



EMPLOYMENT TRIBUNALS

Claimant: Mr A German

Respondent: UK Research and Innovation

Heard at: Bristol by CVP **On:** 1, 2 and 3 March 2021

Before: Employment Judge Christensen

Representation

Claimant: In Person

Respondent: Ms Urquhart, Of Counsel

JUDGMENT

The claimant's claim for unfair dismissal does not succeed and is dismissed.

The claimant's claim for a redundancy payment does not succeed and is dismissed.

REASONS

The claim

1. The claim is one for unfair dismissal based upon a resignation – constructive unfair dismissal in accordance with S95(1)(c). The claim includes that the resignation amounts to a dismissal, that the principal reason for dismissal was redundancy and that the claimant is entitled to a redundancy payment.
2. The respondent defends the claim on the basis that the claimant's resignation is not such that it amounts to a dismissal. In the alternative the respondent argues that the principal reason for dismissal was 'some other substantial reason' – a business reorganisation in accordance with S98(1)(b) and was fair in all the circumstances. The respondent argues that the statutory definition of 'redundancy' in S139 is not met but that in any event the process leading to the dismissal was fair, that they offered suitable alternative employment that was unreasonably declined by the claimant. The respondent's position is that the claimant is not entitled to a redundancy payment.

Witnesses and hearing

3. A number of late disclosures were made by the respondent during the hearing. The documents were accommodated within the hearing bundle.
4. The claimant gave evidence and called Dr Brown and Mr Proctor as witnesses. Dr Brown and Mr Proctor had been colleagues of his at work.
5. For the respondent there was evidence from Mr Biddle Programme Director for ICSF, Ms Holyday of HR, Mr Cook Interim Director of the Transforming Food Production Challenge, Mr Meikle, Director of Infrastructure Systems (Grievance). There was also a witness statement from Ms Simons, Chief Operating Officer. Ms Simons had heard the claimant's appeal against his grievance outcome. Ms Simons did not appear to give evidence as she was ill. This was accepted by the claimant although no sick note was produced. On that basis it was agreed that I would consider her evidence but give it less weight.

The issues

6. It is agreed that that this hearing is limited to addressing matters of liability and that I will also address issues 4.4.4, 4.4.5 & 4.5.6 below.

1 Constructive unfair dismissal

1.1 The Claimant claims that the Respondent acted in fundamental breach of contract in respect of the express term in relation to the Claimant's role or a breach of the implied term of the contract relating to mutual trust and confidence. The breach(es) were as follows:

1.1.1 Changing the Claimant's role from the Space Team to the Food Team.

1.1.2 Initially failed to consult with the Claimant as to changing his role within the Respondent.

1.1.3 Failing to engage in a redundancy process.

1.1.4 Failing to make the Claimant redundant.

1.1.5 Redeploying the Claimant into an alternative role, which was not suitable.

1.1.6 Dismissing the Claimant's grievance and grievance appeal.

1.1.7 On 12 August 2019, the Claimant was informed by letter and email that he was now working in the Food Team role

The last of those breaches was said to have been the 'last straw' in a series of breaches, as the concept is recognised in law.

1.2 The Tribunal will need to decide:

1.2.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

1.2.2 Whether it had reasonable and proper cause for doing so.

1.3 Did the Claimant resign because of the breach? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end.

1.4 Did the Claimant tarry before resigning and affirm the contract? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation.

1.5 In the event that there was a constructive dismissal, was it otherwise fair within the meaning of s.98 (4) of the Employment Rights Act 1996?

1.6 If the Respondent did not use a fair procedure, would the Claimant have been fairly dismissed in any event and/or to what extent and when?

2 'Some other substantial reason'

2.1 If the Claimant was found to have been constructively dismissed, was this due to a business reorganisation within the Respondent?

2.2 If so, was that a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held, pursuant to S98(1)(b) Employment Rights Act 1996? The Respondent relies on the matters pleaded at paragraph 3.7 of the Amended Grounds of Resistance.

2.3 Was that dismissal fair within the meaning of S98(4) of the Employment Rights Act 1996?

2.4 Did the Respondent follow a fair procedure?

2.5 If not, would the Claimant have been fairly dismissed in any event and when?

3 Claim for a redundancy payment

3.1 Was there a redundancy situation within the meaning of S139 Employment Rights Act 1996? The Claimant says that Space Team had ceased or diminished or was expected to cease or diminish.

3.2 Was the Claimant redundant?

3.3 Was the Food Team role suitable for the Claimant and did the Claimant unreasonably refuse to accept alternative employment?

3.4 If not, how much should the Claimant have received as a redundancy payment?

4 Remedy

Unfair dismissal

4.1 The Claimant does not wish to be reinstated and/or re-engaged.

4.2 What basic award is payable to the Claimant, if any?

4.3 Would it be just and equitable to reduce the basic and compensatory award because of any conduct of the Claimant before the dismissal? If so, to what extent?

4.4 If there is a compensatory award, how much should it be? The Tribunal will decide:

4.4.1 What financial losses has the dismissal caused the Claimant?

4.4.2 Has the Claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

4.4.3 If not, for what period of loss should the Claimant be compensated?

4.4.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

4.4.5 If so, should the Claimant's compensation be reduced? By how much?

4.4.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did the Respondent or the Claimant unreasonably fail to comply with it? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?

4.4.7 Does the statutory cap of fifty-two weeks' pay or £86,444 apply?

Redundancy payment

4.5 If appropriate, how much should the Claimant have been paid as a redundancy payment?

Findings of Fact

7. The respondent is an amalgamation of a number of research councils and Innovate UK. It was formed following the implementation of the Higher Education and Research Act 2017.
8. The respondent is the national funding agency investing in science and research in the UK and has a budget of around £6 billion. It is an executive non-departmental public body, sponsored by the Department for Business Energy & Industrial Strategy (BEIS). It employs about 7300 staff in the UK.
9. The claimant started work with the Technology Strategy Board, later known as Innovate UK on 6 January 2014. His employment transferred to the respondent on 1 April 2018. He resigned his employment by letter dated 27 August 2019.
10. The claimant was recruited to the space team in Innovate UK to lead its satellite applications activities in the role of Lead Technologist – Space Applications. His job was renamed to Innovation Lead – Space on 1 October 2016. This had no impact on his terms and conditions or the role he undertook.
11. The claimant is an engineer with more than 25 years of experience in the space sector covering public and private sector in the domains of spacecraft operations, satellite communications, earth observation and space based positioning navigation and timing. He holds a Bachelor's degree in electronic, control and systems engineering and a Master's degree in business administration.
12. Innovate UK was publicly funded to encourage innovation in a number of key vertical sectors. These included energy, agriculture, urban living, transport, and health. It operated a horizontal or cross-cutting space team that worked across all those sectors to ensure that satellite applications were used to ensure growth in those vertical sectors. As a space specialist, the claimant and his colleagues in the space team might therefore engage with 5 or 6 vertical markets at any one time. This is depicted in the graphic at p272.
13. Amongst the Innovation Leads in the space team, particular specialisms included satellite applications (the claimant), satellite navigation (Mr Proctor) and satellite communications (Dr Brown). To encourage innovation and growth within the vertical sectors, the Innovation Leads would work across key stakeholders within the space arena including policy makers, academics, large companies and smaller companies developing at new interfaces. As an Innovation Lead in the space team the claimant and his Innovation Lead colleagues, were considered to be highly specialized and respected thought leaders within this space arena and had effective working relationships with all stakeholders in that arena.

European Space Agency (ESA)

14. The European Space Agency (ESA) operated a 100m euro fund monitored by the UK Space Agency (UKSA). The UKSA relied on the respondent for space technical knowledge in this regard. The respondent operated a Service Level Agreement with within the UKSA under which the claimant and Dr Brown were delegates on the Advanced Research in Telecommunications System (ARTES) and Mr Proctor performed a similar role for navigation. The claimant was assigned to the ARTES programme for 3 years between 2014 and 2017. Dr Brown was assigned to the programme between 2015-2018. The claimant dedicated about 80/90% of his time to ARTES during this period of tenure. The scope of that work included to *“maximize the value of innovative research for space, with a focus on supporting UK major policy themes such as intelligent transport, civil protection, border control and enhancing the sustainability of UK farming and fishing industries”*
15. The claimant would filter all applications from UK industry put forward for funding under the £100m euro ESA programme and identify those that should be funded under the programme. The good ideas were supported and funded and the bad ideas were rejected.
16. The respondent withdrew from involvement with the UKSA and the monitoring of the ESA 100m euro at the end of 2018.

Industrial Strategy Challenge Fund (ISCF)

17. In the summer of 2016 and as the Higher Education Research Bill was proceeding through Parliament, the Prime Minister announced an industrial strategy that became a core part of the respondent's sponsoring department's (BEIS) remit. There was to be a £4.6m uplift in R&D spend over four years as part of the National productivity Investment Fund. That funding included the announcement of ICSF which was to receive about 30% of that funding.
18. The seven existing research councils in the UK were combined with Innovate UK and Research England to form one unified body that is the respondent.
19. The ISCF shifted focus away vertical sector specific teams to 'Challenge Teams'. This change sought to utilize specialist skills differently to maximize the successful delivery of the ISCF Challenges. This focus shift was to ensure the promotion of interdisciplinary and multidisciplinary research; it shifted the focus from running competitions for research funding away from smaller vertical sector specific projects and instead to bigger societal challenges.
20. The claimant had worked with other space team members on a bid for ISCF funding of £85m to fund a Space Data Revolution Challenge. That bid was not successful.
21. Given the withdrawal from the ESA/UKSA programme and the lack of success in bidding for ISCF to run a space challenge team the future of the

space team within the new ISCF structure seemed uncertain by the end of 2018.

22. The claimant and his colleagues in the space team knew their future was uncertain given that the space bid fund had been unsuccessful.

Transformation

23. Management consultants called Quartz were appointed to oversee this ISCF shift in focus within the respondent. The process was known as Transformation and led to the creation of 20 Challenge Teams. These included; Medicines Manufacturing, Smart Sustainable Plastic Packaging, Electric Revolution, Future of Flight, Manufacturing Made Smarter, Transforming Food Production, Healthy Ageing, Transforming Construction and Quantum Technologies. The pre-ISCF arrangement had meant that people worked in sector specific teams. There needed to be a realignment of skills away from sector groups and into the new Challenge Teams. There were no plans for overall work contraction but instead a realignment of focus in how people worked and a growth in work within the respondent.
24. Work was being done through 2018 and early 2019 to map all members of staff into new roles within Challenge Teams. The claimant was mapped to a role as an Innovation Lead in the Transforming Food Production Challenge. The respondent had anticipated that the impact on the Space Team may be greater than in some areas because of the absence of a specific ISCF space challenge.
25. From within Innovate UK 83 staff were impacted by Transformation. Most were mapped to Challenges. Some of the 83 members of staff raised concerns about the roles that they had been mapped to. When concerns were raised, they were addressed and resolved within the consultation process with each individual. Three members of staff, including the claimant, remained dissatisfied and raised formal grievances.

Claimant's contract terms

26. The claimant's contract of employment included a term that stated; *"TSB reserves the right to require you to undertake any duties considered appropriate to your role and commensurate with your level of responsibility. Any changes in role will be fully discussed with you and appropriate training offered as required"*

Role of an Innovation Lead

27. The role of an Innovation Lead required
 - Experience in how to listen to and understand industry needs
 - Understanding of how businesses have the capacity to innovate and what needs to be done to address this
 - Understanding of the policy environment
 - The ability to work with the academic research community

- Carrying out a task from the gestation of an idea, through internal governance, to get the programme signed off, to launching and making the competition call

Space Team meeting 14 February 2019

28. The space team was headed by Tim Just. Mr Just held a meeting with his team on 14 February. He told staff that as part of the Transformation process they had been mapped into new roles as Innovation Leads within ISCF Challenge Teams. The objective was to assign the Innovation Leads such that their specialist knowledge of space applications could be utilised within those Challenges to maximize innovation. These were spread across Robotics and AI, Transforming Construction, Transforming Food Production, Quantum Technology Made Smarter, Future of Flight, Cybersecurity and Health Ageing. The claimant was told that he had been mapped to Transforming Food Production.
29. At the meeting members of the team expressed their displeasure at the decision to dissolve the space team and that they were being mapped into areas that were unrelated to space. Dr Brown expressed his view at the meeting that it felt as if they were being made redundant without the offer of a redundancy payment. Mr Just confirmed that there was no possible offer of redundancy.
30. Dr Brown had been mapped to Robotics and AI. He expressed his view that the move would be fundamentally career limiting as the space team had all established strong expertise and respect within the space industry. He expressed his concern that in the new roles the Innovation Leads would use a minimal amount of their sector/technical expertise and were in no way equivalent in terms of responsibility to the roles they were currently in.
31. Dr Brown immediately started to explore options of employment within the UK Space Industry. He was satisfied that given the new structures, it was no longer possible for him to develop his career as a space specialist within the respondent. He handed in his resignation at the end of April.
32. In light of the disquiet expressed by the Space Team in that meeting the five Innovation Leads (the claimant, Maria Kalama, Carol Sunderland, Catherine Holt and Craig Brown) were emailed by their Director, Dr Zoe Webster later that day.
33. She writes *"I understand that Tim spoke to you all today about some plans as part of Transformation. This was premature and my fault entirely but done in the spirit of openness....Transformation will result in changes but those changes have not been agreed yet....there are numerous and significant opportunities for the Space sector in the current ISCF Challenges. With this in mind the ISCF teams will need to call upon your experience, expertise and networks to address the Challenges fully and to engage the Space sector in the opportunities present. This engagement provides growth opportunities for individuals too...."*

34. Thereafter, Dr Webster called each of the Innovation Leads. Of those Innovation Leads the claimant, Dr Brown and Maria Kalama left before taking up the roles to which they had been mapped. Carol Sunderland did not take up the role that she had been mapped to and instead took up a role as Innovation Lead in AI and Data Economy Applications.
35. When Dr Webster called the claimant he told her that he felt like he was being moved around the organization like a photocopier with no regard for his career.

Andrew Proctor

36. Mr Proctor was one of the Innovation Leads within the space team. He was seconded from Innovate UK to the UK Space Agency in May 2018. His secondment is due to terminate at the end of March 2021. At the time of giving his evidence he remained uncertain what his future might be within the respondent upon completion of his secondment.
37. Mr Proctor did not attend the meeting on 14 February but was sent the email that Dr Webster sent to all Innovation Leads on that date. As with all Innovation Leads in the space team, Mr Proctor received a phone call from Dr Webster on 15 February. Dr Webster told him that the space team roles were under consideration for deployment to other roles. Mr Proctor told Dr Webster in that call that, given the highly specialized field of space, he believed the roles were being made redundant.
38. Mr Proctor was not included in the consultations that took place in 2019 regarding the mapping to new roles as he was on secondment at that time.

Unions

39. Concerns had been raised with the unions that the impact of Transformation may potentially have a greater impact on those in the space team than in other parts of the organization. HR had a meeting with union representatives on 30 April 2019 and they provided a reassurance to the union that Transformation had a similar impact across the organization. They gave an example to the union representatives of someone working in a team of Health and Medicine specialists being reallocated to sit with colleagues responding and developing to a medicine manufacturing capability.
40. The union was reassured that no employee would experience a change to salary or any other benefit. This meeting did reassure the unions that no redundancy situation arose and that the union would step back to allow the process to proceed.
41. Pausing here I reflect that the example given by HR to the unions rather misses the point of concern of the space team and didn't entirely reflect the true situation for the space team as a cross cutting specialism rather than a vertical market. For an Innovation Lead already skilled in and working in the vertical sector of health and medicine to be reallocated to a Challenge relating to medicine manufacturing capability meant that, at least arguably, that

person remained working within a Challenge that utilized their existing and particular area of specialism as an Innovation Lead.

42. For the space team Innovation Leads, their specialism was space technology and its application to business growth generally. The claimant had spent many years in building his profile in that specialism. Space was understood to be an application that spanned all vertical markets. It had no natural or allied vertical market home and was instead available, with the skill and influence of the space team Innovation Leads, to be applied to any vertical market. This allowed for maximum development of and application of those space skills by the Innovation Leads. The claimant's concern was that in the absence of a dedicated Space Challenge, whatever non-space Challenge he was assigned to would, arguably, no longer optimize his very particular specialist space skill set and would instead place his skills within the confines of a particular Challenge. This is the concern that he raised with the respondent and was addressed in his grievance.
43. The unions were satisfied with the explanation provided by HR and stepped back from the process to allow it to proceed.

Career development

44. Absent a move to a job that represented a promotion to a managerial grade that might take him away, to a degree, from that highly specialized area of work, the claimant's career aspirations were to continue to develop his 25 year career as a dedicated space specialist. Dr Brown held similar aspirations. The claimant and Dr Brown resigned their employment as they were satisfied that the jobs that they were mapped to within the Challenge Teams would be career limiting in terms of meeting those particular career aspirations.
45. Other Innovation Leads in the Space Team have also resigned and others have remained employed by the respondent notwithstanding the Transformation process.

Consultation process 11 April

46. The claimant met with HR and Mr Just on 11 April to discuss the move to Innovation Lead in the Transformation Food Production (TFP) Challenge Team. I am satisfied that the claimant had genuine concerns about this new role. Those concerns were that the new role would utilize only a fraction of his space based skills and that he would, at least at the outset, be working within an environment in which he had not developed relationships with the key stakeholders. Notwithstanding these he explored what was on offer before determining how to respond to the situation.
47. The claimant was shown a list of vacancies across the respondent and told that the Innovation Lead role in TFP was considered to be the most suitable for him. He did not express interest in any of the other roles.

48. On 11 April Mr Just reported to the Interim Challenge Director for TFP, Mr Cook, that he had spoken to the claimant and he was set to join TFP. Mr Just explained that the claimant was still looking at other options. This is understood to refer to the claimant looking for other employment opportunities, not within the respondent. Mr Just confirmed that the claimant seemed engaged with the TFP Challenge opportunity and asked Mr Cook to have a role discussion with the claimant.
49. Notwithstanding the concerns that he held about the mapping to TFP, in terms of his career development, the claimant kept an open mind regarding next steps and whether there might be a way in which his career could develop within the respondent. He continued to hope that the respondent might have created a dedicated space time but that hope did not materialize. At the same time he was taking steps to explore other job opportunity away from the respondent.
50. Mr Cook contacted the claimant, as Mr Just had suggested, to discuss his move into the TFP team. The claimant rejected the offer of such a discussion because of his concerns about the role. The claimant emailed Mr Cook on 30 April *"thank you for your offer of a role in the TFP Team. I can see that my generic experience could be useful; however the role would make little use of the contacts, market and technical understanding that I was employed for. I don't consider the role would be a suitable alternative for me, therefore I will politely decline the offer"*

Grievance 29 April

51. The claimant determined that the appropriate way of addressing his concerns was by raising a grievance. He did so by letter to Ms Holyday dated 29 April 2019. He did this conscious that the process would map him into TFP with effect from 1 May and wished to make it clear before that date that he was not content with the move. His grievance stated:

"...I've greatly enjoyed working with the space sector specialists in the Space Team, helping space companies grow in the UK. In my five years in this role, I've been fortunate enough to work with a number of great UK entrepreneurs, lead three entrepreneurs' missions to the US, run a 10m euro budget on behalf of the UK Space Agency, and lead efforts to secure ISCF funding for space. Sadly, with no ISCF funding allocated to a space challenge, the Innovate UK Space Team will be disbanded on 30 April 2019...

While I recognise that my generic experience within our organisation could be useful in the TFP team, I feel that the new role will make use of only a fraction of my skills and experience. I have 25 years of experience in the space sector, an in-depth technical understanding of the sector, and a strong network of connections to match. None of this can be said for my understanding of the UK's food sector, and I feel that the role in the TFP is not a suitable alternative role.

As my existing role is at risk of redundancy because of the disbandment of the Space Team on 30 April 2019, I requested on 11 April 2019 that my employer consider other alternatives. Since no such alternatives appear to be available, and having taken advice, I have reluctantly decided to raise this grievance"

Claimant assisted with TFP from 1 May

52. The claimant was content to assist Mr Cook and the TFP team from 1 May 2019 pending the resolution of his grievance.
53. Mr Cook emailed the claimant on 15 May and referred to the claimant joining the TFP ISCF Programme *“are you free for a chat? I have a specific task that is high priority and I need to assign someone to lead on this through May/June and had you in mind. We should also talk more generically about the innovation lead role and to work with you to make sure it’s appropriate to your expertise”*
54. The claimant responded on 17 May. *“I would stress that I declined the offer of a permanent role.....however I am happy to see how I can help out with the high priority task. We could also explore (without prejudice) the specifics of the proposed/declined role”*
55. I am satisfied that this indicates that the claimant kept an open mind regarding the possibility of being mapped into the TFP role.
56. The claimant helped with work related to the Catapult research centres. He picked up a complex task which included remote sensing and satellite type technology to transform food production. It required the skills of an Innovation Lead who knew their way around complex political discussion and the claimant delivered on this task. Mr Cook was very pleased with the work that he did.
57. Mr Cook wished to keep the claimant within TFP as he considered the claimant’s skills to be advantageous for the future of programme. On 14 May Mr Cook emailed Ms Webster *“I understand from Tim that Andy has worked alongside the agri-food team on recent international missions and so it should utilize his skills appropriately. Having spoken to Calum this morning, he cannot release staff resource to lead on this....I really am stuck if I can’t get Andy to lead on this...”*

List of vacancies distributed on 14 May

58. Ms Holyday sent all members of the space team a further list of vacancies on 14 May and offered to put the claimant or any of his colleagues in touch with the relevant line managers for further discussion. The claimant did not pursue any of these opportunities. He didn’t consider any of them to be suitable for the same reason that he objected to being mapped to the TFP Challenge. None of them sat within the specific discipline of space.

Grievance Meeting 24 May 2019

59. The respondent’s grievance procedure states that a grievance meeting would normally be arranged within one week of the receipt of a written procedure. The grievance meeting was in fact held just under four weeks after the grievance was raised.

60. Following receipt of his grievance on 29 April, Ms Holyday emailed the claimant on that day to say that the union had requested a grievance meeting and that the meeting should progress that week if possible. The respondent then spoke with the unions and Ms Holyday emailed the claimant on 15 May *“I believe that the union will have reported back to you following their conversation with us. We are suggesting that Dean [Mr Cook] get in touch with you again to discuss the proposed role in more detail. In the meantime I wanted to ask if you wish me to progress arrangements for hearing your grievance? Or are you content to await the discussion with Dean first? The claimant responded the next day and expressed his displeasure at the delay “please progress the grievance arrangements. I’m very disappointed that this had been delayed without informing me for third party reasons. The delay also means that we haven’t adhered to the UKRI Grievance Policy that defines a time envelope of 10 days”*
61. Ms Holyday responded on 17 May *“I’m sorry if this wasn’t clear – I was aware that the union were specifically picking some of these issues up on behalf of the Space Team so had seen the issues as connected but my apologies for the delay. I’ve already reached out to an uninvolved director to hear your grievance and hope to come back to you with a proposed date for a meeting later”*
62. The grievance was chaired by Mr Ian Meikle, Director of Infrastructure Systems. The claimant was accompanied by Mr Dirken, a Prospect Union representative.
63. There was a fulsome exploration of the claimant’s objections to and grievance relating to being mapped as Innovation Lead into the TFP Team as part of the Transformation Programme. The claimant set out his concern that the Agri-Food role would not make the best use of his experience and professional contacts in the Space sector. He expressed his concern that he had limited experience within the Agri-Food sector and might struggle with the role. Mr Meikle confirmed that he had previously changed sectors and moved to Agri-Foods and he expressed his view that there is a lot of technological application in Precision Agriculture that may suit the claimant’s background, particularly when working with the Satellite Applications Catapult. Mr Meikle expressed his view that there is an overlap in the two sectors and a need for technological influence in the Agri Food sector. The claimant was shown the list of all potential vacancies, the claimant noted that some were interesting where he could add value but that there were no vacancies that would be a good use of his experience in the space sector. The claimant confirmed that he had not completely written off the possibility within TFP but had aspirations to join a start up in the space sector.
64. There were discussions about the possibility of a redundancy package but Mr Meikle confirmed this would not be possible because Transformation was growth based.

65. After the meeting Mr Meikle spoke with Mr Cook to better understand the TFP and the work that the claimant had been doing within TFP.
66. The claimant raised his concern that no Job Description had been made available to him.

Grievance Outcome 11 June 2019

67. Mr Meikle wrote to the claimant on 11 June. It provides a record of all the key points discussed at the meeting regarding the claimant's concerns. Mr Meikle sets out that Mr Cook has confirmed that the claimant was using his sector expertise and strong product development and commercial skills to good effect within TFP. *"I spoke with Dean Cook and he said that you were using those types of skills to good effect particularly in the politically sensitive scoping exercises with Canada and China. He described you as excellent to work with, candid about your current concerns yet professional in your approach....the sector needs shaking up from those outside the sector and that there were opportunities to shape the programme as such"*
68. He suggests to the claimant that he have a more in depth conversation with Mr Cook about the work required in the Agri Food team. His grievance is rejected. He is told he has a right of appeal.
69. The claimant confirmed his wish to appeal by email on 11 June. He expressed his concern that the respondent had not properly engaged with the definition of redundancy.

Appeal 16 June 2019

70. The claimant appeal was heard by Ms Louisa Simons Chief Operating Office on 16 June.
71. The appeal explored the claimant's concerns regarding the suitability of the alternative employment that had been offered. He referred to government guidance that set out that the criteria to be considered in determining whether a job is suitable depends on
 - 1 How similar the work is to your current job
 - 2 The terms of the job being offered
 - 3 Your skills, abilities and circumstances in relation to the job
 - 4 The pay(including benefits) status, hours and location
72. He expressed his concern that the respondent had focused on points 2 and 4 and had not addressed points 1 and 3. He explained the importance of his technical expertise in the space sector, his understanding of the market, technologies and the people involved. He expressed his concern that limiting the application of his skills to only one market would leave most of his experience unused. There was a fulsome discussion regarding these concerns. The claimant confirmed that the TFP opportunity lay within his capabilities, that he could learn the market but that he would not be motivated

to do it. Ms Simons confirmed her view that a lack of motivation was not an indicator of the job not being a suitable alternative for the claimant.

73. After the grievance meeting, Ms Simons spoke with Mr Cook to better understand TFP and he confirmed to Ms Simons the importance to the industry to have a team with a strong engineering and satellite knowledge so that they can drive the use of technology into the sector.

Grievance Outcome letter 4 July

74. Ms Simons wrote to the claimant on 4 July and upheld the decision to reject his grievance. She sets out her findings

- 1 *The proposed role is a close match to your current role, as you will continue in the role of an Innovation Lead*
- 2 *There is no change to your terms and conditions of employment other than sector area in your job title*
- 3 *We recognize your significant skills in the crosscutting space technology area. We believe that both your technical skills and your non-sector specific skills along with your experience in innovate UK and in the business will be well utilized in the proposed role and that the role is broadly the same as your current role, albeit it in a different team.*
- 4 *The pay, benefits and location are unchanged and we do not believe that the change would hinder your progression within UKRI*
- 5 *With regard to future career development we do acknowledge that your personal career aspirations are within the space sector and we have tried to ensure that we have placed you in a role that best keeps you in touch with this sector. In terms of future career opportunities there is evidence within Innovate UK that having worked across more than one sector is not detrimental to career development within the organization and may be beneficial (e.g. at least two of our directors have followed this route).*

75. The claimant had raised in the appeal meeting his concerns that he had been told of the changes in February but not consulted until April and that 4 months had already passed. Ms Simons concludes her letter by addressing the claimant's concerns regarding the consultation process and that *"I am content that the Innovation Lead role in transforming food production is suitable alternative employment"*

New opportunity arises – 12 July

76. Dr Webster emailed the space team to alert them to a new opportunity that had arisen as Innovation Lead in AIDE (Artificial Intelligence and Data Economy) Challenge. The claimant did not express an interest in this role. The claimant's Innovation Lead colleague, Ms Sunderland, did express an interest in and was appointed to this role.

Letter confirming new job title 12 August

77. Dr Webster wrote to the claimant on 12 August. She writes *"whilst I note that you still have some reservations I think that it is now important that we bring*

the consultation towards I close. I am therefore writing to give you notice that your reporting line and job title will formally change in one month's time". His job title would become 'Innovation Lead – Transforming Food Production (Satellite Applications)' and he would be reporting to the TFP Deputy Challenge Director and Challenge Director.

Offer of job 25 August

78. Having reached out to his contacts in the space sector the claimant received a job offer from a company called Gyana on 25 August.

Resignation 27 August

79. The claimant resigned his employment by letter on 27 August. Referencing Ms Webster's letter of 12 August, he writes "*now that Innovate UK as finally made a decision on my future employment, and having turned down my request for redundancy, I feel that my situation has become untenable and I resign from the role of Innovation Lead-Satellite Applications*". The claimant reiterates the essence of his grievance in his resignation letter.

Submissions

80. Both parties provided me with written submissions which I do not here repeat. They have each referred me to case law. I refer to these below but do not give their citations as these are included in the written submissions.

81. The respondent has referred me to

- Constructive Dismissal: *Western Excavating-v-Sharp; Tullett Prebon-v-BGC Brokers; Buckland Bournemouth University; Malik-v-BCCI; Morrow Safeway Stores; London Borough of Waltham Forest-v-Omilaju*
- Definition of redundancy – S139. *Shawkat-v-Nottingham City Hospital; Servisair UK-v-O'Hare*
- Suitability of alternative employment – S141. *Jones-v-MEM Marketing Retail Services.*

82. The claimant has referred me to the case of *Devon Primary Care Trust-v-Readman*, relevant to the issue of the suitability of alternative employment.

Determination of Issues

Did the respondent behave in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent? Did it have reasonable and proper cause to do so?

83. In relation to this issue the claimant has identified seven particular events that he argues show that the respondent acted in fundamental breach of contract in respect of the express term in the claimant's contract or a breach of the implied term of trust and confidence.

84. Whilst accepting that the claimant found the process that started on 14 February and ended with his resignation on 27 August unsettling, and that there are parts of it that can be criticised, I am not satisfied that there is anything in any of the particular events complained of by the claimant, or otherwise arising from the evidence, that establishes any fundamental breach of contract on the part of the respondent in relation to either the express or the implied term. There is no evidence that tends to indicate that the respondent behaved in a way that was calculated or likely to seriously damage trust and confidence between the claimant and his employer, nor indeed that his express term has been breached. The Transformation process that was underway was a fundamental shift in focus for the respondent, led by a change in government funding strategy, and required a realignment of its workforce consistent with that shift.

Failure to consult as to changing role

85. A criticism that can be levelled at the respondent relates to the fact that the meeting on 14 February with Mr Just, presented to the space team what appeared to them to be a fait accompli. The message they heard was – the Transformation process will mean that you are now mapped to these new roles within particular ISCF Challenges. For the claimant this was the TFP Challenge. This was unsettling for the claimant and his colleagues as they had no forewarning that that particular change was coming and they had experienced no consultation leading up to that point. I am however satisfied that it is relevant that they all reasonably understood that given the failure of the ISCF Challenge fund bid, that something was going to have to change in terms of how they worked in the future. I am satisfied that the meeting was not well handled. That is clear from Dr Webster's email sent later the same day. Without more it could indicate conduct that was likely to damage the trust and confidence that the claimant had hitherto had in his employer. However, that meeting does not sit in isolation and facts need to be considered in the round.
86. I consider that the steps taken by Dr Webster later that same day are indicative of the conduct of an employer who is signalling very clearly that they are seeking to maintain the trust and confidence of the whole space team. Once she became aware of the disquiet that had been generated at the meeting, Ms Webster emailed all members of the team to offer reassurance and explanation. She followed this up with a telephone call with each Innovation Lead. She sought to reassure the claimant and his colleagues within the space team that no changes had been agreed.
87. It is also relevant that the respondent consulted with the unions to address the particular concerns that had been raised by the space team. The unions were satisfied with the explanations provided by the respondent most particularly as pay and benefits and terms and conditions would be preserved in any new role.
88. The respondent then started a period of consultation on 11 April at which the claimant was shown a full list of vacancies, further vacancies were distributed May and July. The claimant did not express an interest in any of them as he

was satisfied that they were not suitable alternative jobs given his space expertise.

89. I also consider it relevant that there was fulsome engagement with the claimant, as part of his grievance, relating to his concerns surrounding the Innovation Lead role in TFP and his understandable wish to optimise his career development as a space specialist.
90. Another point of criticism that can be levelled at the respondent is their failure to have produced a Job Description for the role in TFP. The claimant raised his concerns in this regard in his grievance meeting. However, I consider it relevant that the claimant was offered several opportunities, whilst assisting within the TFP team pending the resolution of his grievance, to have a substantive discussion with Mr Cook regarding what the substantive role might entail and how it might develop to maximise his particular space skills. He was encouraged to do so on several occasions. The claimant largely chose not to engage with Mr Cook to explore what the job might entail and how it might develop. I therefore do not consider the lack of a Job Description to be a particular barrier as the claimant understood the role of an Innovation Lead very well and was offered several opportunities to discuss what this might mean in practical terms within the TFP Challenge.
91. From all of that I cannot discern conduct that strikes at the fundamental terms of trust and confidence, nor indeed that there is a breach of the express term regarding changes to the claimant's role.

Redeploying the claimant into an alternative unsuitable role/Changing the claimant's role from Space Team to TFP.

92. I accept the respondent's submissions on these two issues between paragraphs 44 and 46. I address the suitability of the role below when addressing the issues relating to redundancy but I am satisfied that given the reality of the change process that was needed in accordance with Transformation, the respondent needed to assign the claimant to a new role within the Challenge Teams. This was a growth programme in which it was anticipated that the claimant's space knowledge and skills would be valued and used. The respondent identified TFP as the closest match for the claimant and left him able to apply for any other vacancies that he considered to be a better alternative.
93. From all of that I cannot discern conduct that strikes at the fundamental terms of trust and confidence, nor indeed that there is a breach of the express term regarding changes to the claimant's role.

Failing to engage in a redundancy process/failing to make the claimant redundant.

94. The claimant wished to be made redundant and he made this clear as part of his grievance process. I can discern nothing in the respondent's response to that wish that indicates conduct that was likely to destroy trust and confidence. The respondent engaged with the claimant's wish in this regard

but explained its rationale for concluding that no redundancy situation existed and that in the circumstances of the ISCF funding being growth based, could not make an argument to its sponsoring department, BEIS, for a voluntary exit package.

Dismissing the claimant's grievance and appeal

95. I am satisfied that the respondent engaged in a genuine and fulsome way with the substance of the claimant's objections to being mapped into an Innovation Lead role in TFP. The grievance and appeal were carried out by senior independent staff, both of whom addressed the points of the claimant's concern and sought further guidance from Mr Cook before concluding that the grievance and appeal should be rejected.

96. From all of that I cannot discern conduct that strikes at the fundamental terms of trust and confidence, nor indeed that there is a breach of the express term regarding changes to the claimant's role.

Letter of 12 August

97. Given that the grievance had been rejected by the respondent it reasonably needed to create certainty regarding the way forward. I can discern nothing in the letter of 12 August that tends to indicate conduct likely to destroy the implied term of trust and confidence.

Was there a repudiatory breach of contract?

98. I adopt the approach argued for in the respondent's submissions at paragraph 50 to 53 and determine that there was no repudiatory breach of contract. The facts do not support the proposition that there was a repudiatory breach of contract.

Did the claimant resign because of the breach?/Did the claimant delay before resigning and thus affirm the contract?

99. Notwithstanding my determination that there was no repudiatory breach of contract I am also satisfied, that in any event the decision of the claimant to resign was principally caused by being offered a new job on 25 August. The timeline is strongly indicative of this fact. The claimant had indicated that he maintained an open mind in relation to the TFP job, whilst also signalling his dissatisfaction. I am satisfied from the facts that the claimant continued to keep an open mind regarding TFP up until the time that he received that job offer on 25 August. That is not a criticism of the claimant – it seems a very sensible course of action.

100. Even had the facts supported that it was the confirmation of the situation regarding his transfer to TFP (following the resolution of his grievance appeal on 4 July and the letter of 12 August) he has waited too long to resign.

101. The letter of 12 August made things crystal clear for the claimant following the rejection of his grievance appeal. Its contents can have come as no surprise given the rejection of his appeal on 4 July. Had he wished to resign

in the face of the reality set out in that letter I am satisfied that he was properly in a position to do so promptly and that he waited too long. The situation had been developing for several months and if the claimant's position was that he must resign once it was clarified that, to remain employed he needed to move to TFP, then he needed to do so upon receipt of the letter of 12 August rather than just over two weeks later.

102. In relation to the issue of the 'last straw', although I am satisfied that the letter of 12 August was not the last in a series of events that breached the implied term, I reject the submission of the respondent at paragraph 61 that the letter of 12 August could not, in principle, amount to such.
103. I reject the position adopted by the respondent that matters were sufficiently clear following the outcome of the appeal on 4 July such that the letter of 12 August could in principle add nothing. The claimant was entitled to await formal confirmation of his new job role before deciding what to do next – the letter of 12 August is an important letter than confirms matters from a contractual point of view. However I am also satisfied that (a) it was not that letter that caused the claimant to resign and (b) that the letter and the events that precede it do not amount to actions that are calculated or likely to damage the implied term of trust and confidence, nor indeed the express contractual term (c) in any event the claimant waited too long to resign after receipt of that letter.
104. The claimant's resignation is not such that he has not been constructively unfairly dismissed in accordance with S95(1)(c).
105. Notwithstanding that the claim must fail on this basis I address the outstanding issues on a hypothetical basis and for completeness.

Some other substantial reason'

- If the Claimant was found to have been constructively dismissed, was this due to a business reorganisation within the Respondent?
 - If so, was that a substantial reason of a kind such as to justify the dismissal of an employee holding the position which the Claimant held, pursuant to s.98(1)(b) Employment Rights Act 1996? The Respondent relies on the matters pleaded at paragraph 3.7 of the Amended Grounds of Resistance.
 - Was that dismissal fair within the meaning of s.98(4) of the Employment Rights Act 1996?
 - Did the Respondent follow a fair procedure?
 - If not, would the Claimant have been fairly dismissed in any event and when?
106. To determine these issues, I would adopt the approach argued for by the respondent at paragraphs 62 to 65 of their submissions.
 107. In the event that my approach is wrong to rejecting the claim for constructive unfair dismissal, and therefore that the claimant's resignation amounts to a

dismissal, I am satisfied that the principal reason for dismissal is a business reorganisation and that the procedure adopted in that reorganisation lay within a range of reasonableness.

Was there a redundancy situation in law?

108. In the event that my approach is wrong to rejecting the claim for constructive unfair dismissal, and therefore that the claimant's resignation amounts to a dismissal; and that my approach is wrong to determining that the principal reason for dismissal was a business reorganisation within the meaning of 'some other substantial reason' (S 98(1)(b)) I address the alternative possibility that the reason was for redundancy.
109. The statutory test is in S139 Employment Rights Act. The relevant part for the purposes of this case are *"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 that business for employees to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish"*
110. As per the case of *Shawkat*, a business reorganisation in itself does not indicate a redundancy. Instead the question is, as per *Servisair*, has the requirement for employees to do the particular work ceased or diminished. Is there a reduction in headcount?
111. The work of a particular kind was an Innovation Lead in the space team – an Innovation Lead with specialist space application skills. Although the facts support that the Innovation Leads in the space team were impacted to a greater degree than other employees and other Innovation Leads – given the absence of a Space Challenge in which to place them – the facts also support that the respondent wished the specialist space skills of the Innovation Leads in the space team to be put to use within the Challenges to which they were mapped. This was consistent with the new approach of ISCF to address societal challenges in new ways, including considering how space technology could assist the particular Challenges.
112. The facts support the proposition that there was no diminution within the respondent for Innovation Leads and indeed no diminution in the objective of using space technology to assist the development of all the Challenges. It is relevant that Transformation was a growth based reorganisation. The submissions of the respondent at paragraphs 68 to 72 are helpful in this regard and I accept the approach argued for by the respondent in this regard.
113. The claimant was uncomfortable with the prospect of limiting his space skills within only one discipline or Challenge. I recognize his concerns as legitimate for himself and I consider the significance of this when considering the suitability of the alternative below.
114. I am satisfied that there was no redundancy situation in existence within the meaning of S139.

Was the TFP suitable alternative employment/did the claimant unreasonably refuse to accept the offer?

115. In the event that my approach is wrong to the question of whether there was a dismissal and a redundancy situation I address the issue of whether the TFP role was suitable alternative employment within the meaning of S141. This would be relevant to whether the claimant is entitled to a redundancy payment.
116. The section sets out at S141(2) that where S141(3) is satisfied, the employee is not entitled a redundancy payment if he unreasonably refuses the offer of alternative employment. The employer must show both that the job offered was suitable and that the employee's refusal of it was unreasonable.
117. The question of 'suitability' is to be judged objectively by the tribunal with a degree of subjectivity in relation to the employee concerned.
118. I am satisfied that the alternative job offer was objectively suitable for the claimant in that the he was offered an alternative job as Innovation Lead on the same terms and conditions, the same physical location, same level of seniority, same salary and benefits. It is evident from the evidence of Mr Cook that in the few months that he assisted with the TFP team he did an excellent job and was well suited, on his skill set, to being an Innovation Lead within TFP.
119. I am satisfied too that looked at subjectively from the point of view of the claimant it was reasonable for him to refuse the role. I consider his submissions to be helpful in this regard which focus on his wish to develop his career only within the sector specialism of space. He refers in his submissions to the *Devon Primary Care Case* which is helpful in establishing that although the role was within his capabilities that his refusal to accept it was not unreasonable. The claimant's particular career aspirations (as with Dr Brown) were very specific and he was reasonably entitled to hold such a career aspiration and reject the TFP role on the basis of those particular career aspirations. Other than moving to a management role, the claimant wished to continue to develop his career only with the particular specialism of space and without limiting his skills to any one sector. That is an entirely reasonable position for someone with the claimant's skill set and years of experience within that highly specialized sector to adopt. It is relevant that from within the space team, Innovation Leads both rejected and accepted their newly mapped roles. This appears consistent with it being a subjective decision depending upon particular career aspirations within the space specialism.

Remedy matters

120. Notwithstanding that the claim does not succeed for the reasons set out I address the remedy matters for the sake of completeness. The claimant is not entitled to any compensation.

Would the claimant have been fairly dismissed anyway if a fair procedure had been followed or for some other reason?

121. Assuming, hypothetically, that the claimant's resignation amounts to a dismissal I am satisfied that the procedure adopted lay within a range of reasonableness and that no unfair dismissal is created by reference to procedural failings.

Is there a breach of the ACAS Code of Practice on Grievance

122. Paragraph 33 of the ACAS Code is, hypothetically, relevant. *“Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received”*

123. The respondent raised his grievance on 29 April. The respondent's grievance procedure sets out that a grievance meeting would normally be arranged within one week of the receipt of the grievance. In fact, the grievance meeting was not set up until 24 May and so outside the usual timescale.

124. I consider it relevant that the mistake was because of attempts by Ms Holyday to engage with the union and a genuine misunderstanding regarding how the claimant wished to proceed. It is relevant that she offered the claimant a fulsome apology when she realized that the claimant was unhappy with the delay and took immediate steps to convene a grievance meeting once she properly understood the situation. I do not consider that there was any unreasonable delay such that, hypothetically, it would be appropriate to uplift any compensation to the claimant.

**Employment Judge Christensen
Date: 24 March 2021**

Judgment and Reasons sent to the parties: 31 March 2021

FOR THE TRIBUNAL OFFICE

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