps to assist the claimant in his search for alternative work. It was not merely reactive but also proactive. Managers who might have vacancies (actual or forthcoming) for which the claimant could be considered were contacted with copy CV's for consideration. The internal website was brought to the claimant's attention but it was essentially as a result of the proactive steps taken by Mr Mucke and Ms Kato that the claimant was interviewed for the available positions.

68. It cannot be said that the respondent's actions fall outside the range of reasonable responses in this area. They took considerable steps and invested considerable time and effort to find the claimant, and others within his team, work within the organisation knowing as they did that the claimant and other members of the team were highly skilled and keen to remain within the respondent if possible.

69. During the course of the hearing the claimant was particularly critical of the fact that Mr Nield did not speak to him or interview him for the graphics RTL design engineer role but relied upon the contents of his CV when determining that he was not suitable for the role. I have considered whether

this took the respondent's search for alternative work outside the bands of reasonableness. I have concluded that it does not for the following reasons.

70. First the claimant was considered by Mr Nield not once, but twice. He was specifically invited to submit a revised CV tailored towards the demands of the role which he was seeking and whilst he amended his CV he accepted that it did not include any specific graphics experience.

71. Secondly, Mr Nield was concerned to have in the team people who had focused on graphics and the claimant had not.

72. Thirdly, the tribunal's role in this area is not to question whether it would have interviewed the claimant for the role but whether Mr Nield acted unreasonably in not doing so. In the absence of graphics experience on the claimant's revised CV and given Mr Nield's specific requirement for a graphics focused individual, which the claimant was not, it cannot be said that Mr Nield acted unreasonably when rejecting the claimant without interview.

73. The second concern about the process was Ms Treivish's honest statement that after November 2016 she was not actively looking for work for the claimant. It is submitted on behalf of the respondent that that does not render the previous efforts unreasonable and bearing in mind that by that stage of the process all relevant managers had been contacted to see whether vacancies might exist for which the claimant (and others) were suitable. That reduced level of proactivity does not in my view render the process unreasonable. That is particularly the case when the claimant continued to have full access to all internal vacancies through the Cooljobs website.

74. Overall, based on the steps which the respondent took to try to find alternative employment for the claimant, it cannot be said that they acted unreasonably or that they unreasonably failed to seek alternative employment for the claimant. There was proactive contact around the businesses and the claimant was specifically directed towards the internal website so that he would be aware of all vacancies that were available both within and outside the United Kingdom.

75. The process which the respondent took to search for alternative work for the claimant was a reasonable one.

76. In relation to the graphics RTL design engineer position it was suggested that the manager of the team, Mr Metcalfe, had a preference for employees with whom he had previously worked at a company known as Imagination Technologies. Mr Metcalfe denied this and said in relation to the team that he had more vacancies than he could fill. His unchallenged evidence was that any internal or external candidate who had the necessary in-depth specialist skills to be useful within the team would be hired if possible but for the roles which he had, graphics experience was very important. Neither the claimant nor other members of the team had that experience.

77. It was put to Ms Kato that there was a plan to recruit employees from Imagination Technologies which she denied and whilst she confirmed that Imagination had a graphics specialisation which therefore generated employees which would be of interest to the team, another graphics IT company (ARM) was one from which the respondent had also made significant hires. Given Mr Metcalfe's unchallenged evidence about the number of vacancies and his desire to fill roles with suitable candidates I cannot find that no reasonable employer could have come to the view that the RTL role was not suitable for the claimant. There was no advantage to Mr Metcalfe, knowing that he required additional employees with relevant graphics experience, in rejecting the claimant. Mr Metcalfe's evidence was that people were recruited from a number of companies (confirmed also by Ms Kato) and it cannot be said that no reasonable employer would have come to the view that the RTL role was not suitable for the claimant.

78. The claimant was interviewed for the graphics modelling role. In areas such as this the tribunal must be extremely careful not to fall into the substitution mindset. The recruiting manager came to the conclusion that the claimant was not suitable for the role and that training could not bridge the gap which existed. That manager, Mr Lent, had said that he was willing to accept a larger gap than would normally be the case in order to keep an internal candidate but did not consider that the gap in the claimant's case was capable of being bridged. There is no evidence to suggest that when reaching that decision Mr Lent acted unreasonably.

79. Finally, the claimant has referred to a GPU power modelling role. Mr Metcalfe's evidence was that the suggestion that the claimant's skills were such that he should be considered for that role was designed to be helpful but that Mr Metcalfe "knew what the requirements for that role were so I did not give it much consideration". Just as Mr Lent had concluded that the claimant was not suitable for the graphics modelling roll, Mr Metcalfe concluded that the GPU power modelling role was not one which the claimant was suitable for and did so on the basis of the claimant's skills and experience. Given Mr Metcalfe's knowledge of the requirements of the role it cannot be said that in reaching that decision he acted unreasonably and there is no evidence that he did so.

Summary

80. The respondent undertook reasonable and sufficient consultation with the claimant, acted reasonably in its efforts to assist the claimant to find alternative work when at risk of redundancy and therefore acted reasonably in treating the claimant's redundancy as sufficient reason to justify the termination of his employment.

81. For those reasons the claimant's complaint of unfair dismissal is not made out and the claimant's claim is dismissed.

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Employment Judge Ord

Date: 22 February 2018

Sent to the parties on: 22 February 2018

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For the Tribunal Office