EMPLOYMENT TRIBUNALS

Claimants: Mrs A France
Miss J Hillbeck
Miss K Hall

Respondent: Nacro

Heard at: Carlisle Combined Court **On:** 25-26 September 2019

Before: Employment Judge Humble

REPRESENTATION:

Claimants: All in person
Respondent: Paul Mills, Legal Assistance

JUDGMENT

The Judgment of the Employment Tribunal is that the claimants were unfairly dismissed.

REASONS

The Hearing

1. The claimants were self-represented at the Hearing and they each gave evidence on their own behalf. The respondent was represented by Mr Paul Mills, a Legal Assistant, and evidence was given by Mrs Karen Robinson, the respondent's Faculty Manager and claimants' line manager, Christopher Morgan, Head of Contracts for the respondent, and Mark Welsh, the respondent's Assistant Principal. There was an agreed bundle of documents which initially comprised 604 pages. Further documents were added to the bundle on the morning of the first day and, following some further disclosure, on the morning of the second day such that the final bundle extended to 664 pages.

2. Evidence in chief was provided by way of written statements which were read by the Tribunal, along with the key documents, before the witnesses took the stand. Ms Hall suffered from double vision and so it was agreed that Ms Hillbeck would take the witness stand alongside her to read aloud those documents to which she was referred in cross examination. The claimants' cross examination was led by Mrs France who also made submissions on behalf of all the claimants; each of the other claimants were given an opportunity to ask additional questions of the respondent's witnesses and to add to Mrs France's submissions.

3. Submissions were concluded on the afternoon of 26 September 2019 and Judgment was reserved.

The Issues

4. At the outset of the Hearing the Employment Tribunal took some time to discuss the issues with the parties. These were identified and agreed as follows:

4.1 It was for the respondent to show that the dismissal was for a potentially fair reason under section 98(1) and (2) Employment Rights Act 1996. The reason relied upon in this case was redundancy.

4.2 If the respondent was able to show a potentially fair reason for dismissal, then the Tribunal would consider whether the respondent acted reasonably under section 98(4), having particular regard to:

4.2.1 whether there was adequate warning and genuine consultation;

4.2.2 whether there was a fair basis for selection; and

4.2.3 whether there were reasonable attempts to redeploy the claimants or find them alternative roles.

4.3 The claimant took issue with a number of procedural points which they said rendered the dismissal unfair and to which the Tribunal also gave consideration.

4.4 There was some discussion over an alleged failure by the respondent to pay a severance payment which was referred to in the respondent's policy documentation. The claimants clarified at the outset that this was not intended as a separate breach of contract claim but rather was relied upon as evidence, as they saw it, of unreasonable behaviour on the part of the respondent.

The Law

5. Where an employee brings an unfair dismissal claim before an employment tribunal and the dismissal is established or conceded, it is for the employer to demonstrate that its reason for dismissing the employee is one of the potentially fair reasons set out in Section 98(1) and (2) of the Employment Rights Act 1996. Redundancy is a potentially fair reason for dismissal under Section 98(2).

6. *The definition of redundancy is contained in section 139 (1) of the Employment Rights Act 1996, which states:*

"(1) For the purposes of this Act 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 his 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."

7. If the employer establishes such a potentially fair reason the Tribunal must then determine the fairness or otherwise of the dismissal by deciding, in accordance with Section 98(4) of the Employment Rights Act, whether the employer acted reasonably in dismissing the employee for that reason.

8. In a redundancy case the factors which a reasonable employer is expected to consider are set out in the case of Polkey v A E Dayton Services Ltd [1988] ICR 142, among others, in which it was stated by the House of Lords that, in the case of redundancy, an employer will not normally act reasonably unless he (a) warns and consults any employees affected or their representatives, (b) adopts a fair basis on which to select for redundancy (c) takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within its own organisation.

9. Williams & Others v Compair Maxam Limited [1982] ICR 156 is another leading case in this area of law, in which the Employment Appeal Tribunal laid down general principles which a reasonable employer might be expected to follow in making a redundancy dismissal, and which included "*giving as much warning as possible of impending redundancies*", consulting upon selection criteria and using criteria which were objectively chosen and fairly applied, and where there was a union involved, ensuring the union's views were sought, and considering whether any alternative work was available.

10. The Tribunal reminded itself that it must not substitute its own view for that of the employer as to what is the proper response on the facts which it finds (Iceland Frozen Foods Limited v Jones [1982] IRLR 439, EAT as confirmed in Post Office v Foley/HSBC Bank v Madden [2000] IRLR 827, CA). It was held in the case of Iceland Frozen Foods that:

"*It is the function of the [Employment Tribunal] to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within that band, the dismissal is fair. If the dismissal falls outside the band it is unfair.*"

11. There may be occasions when one reasonable employer would dismiss and others would not, the question is whether the dismissal is within the band of reasonable responses. The band of reasonable responses test applies to procedural as well as substantive considerations, see Sainsbury's Supermarkets Limited v Hitt [2003] IRLR 23, CA.

12. The Tribunal were also referred to the cases of R v British Coal Corporation v Secretary of State for Trade and Industry and others [1994] IRLR 72, Moon and Others v Homeworthy Furniture (Northern) Limited [1976] ICR 117, EAT, James Cook & Co. Ltd v Tipper [1990], ICR 716, CA, and Quinton Hazell Ltd v W C Earl [1975] IRLR 296, EAT.

Findings of Fact

The Employment Tribunal made the following findings of fact on the balance of probabilities (the Tribunal made findings of fact only on those matters which were material to the issues to be determined and not upon all the evidence placed before it):

13. The respondent describes itself as a social justice charity; it employs over 900 staff across England and Wales. One of the services which the respondent provides is educational and training courses for disadvantaged young people and adults.

14. The claimants in this case are Mrs Ami France, Ms Jane Hillbeck and Ms Kirsten Hall. For ease of reference they are referred to in this Judgment individually by their own names and collectively as "the claimants". All three of the claimants worked from the respondent's educational centre at Barrow-in-Furness (referred to in this Judgment as "the Centre"). This was one of 19 centres which the respondent operated across England and Wales, it provided a range of training programs for young people aged 16 to 19 with the aim of supporting them into employment or further learning. Ms Hall commenced her employment on 18 July 2005, Mrs France on 4 June 2007 and Ms Hillbeck on 17 November 2011. At the relevant time for purposes of this case Ms Hall was employed as an Administrator, Ms Hillbeck as a Tutor and Mrs France as a Senior Tutor.

15. In May 2017 the respondent identified that the Centre was operating at a loss and failing to attract sufficient student numbers to meet its performance targets. A proposal was put forward at that stage that the Centre should be closed, but following a consultation process during which the staff at the Centre presented some comprehensive counter proposals it was agreed that it would remain open. The main aspect of the staff proposal was that the respondent should recruit more staff so that it could offer additional courses and attract more students. The respondent thereafter made some make efforts to undertake a recruitment program, and three new members of staff were recruited in late 2017.

16. At some point in about April or May 2018 a renewed proposal was put forward to close the Centre. One of the difficulties which the Tribunal had when considering this case was that there were some significant gaps in the evidence before it. In particular, there was a lack of evidence as to when and by whom

the decision was taken to close, or to propose to close, the Centre. The three witnesses called by respondent all said that they were not involved in that decision-making process and the Tribunal initially had no evidence before it to show when the decision was taken. The first significant document in the bundle was one entitled "Proposal for Site Closure Resulting in Redundancies of All Staff & Consultation Document", page 233-235, which was dated 30 May 2018. This document set out the respondent's rationale for closing the Centre and the timetable for the consultation process, and it was supposed to be issued to the claimants at their first consultation meeting. There was nothing which pre-dated that document to show when, how or by whom the decision to close the Centre had been taken.

17. After the Tribunal highlighted this gap in the evidence some further documentation was produced by the respondent on the morning of the second day of the hearing. This included a document dated 24 May 2018 which was entitled "Centre Review" and was prepared by Lisa Capper, the Respondent's Principal. This was a 16-page document, including appendices, in which Ms Capper set out figures relating to the performance of the Centre and another of the respondent educational centres based in Ipswich. The report stated, among other things, "*Recommendation: for Executive and Trustees to discuss the following proposals*" and there followed a series of bullet points, one of which was "*Close the Ipswich and Barrow Centres for September 2018.*" The report also stated, "*Barrow has been under threat of closure before, it is an outlier, and is too small to be able to make necessary impact and recovery in this area where demand has been poor, despite the social issues present.*"

18. It was an unusual aspect of the case that Ms Capper, who took the decision to close the Centre and was therefore best placed to explain the rationale for that decision, was not called to give evidence. The respondent's representative informed the Tribunal that the decision to proceed with the proposal to close the Centre was taken at a meeting on 25 May 2019. Although there was no evidence to that effect (there was no minute or note of that meeting and it was not covered in any witness statement), that assertion fitted with the surrounding documentation and was not disputed by the claimants. The Tribunal held therefore that the decision to close the Centre by September 2018, or at least a firm proposal that it should close by that date, was taken on 25 May 2018.

19. That decision was not however communicated to the claimants, or the other three employees who were employed at the Centre, until 14 June 2018. Again, there was a gap in the evidence as to why there was a 20-day delay before the claimants were warned of the proposed closure. No meaningful explanation was provided for that delay. When questioned upon it, Mrs. Robinson, who was the claimants' line manager and primarily responsible for the consultation process, said she was "*not sure, HR were doing it*."

20. The employees at the Centre, including the claimants, were all unionised and their contracts were subject to a collective agreement with Unite, or in the case of Ms Hall, ACTS. On 6 June 2018, under cover of an email of that date, the respondent's proposal for the closure of the Centre set out in the document of 30 May 2018 was sent to Robert Harper, a trade union representative for employees of the Centre (page 648). Mr Harper was apparently absent and so

a copy was also sent to Nicole Charlett of the same trade union on 11 June 2018 (pages 236 to 243). Later that day there was an email sent from one of the respondent's human resources representatives to members of management which stated, "*I have just spoken to the National Unite Rep and we are OK to go ahead and send the letters out.*" It was unusual aspect of the case that, aside from those emails, the trade union played no further part in the evidence or in the process.

21. In her evidence Mrs Robinson said that the proposal document was sent to the trade union for their "*approval*", which was an odd term since it is not for a trade union to approve an employer's proposal to close a place of work but rather, if so instructed, to oppose that decision or at least to make appropriate representations on behalf of their members. In the event, the trade union played no part in the consultation process and the claimants did not have any contact from their trade union representative. It is not known whether Mr Harper or Ms Charlett responded to the email of 6 June, no reply was provided to the Tribunal and no evidence was given upon the trade union's stance on the closure. The proposal attached to that email was not copied to the claimants who were unaware that the trade union had been notified.

22. The first the claimants were aware of the proposed closure of the Centre was 14 June 2018 when a meeting was convened at the Centre. They were each invited to that meeting under cover of letters dated 11 June 2018 (pages 244-246 of the bundle). Those letters stated that "*the purpose of this meeting is to share with you some proposals on structural changes in line with [the respondent's] Strategic Business plan 2018/2019 and the likely impact it may have upon your role…*" There was no clear warning in that letter that it was proposed that the Centre be closed or that the claimants were at risk of redundancy.

23. At the meeting on 14th June Mrs Robinson read from a prepared script (page 257-258) which set out the respondent's proposal to close the Centre and explained that individual consultation would follow with each of the employees. The claimants were given the opportunity to ask questions and some issues were raised about a lack of review meetings and an alleged lack of input from senior staff.

24. Mrs Robinson then wrote to each of the claimants in a letter dated 14 June 2018 in which they were advised that their roles were at risk of redundancy (page 261-262). The letter gave some details upon the reason for the proposed closure, essentially that the Centre was predicted to continue to make a loss, and it stated:

    "During Blocks 1 and 2 the centre recruited 41 funded learners against a target of 42 but to date (week commencing 28/05/2018) only 5 Blocks 3 learners have been recruited against a target of 28. This has led to continued worsening of the centre's financial position; in the financial year to March 2018 a deficit of £15,000 was reported as a result of higher operational costs of £192,000 than income of £177,000.

    It is recognised that the team have undertaken a comprehensive schedule of activity to increase referral of learners as well as working with local

stakeholders to guarantee sufficient referral of learners. However, this has had limited impact."

The letter went on to outline the consultation process which was to follow.

25. Individual consultation meetings took place with the claimants on 20 June 2018, when the claimants were given a further opportunity to ask questions and to challenge the proposals. The notes of those meetings were reproduced in the bundle for each of the claimants at pages 268-280.

26. On 25 June 2018 an email was sent from Mrs Robinson to Mrs France, attaching a response to the questions raised at the group consultation meeting on 14 June 2018 (page 281-282).

27. At that stage Mrs France, with some assistance from the other claimants, was working upon a counter-proposal to the respondent's plan to close the Centre. The claimants were given access to the respondent's financial information and, on 27 June 2018, a document entitled "Barrow Proposal and Consultation Response" was sent by Mrs France to the respondent by email (pages 287-304). It was a detailed and well-presented document which provided a comprehensive analysis of the Centre's financial position and submitted in essence that, following the recent recruitment program, an appropriate team was now in place to help the Centre achieve financial stability.

28. There was a further gap in the evidence at this point as to how the respondent went about considering and determining the proposals put forward by the claimants. Ms Capper, having received the proposal, sent a copy by email on 2 July 2018 to Mrs Robinson, Mr Morgan and another employee and stated, "*Hopefully you will have all had the chance to read the attached by now. We need to respond by 4th. Chris and Karen please can you draft a management response for wider discussion on 3rd. Kuldip – do you have a template we can use? Thanks."*

29. Mr Morgan replied later that same day and stated, "*What would you like to see in the management response? It's not something I'm familiar with from previous consultations.*" A reply was received from Ms Capper within about 20 minutes, which stated:

"*Thanks Chris*

Process is:

- *Review of their points, esp. any new information, against the case for closure – could be confidential notes in tracked changes set against their paper.*
- *Discussion by management 3rd July*
- *Summary set out in letter to go back to sender 4th July*"

30. Mrs Robinson, having reviewed the proposal put forward by the claimants decided to support it. She stated, in an email on the morning of 3 July 2019, "*Having reviewed the proposal, I just wanted to add that I fully understand the request for consideration to be given to keep the centre open (at least until the end of Block 1) in order for them to be able to demonstrate a turnaround and the impact of a full staff team, revised curriculum offer that meets local needs*

and with the opportunity for increased WEX and progression." She went on to outline figures which she believed supported the claimants' plans to keep the Centre open.

31. Mr Morgan's evidence was that he did not have anything to contribute so he was not involved in any analysis of the claimants' proposal or in formulating any response. In that respect his oral evidence rather differed from that in his witness statement which suggested that he had discussed the matter with Ms Capper. In his oral evidence, which the Tribunal accepted, he said that he simply forwarded Mrs Robinson's email of 3 July on to Ms Capper later that same morning, with the comment, "*please see below for Barrow for consideration by the alternative proposal panel.*"

32. In the absence of Ms Capper's evidence, we do not know what happened after she received that email save that at some point during the course of that day or the following day she must have given some consideration to the claimant's proposal since she responded to it in writing the following day, 4 July 2018 (page 318-319). In that letter she stated:

    "*I have given this proposal considerable thought. As you know the performance of the centre was reviewed in a deep dive by the leadership and Trustees before the proposal to close the centre was made, the alternative proposal does not bring any new information that changes the assessment of the viability of Barrow Education Centre. Therefore, after detailed review of the issues and your response, the decision is that the proposed closure will go ahead. Please be assured that this is not a decision that is taken lightly. However, the Centres were £1.4 million behind budget in 2017/18 and £500k away from the third reforecast for that year. This cannot be sustained."*

    It went on to outline some further figures. In short, the Centre was not making a profit and the proposal was rejected.

33. Further consultation meetings were held with each of the claimants on 10 July 2018. During these meetings the claimants each said words to the effect that they understood the respondent's decision albeit they did not agree with it. The notes from those meetings for each of the claimants were reproduced at pages 356-368 of the bundle.

34. The claimants were invited to final consultation meetings to take place on 16 July 2018. Mrs France and Ms Hall both attended those meetings, which were relatively brief and in which the claimants' input was largely restricted to seeking clarification about their redundancy entitlements. Mrs France also asked how she went about raising a grievance or appealing against the decision. Ms Hillbeck did not attend her meeting.

35. The dismissals were confirmed in writing by letters dated 16 July 2018 (pages 398-401), and redundancy statements were sent to each of the claimants on 19 July 2018 (pages 434-436).

36. On 18 July 2018 the claimants, and the three other employees affected by the closure of the Centre, submitted a document which they described as a collective "grievance/appeal" (pages 416 – 420). The document set out in some detail the deficiencies which the claimants perceived with the redundancy process and, in essence, stated that the consultation was not fair or

meaningful. The letter was initially treated as an informal grievance and a "paper review" of the matter was carried out by Christopher Morgan, the respondent's Assistant Principal, who provided his response on 25 July 2018 (page 456-458). The claimants then escalated the matter to a formal grievance by way of a letter sent by Mrs France on 25 July 2018 (page 460-462).

37. On 16 August 2018 a grievance meeting took place between Mrs France, Ms Hillbeck, one other employee and Mark Welsh, another of the respondent's Assistant Principals. There followed some investigation meetings with four other members of the respondent's management, including Ms Capper, and a detailed report was later produced (pages 545 to 554). On 19 September a letter was sent to each of the claimants advising them of the outcome of the grievance (pages 556-569). Mr Welsh acknowledged that there were some deficiencies in communication and in the process in more general terms but concluded that the claimants were not disadvantaged by it and that a fair and meaningful consultation was carried out.

38. The complaints raised by the claimants within their grievance, and within these proceedings, can be summarised as follows:

    a) Employees did not receive the full consultation documents produced to trade union, with a full timeline and detailed reasons for planned closure of the Centre.

    b) Questions raised at consultation meetings were not answered in a timely manner. It was said that the respondent did not follow their own Restructure and Redundancy Policy.

    c) Poor and incorrect documents were received.

    d) The respondent did not pay any severance payments, which it was said was unfair.

    e) There was no fair and meaningful consultation, it was suggested by Mrs France in particular that the decision was predetermined.

    There were some additional points raised, which included delays in providing replies and a premature announcement being made in the media, but these did not have any material bearing upon the issues in dispute. We shall deal with each of the other points in turn.

    a) <u>Employees did not receive the full consultation documents produced to trade union</u>

39. The claimants were not issued with the full consultation document at the meeting on 14 June 2018. This ought to have been provided to them at that stage since this was the recommended procedure in the respondent's Redundancy and Restructuring Policy (pages 98-121) and it had been provided to the trade union several days earlier. However, the information contained in that document was in the main relayed to them at the meeting, which was evident from the script read to the claimants. Further, the respondent's rationale for the closure of the Centre and an outline of the timetable for consultation process was summarised in the letter which was sent to them on 14 June. The Tribunal was therefore satisfied the claimants were not disadvantaged by this omission.

b) Questions raised at consultation meetings were not answered in a timely manner. The respondent did not follow their own Restructure and Redundancy Policy.

40. The Tribunal was satisfied that the questions put to the respondents as the various meetings were answered by them, on occasion there were some delays but these were not such that they could be described as unreasonable. While the respondent did not follow every aspect of its own policy, and in particular it failed to issue the full consultation document to the claimants at the outset of the process, the policy itself was non-contractual and the delays did not adversely affect the claimants.

c) Poor and incorrect documents were received

41. The respondent acknowledged that there were some errors in its documentation, including on one occasion a claimant been referred to by an incorrect name and on another occasion an incorrect version of a letter being sent out. These matters were not sufficient however such that they impacted upon the fairness of the procedure as a whole.

d) The respondent did not pay any enhanced severance payment, which it was said was unfair

42. The respondent operated a non-contractual redundancy and restructuring policy (pages 98-121) which among other things, stated that the respondent "*does not pay enhanced redundancy pay or other form of severance payment in addition to those payments to which an employee is entitled by reason of their contract of employment law…"* then went on to state that the respondent "*may make severance payments where appropriate; see Appendix 7*". Appendix 7 stated that the respondent had "*the power to make severance payments to employees who are made redundant as a result of a reorganisation which is not linked, directly or indirectly, to loss or expiration of funding*" (page 120).

43. The claimants accepted that this policy was not contractual and that there was no obligation upon the respondent to make payments. There was no evidence before the Tribunal that there was any custom practice in paying severance payments to redundant employees. In the circumstances, the non-payment of a non-contractual discretionary severance payment was neither capable of amounting to a breach of contract or contributing to unreasonableness in accordance with section 98 (4).

e) There was no fair and meaningful consultation, it was suggested by Mrs France in particular that the decision was pre-determined.

44. This was the main aspect of the case to which the Tribunal were required to give careful consideration. It could be broken down into two elements, firstly whether the claimants were given sufficient warning of the redundancy; and secondly whether the consultation process was meaningful, in other words was it a genuine exchange of views with the aim of reaching a decision or was this simply a case where a decision was taken and the employer then jumped through the necessary hoops to demonstrate that they had followed a process.

45. In respect of the sufficiency of the warning, the Tribunal were troubled by the delay between 25 May 2018 and 14 June 2018. On the respondent's own evidence, a decision to propose to close the claimants' place of work by September 2018 had been taken, at the latest, by 25 May 2018. There was then a delay of 20 days before the claimants were informed of that decision and consultation was commenced. There was no explanation put before the Tribunal for that delay save for Mrs Robinson's rather vague assertion that "*HR were doing it*".

46. In respect of the second element, whether there was genuine and meaningful consultation, the Tribunal had some reservations about whether the respondent gave genuine and proper consideration to the claimants' counter proposal submitted on 27 June 2018. The absence of evidence from Ms Capper made it difficult to ascertain whether, irrespective of any comments and representations made by the claimants and Mrs Robinson, the Centre was to be closed in any event and the decision had already been taken by that stage, or whether genuine consideration was given to the claimants' proposals before being rejected on 4 July 2018.

47. Before we reach our conclusions, and for the sake of completeness, it should be recorded that much of the claimant's witness evidence focused upon what they perceived to be mismanagement of the Centre, and in particular a failure to adequately recruit staff to enable it to enhance its performance. It was this which the claimant's said led to the financial difficulties of the Centre. The Tribunal did not review the figures and financial performance of the Centre in any detail. It did find, and these matters were not disputed, that the Centre was unprofitable in 2017 and that it had ongoing difficulties in recruiting staff. By June 2018, while some progress had been made on recruitment and financial performance, the Centre was still not profitable.

Conclusions

48. The Tribunal find that the dismissal was for the potentially fair reason of redundancy. The reason for the dismissal was the closure of the Centre which fits the definition of redundancy for the purposes of section 139 of the Employment Rights Act 1996; the requirements of the business for employees to carry out work of a particular kind in the place where the employees were employed by the employer had ceased or diminished.

49. It is not for the Tribunal to carry out a detailed financial analysis of the basis upon which that decision was taken. It was established that the Centre was unprofitable in 2017 and, despite some progress having been made in the 12 months prior to June 2018, it remained unprofitable when the consultation process for its closure was commenced. It is possible, as the claimants submitted, that this was due to a lack of senior management support or poor strategic decisions. It is also possible that it was because the Centre was in a relatively low populated region and the respondent was unable to attract sufficient qualified staff and/or there were insufficient learners within the region to maintain profitability. This is largely irrelevant for the purposes of the Tribunal's findings. Irrespective of the reasons for it, the Centre was unprofitable over a substantial period and the respondent had a genuine rationale for determining that it should close. The Tribunal was satisfied that

redundancy, brought about by the closure of their place of work, was the reason for the claimants' dismissals.

50. Turning to section 98(4) Employment Rights Act 1996; whether the respondent acted reasonably when dismissing for that reason. There were some matters raised in the case which might be described as purely procedural. These included a failure to issue correct documentation, some delays in the consultation process and some miscommunication. These procedural deficiencies were relatively minor and did not render the dismissal unfair for the purposes of section 98(4).

51. This was not a case in which fairness of selection was in dispute since all six employees at the Centre were dismissed by reason of redundancy upon its closure, and it was not suggested by the claimants that they should have been part of any wider pool incorporating any other centre operated by the respondent. Nor was this a case in which the respondent failed to consider or offer any alternative role. The claimants accepted in evidence that there was only one alternative role available and this was put to them during the consultation process. However, the role was based in Carlisle and none of the claimants were interested in it because of the distance they would have been required to travel on a daily basis.

52. The key issue in this case was whether there was adequate warning and consultation. In respect of adequate warning, the Tribunal held that this was not a case which met the requirements set out in, among others, Williams & Others v Compair Maxam Limited [1982] ICR 156. In that case it was held that:

"*there is a generally accepted view in industrial relations that, in cases where the employees are represented by an independent union recognised by the employer, reasonable employers will seek to act in accordance with the following principles:*

1. The employer will seek to give as much warning as possible of impending redundancies so as to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and, if necessary, find alternative employment in the undertaking or elsewhere…"

53. On its own evidence the respondent's decision to close, or at least to propose to close the claimant's place of work by September 2018, was taken by 25 May 2018. There was then a 20-day delay before the consultation process with the employees commenced. None of the respondent's witnesses were able to explain that delay since they were not involved in that initial part of the process. In submissions, when the Tribunal pointed out the relevant section of the Williams v Compair Maxam case, the respondent's representative suggested that the length of the delay was not unreasonable. That might well have been accepted if there was a good reason for the delay but no such reason was put before the Tribunal, the respondent's witnesses were unable to offer any explanation for it. The trade union was sent emails containing the proposal document by way of emails on 6 and 11 June but the Tribunal had no evidence as to what became of that notification or what discussions, if any, accompanied

it. In any event, it was common ground that the consultation process did not commence until 14 June and it was only then that the claimants received warning of the proposed closure. In the circumstances of this case, the Tribunal were of the view that the respondent did not give the claimants as "*much warning as possible of impending redundancies*". The Tribunal find that the warning of the proposed closure should reasonably have been given within a few working days of the decision finalised at the meeting of 25 May and therefore by about 30 May 2018.

54. The Tribunal also had some reservations as to whether a genuine and meaningful consultation process was carried out. In the absence of the key decision maker it was difficult to determine whether this was a genuine consultation process, involving an exchange of views with the aim of reaching a decision, or whether the decision was pre-determined and the respondent simply followed a process to jump through the necessary hoops. The speed with which Ms Capper dismissed the claimant's counter-proposals, which were supported by Mrs Robinson, without any further discussions on 3 or 4 July suggested the latter. However, on balance the Tribunal find that the respondent did give proper consideration to the claimant's representations. The response provided by Ms Capper on 4 July addressed the claimant's main points and gave a reasoned rationale for rejecting them. There was also some persuasive evidence in the bundle comprising notes from an interview between Mr Welsh and Ms Capper which suggested Ms Capper gave some considered attention to the matter (pages 537-544). Even if that analysis were incorrect, the Tribunal would have found that there was a 100% chance that the closure of the Centre would have been confirmed in September 2018 since the business rationale for the closure remained: this was a Centre which had operated at a loss over a prolonged period and had difficulties in attracting suitable staff and students.

55. The Tribunal find nevertheless that the lack of adequate warning rendered the dismissals unfair. If the claimants had received earlier warning of the proposed closure, they would have had an additional two weeks in which to find alternative employment either within the respondent's undertaking or, much more likely on these facts, elsewhere. Accordingly, the claimants were all unfairly dismissed.

56. In the circumstances, and given the other findings, the Tribunal find that the compensation payable to the claimants for loss of earnings should be limited to two weeks pay, representing the additional period which they would have had to find employment elsewhere. The claimants' basic award will be offset by their redundancy payments, but there may be some additional compensation due for loss of statutory rights. The compensatory award will also be subject to mitigation if the claimants were able to swiftly mitigate their losses following the termination of their employment.

57. The case will be listed for a remedy hearing and a notice of hearing will follow. It is hoped that, given the sums involved and the indications provided by the Tribunal at paragraph 56 above, the sums payable to the claimants can be agreed. The services of ACAS remain available to the parties.

Employment Judge Humble

Date 22nd October 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON
25 October 2019

FOR THE TRIBUNAL OFFICE

Note
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.