



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr I Harvey

**Respondent:** Eastleigh College

**Heard at:** Southampton **On:** 16 / 17 December 2020

**Before:** Employment Judge Craft

**Representation:**  
Claimant: Himself  
Respondent: Mr Liberadzki, Counsel

## RESERVED JUDGMENT

The Claimant's claims of unfair dismissal and unlawful deduction of wages fail and are dismissed.

## REASONS

1. The Respondent is a further education college providing technical and professional training and apprenticeships to school leavers, in addition to part-time professional courses and part-time leisure courses for adults. The Claimant commenced employment with the Respondent as a Reprographics Assistant on 4 January 2010. He worked in the Central Printing / Reprographics Unit ("the Unit") in the Computer Services Department which provided printing and related services across the College. He was dismissed by the Respondent by reason of redundancy on 27 August 2019.
2. The Claimant makes a number of complaints to support his claim of unfair dismissal. These include allegations that his job was not redundant; that redundancy was not a genuine reason for his dismissal; that the consultation undertaken with him was procedurally flawed and a sham; that the Respondent failed to enter into the required collective consultation with the Respondent's recognised Trade Unions (Unison and UCU); that suitable alternative positions were not offered to him by the Respondent; and that the appeal hearing was not conducted impartially. His claim for unlawful deduction of wages which was not particularised was for a week's unpaid wages which he alleged had not been paid to him at some time in the previous year of his employment.
3. The Respondent denies that the Claimant was unfairly dismissed or that it

made any unlawful deduction from wages due to him. It submits that the position of Reprographics Assistant was a unique job which as a result of necessary restructuring by the Respondent was no longer required. It also submits that the Claimant was paid all wages due to him to the date of the termination of his employment.

4. A Preliminary Hearing was held before Employment Judge Dawson on 24 August 2020 to determine whether the Claimant had brought a claim for a protective award pursuant to section 189 Trade Union & Labour Relations (Consolidation) Act 1992 and, if not, whether he should be given leave to amend his claim to include this claim.
5. Employment Judge Dawson determined that the Claimant had not included a claim in respect of a protective award in his ET1 and refused the Claimant's application to amend these proceedings to include such a claim. At paragraph 64 of his Reasons, Employment Judge Dawson notes as follows:  
  
*"The effect of this order is that the claimant cannot bring a claim for a protective award. However, at the last Case Management Hearing, the respondent accepted that the question of collective consultation may be relevant to the claimant's individual claim for unfair dismissal".*
6. I was informed that the Claimant was pursuing an appeal against Employment Judge Dawson's Order and that he had recently applied to postpone this hearing pending the outcome of his appeal to the Employment Appeal Tribunal. This application had been referred to Regional Employment Judge Pirani who had refused the application and directed that this hearing should proceed.
7. There was an agreed Bundle of documents for the hearing (**Exhibit R1**). The Tribunal received evidence on behalf of the Respondent from Mr R Sarll, Head of Finance and Data Protection Officer; Mrs J Edrich, former Chief Executive; Ms M Blake, Head of HR; and Mr P Cox, Chief Executive, former Vice Principal for Curriculum and Quality (from August 2017 to November 2019). These witnesses gave their evidence in chief by written statements; **Exhibits R2, R3, R4 and R5** respectively.
8. The Claimant gave evidence in chief by his witness statement (**Exhibit C1**). The Tribunal also received evidence from Mrs D Clarke Warren, Dignity at Work Adviser, who had attended consultation meetings with the Claimant, as his work colleague, and who had submitted a written statement (**Exhibit C2**). The contents of Mrs Clarke Warren's statement were accepted by the Respondent and she was not required to give oral evidence to the Tribunal.

### Findings of Fact

9. The Tribunal made the following findings of fact after giving careful consideration to the documentary and oral evidence provided to it and the submissions made by the Claimant and Counsel.
10. The Computer Services Department was managed by Mr Robert Lockey, and in addition to the Claimant, three Senior Technicians, four Technicians and a

Help Desk Coordinator worked in the Department. The Claimant was employed on a permanent term time contract. He was contracted to work 30 hours a week for 42 weeks of the year at the relevant time.

11. The Respondent's CEO reports to the Respondent's Board of Governors. It is the Board who have overall insight and management and are ultimately responsible for the performance of the College. Mrs Edrich had a Senior Management Team ("SMT") which comprised two Vice Principals, Messrs Cox and Phelps. The SMT would usually have included the Respondent's Finance Director. This position was vacant at that time.
12. The need to save costs which resulted in the restructuring of staffing arrangements was forced upon the Respondent for two reasons. Firstly, the Government announced a reduction in its funding for FE Colleges in the next financial year (2019 / 20). Secondly, the Respondent had seen a continuing reduction in learners which had resulted in a reduced income and a significant shortfall on its budgeted income in the current financial year.
13. In the documentation available to the Tribunal it showed that in the year 2017 / 2018 the Respondent had an income of £32m and that in the course of the year 2018 / 2019, for which the Respondent had budgeted an income of £30m, that income had been forecast by May 2019 to be £28.6m. Furthermore, the Respondent had 9,500 apprentices on its books in 2017 / 2018 and that number had fallen to 5,000 for the current year.
14. The SMT's first step was to look at where it could reduce costs. This included scrutiny of fixed term, temporary and agency staff. The SMT made substantial reductions in those costs if its teaching commitments allowed it to do so. However, the SMT concluded that, notwithstanding these cost savings, they would still have to make further cost savings. This resulted in the SMT's proposal to the Board to restructure staffing in a number of areas of the College, which the SMT anticipated would result in fifteen redundancies.
15. The Respondent recognises two Trade Unions: Unison and the University and College Union ("UCU"). After the restructuring proposals had been submitted to, and approved by, the Respondent's Board of Governors, Mrs Edrich and Ms Blake, Head of HR, invited the recognised Unions to attend a meeting on 22 May 2019. Two representatives from UCU attended that meeting, but Unison did not attend. The purpose of the meeting was to explain the financial difficulties faced by the Respondent and how it proposed to deal with them. Those who attended were informed that income in the current financial year was forecast to be £1.4m below budget, and that a further substantial drop in income (to £26m) was forecast for the following year. Mrs Edrich and Ms Blake explained that even after cutting sessional and fixed costs and making savings on agency and bank staff there would still be a £500,000 deficit. The minute of the meeting states, inter alia:

*"This review had led to the position that 15 posts would be at risk of redundancy with an expectation that nearly 60 staff would enter consultation"*

The Respondent was not required to enter into collective consultation with its

recognised Trade Unions but confirmed that individual consultations would be undertaken with those who were at risk of redundancy and those areas of the College where such consultations would take place. The minute of the meeting then states:

*"JE advised that she would announce the position to the College on 3 June 2019 and letters inviting those involved would be sent out the following morning. From this each department would be consulted with independently as the impact will differ.*

*MB advised that recruitment was not frozen at this time as some areas of the College continue to grow therefore each request for a post was under scrutiny".*

16. The minute of the Respondent's Board Meeting which was held on 3 July 2019 confirms that Mrs Edrich reported, inter alia, to the Board as follows:

*"Dr Edrich reported that in terms of operating costs, 60 staff had been put under the risk of redundancy. The consultation process has begun and it is estimated that between 14 and 15 members of staff will be made redundant. Those staff costs amount to approximately £900k reduction to allow for a budget re-balance next year".*

17. The Respondent had commenced the implementation of a far reaching digital strategy in 2017. Mr Cox was responsible for overseeing this implementation. The Respondent's aim was to complete the implementation of the strategy by August 2022 by which time it would have integrated digital technology into all its deliveries by moving to Google Classroom. The implementation was well advanced by the middle of 2019.
18. The strategy involved transferring all areas of activity to digital platforms. The result of this would be that the College would not need to provide central printing services and, furthermore, as a result of its curriculums moving wholly on line, the print function would be very different and a number of connected tasks, such as laminating and binding, would no longer be required. The Respondent's printing requirements would be predominately served by Multi-Functional Devices with individual printers being removed from the majority of its offices.
19. The Respondent had followed a communication strategy to keep its staff informed of the progress of the implementation of the strategy. This provided timelines for the various stages of the implementation and a number of meetings had been held with staff to explain the strategy and its objectives to them and then to provide updates on the progress of the implementation. The Claimant told the Tribunal that he was unaware of the digitisation programme and that he did not attend staff meetings about it because he did not consider that it concerned him. However, he did accept that he had been informed that printing requirements would be diminishing as a result of the digital strategy, but did not accept this would be the case.
20. Mr Cox recommended that the Unit should be closed because the College's printing requirements could be met by ongoing implementation of its digital

strategy. The closure of central printing meant that the Claimant's job of Reprographics Assistant would no longer be required by the College and it was for that reason that the Claimant was placed at risk of redundancy.

21. It was also concluded the requirements for Senior Technicians and Technicians had diminished and that there would be two further redundancies in the Computer Services Department for which selection exercises would have to be undertaken followed by individual consultation with those concerned. The Claimant was the only Reprographics Assistant employed by the College. It was a unique job and he was at risk of redundancy for this reason.
22. On the morning of 17 June 2019 the Respondent delivered a letter to the Claimant. This letter explained that a number of cost cutting exercises had been undertaken and there would also need to be restructuring of various Departments and that his job was one of the jobs that would be impacted by these restructuring proposals. The letter invited him to attend a meeting that afternoon and informed him that he had the right to be accompanied by a Trade Union representative or a work colleague at that meeting.
23. The Claimant attended this meeting, which was chaired by Mr Lockey, who was accompanied by Ms Blake, with Mrs Clarke Warren, his work colleague. This was an introductory meeting to explain to the Claimant that he was at risk of redundancy, the reason for that and to arrange ongoing consultation with him. No minutes were taken at this meeting. Mr Lockey wrote to the Claimant after the meeting explaining, inter alia, as follows:

*"It is proposed that over the next two weeks the College will be consulting individually with all employees affected by conducting a number of one to one meetings. The purpose of the meeting will be to give you the opportunity to discuss your individual situation and gain clarification and information, and to give you an opportunity to suggest potential alternatives for revolving this situation".*
24. It was confirmed that the Claimant's meeting had been arranged for 10 am on 25 June 2019 and that Mr Lockey and Ms Blake would be attending the meeting and that, once again, he would have the right to be accompanied by a Trade Union representative or work colleague. The letter enclosed a comprehensive written rationale explaining how the decision to restructure the Claimant's area of work had been reached, the stages of the Respondent's redundancy procedure that would be followed in the Computer Services Department, a copy of the Respondent's published redundancy procedure and a counselling leaflet.
25. The Respondent is to be commended for the written rationale it provided to the Claimant. This explained in general terms that it was necessary for the Respondent to reduce costs because of its reduced funding allocation for 2019 – 2020 and the need to ensure ongoing viability. The letter further explained that each area of the College had been reviewed and that this had resulted in restructuring in a number of areas.
26. The rationale also provided a clear written explanation of why the College

had made the decision to significantly reduce printing requirements, how this would be achieved and that it would result in withdrawing centralised printing services and the closure of the Unit.

27. The Claimant's first consultation meeting was held on 25 June. The minutes of that meeting, which are not disputed by the Claimant, confirm that his position, and the consultation procedure that was to be followed was clearly explained to him. He was provided with details of the financial package that he would be entitled to receive if he was made redundant.
28. Mr Lockey's holiday commitments resulted in Mr Cox taking over the consultation with the Claimant at the meeting held with him on 3 July. Ms Blake and Mrs Clarke Warren were also in attendance. Mr Cox explained that as he had taken over from Mr Lockey, the consultation period would now run until 17 July. This was a long meeting which lasted 1 hour 45 minutes. The Respondent kept minutes of this meeting, the contents of which are not disputed by the Claimant. The minutes confirm that Mr Cox and Ms Blake entered into extensive, and constructive, discussion with the Claimant throughout this meeting. They responded to all questions and other points which the Claimant raised with them.
29. Mr Cox referred the Claimant to the written rationale that had been provided to him. He explained that the Respondent's digital strategy was, as intended, resulting in a change in working practices across the College. He then dealt with the impact of the strategy on printing services. He explained that central printing requirements would be diminishing substantially and that the result was that the Respondent had concluded that the Unit could be closed in December when the current leasing arrangements for printing equipment in the Unit came to an end. The Claimant informed Mr Cox and Ms Blake that he intended to submit an alternative business case to retain the Unit and requested information from them to assist him in doing this. Mr Cox agreed to provide that information to him and duly did so during the course of the ongoing consultation with him.
30. The minutes of this meeting, and subsequent meetings held with the Claimant on 10 and 18 July (and the Claimant's evidence to the Tribunal) confirm that the Claimant either did not understand, or was not prepared to accept, the obvious impact on his workload of the implementation of the Respondent's digital strategy (which previously he had either ignored, or refused to recognise). The strategy had been validated by a number of successful pilot projects by this time and bringing forward its implementation supported the restructuring required to meet the substantial financial challenges that were then facing the College.
31. The Respondent's consultation with the Claimant resumed at a meeting on 10 July when the attendees at the previous meeting were joined by Ms Allman, an HR adviser. By this time Mr Cox had provided all the information which the Claimant had requested from him except the end date of the contract for printers in the Unit. Notwithstanding that Mr Cox had previously explained to the Claimant that costs which had been incurred by the Respondent in pursuing unsuccessful merger negotiations with City College Southampton, had not been the reason for implementing the cost

savings and restructuring the Claimant had pursued his demand to be given full details of those costs. Mr Cox explained to the Claimant that the Board had instructed him that they were not prepared to release confidential information to him about the recent merger discussions. He explained to him again that these costs were not the reason for the restructuring and were not relevant to the ongoing consultation with him.

32. Ms Blake also explained to the Claimant that the consultation in his Department was ring fenced to the senior technicians, the technicians and him so that three separate consultations were ongoing. The Claimant asserted that he should be involved in all these consultations. This issue arose again at the meeting held with the Claimant and Mrs Clarke Warren on 18 July. The Claimant asserted that because he had been told that the whole College was affected by the restructuring proposals then consultation should be with the whole College and he should be involved in those consultations. Mr Cox and Ms Blake did not accept that this was correct and continued the Respondent's individual consultation with him. The Claimant's assertions on the situation were incorrect and appear inexplicable. The Tribunal concludes that the Claimant was, whether mistakenly or deliberately, misunderstanding the purpose, and extent, of collective consultation which he continued to assert to the Respondent, and continues to assert to the Tribunal, should have been undertaken with the recognised Trade Unions while refusing to accept the continuing, and necessary, requirement for individual consultation with those whose jobs were at risk of redundancy.
33. This is confirmed by the submission he made at the meeting on 18 July that as more than 20 people were being made redundant (which was not the case) the consultation with him should last for at least thirty days. Ms Blake explained to the Claimant that there were not 20 or more employees being made redundant as a result of the restructuring arrangements under consideration and that there had been no requirement for the Respondent to undertake collective consultation. Notwithstanding this explanation the Claimant has continued to contend that he should have been given information about all the posts that were at risk of redundancy and involved in all consultations undertaken by the Respondent because "*consultation is the whole College*".
34. The Claimant also submitted that the decision to close the Unit was not part of a cost cutting exercise but personal and that decentralising printing would increase costs, and lead to many mistakes being made by users. He was told that all desktop printers were to be removed from the College with the exception of five that would remain in certain areas and that staff printing was to be sent to MFDs. Mr Cox also explained that there would be a transitional period in which ongoing printing in the Unit would continue until its closure in December.
35. The Claimant had been given the opportunity to submit a counter proposal to the proposed closure of the Unit for consideration at this meeting. Although by 18 July the Claimant had received all the information he had requested from the Respondent he had not made any counter proposal. Mr Cox reasonably concluded that he did not need to extend the consultation period. Ms Blake wrote to the Claimant on the following day (19 July) to confirm that

the College had decided to implement the closure of the Reprographics Unit in December and that the position of Reprographics Assistant was redundant for that reason. Her letter also states, inter alia, as follows:

*"We agreed that we would meet in the following few days to discuss next steps and give you opportunity to review any current vacancies that the college may have that you wished to apply for. Details of these are included for information.*

*On the morning of 19 July you advised that you wished to submit a counterproposal which the college agreed to review. In addition you advised that you had found the process very stressful and I agreed that you would take the week the 22 July to the 26 July as a period of approved absence.*

*I would therefore like to propose that we meet on the 30 July to discuss next steps and confirm whether the college can accept your counterproposal."*

36. During the period under consideration the Respondent's Stationery Assistant / Caretaker resigned from his job for reasons unrelated to the restructuring. The Respondent decided that he would not need to be replaced and the timing of this employee's departure had avoided a potential further redundancy. The Claimant's counter proposal which he submitted to the Respondent on 19 July proposed that his job should be combined with that of the Stationery Assistant / Caretaker, and that after the transition period which ended in December with the closure of the Reprographic Unit, his employment with the College should continue in the capacity of Stationery Assistant / Caretaker.
37. There was no job of Stationery Assistant / Caretaker to which the Claimant could be transferred because the Respondent had concluded that this job was no longer required by the College after its previous occupant had resigned. However, Ms Blake was able to offer the Claimant the opportunity of continuing to work in the Reprographics Unit on an ad hoc basis until its closure in December and explained to him that his employment would end by reason of redundancy at that time on the financial terms which had already been notified to him. The Claimant did not accept this offer.
38. As Ms Blake's letter of 19 July confirms she had met with the Claimant on 19 July when she agreed to grant him leave of absence for a week and they agreed to meet again on 30 July. Notwithstanding this agreement the Claimant sent an email to Ms Blake on 26 July stating that he was unable to attend the meeting on 30 July as he had a bouncy castle booking, and that he was also unavailable to attend a meeting on 31 July. Ms Blake emailed a reply to the Claimant confirming that she could move the time of the meeting on 30 July to suit him and his representative. She also made it clear that if the date was not suitable then she would write to him to confirm the date of his dismissal, provide feedback to his counter proposal and advise on next steps.
39. On 30 July the Claimant sent an email to Ms Blake stating that he was now on annual leave and had no obligation to attend any further meeting until he returned to work on 27 August. His email stated, inter alia, as follows:



*"Consultation should be meaningful and with purpose and has no time limit. The College has made no effort to mitigate the redundancy you have failed to produce any facts and figures to warrant a redundancy. This is a personal redundancy."*

40. On 30 July Ms Blake wrote to the Claimant to confirm that the Respondent was prepared to continue his employment to allow him to work in the Reprographics Unit on an ad hoc basis up to 31 December when the Unit closed. Ms Blake's letter enclosed vacancies for the Claimant's consideration, and for which he could apply if he considered they were suitable alternative positions. Ms Blake wrote to him again on 7 and 12 August sending him copies of all current vacancies in the College, including vacancies restricted to internal applications.
41. Ms Blake explained that the Respondent's procedure at the end of a redundancy consultation is to arrange a further meeting to finalise an employee's wishes on exit from their employment, agree a date of termination, discuss alternative roles, what support the college can provide in finding alternative employment, what the current vacancies are at the college and the external outplacement support from Hayes. The Claimant had declined to attend this meeting and for that reason everything was then explained to him in writing. Ms Blake's letter of 30 July gave written notice of dismissal by reason of redundancy to the Claimant and confirmed that his employment would end on 27 August 2019. It also informed him that he had the right to appeal against this decision.
42. The Claimant exercised that right of appeal by letter dated 28 August. He submitted a detailed letter of appeal. He continued to assert that the redundancy was a personal one and that the process had been a sham. The appeal hearing was held on 25 September. The appeal panel was chaired by Mrs Edrich who was accompanied by a Governor, Mr Phelps, the Respondent's Vice-Principal Commercial and Ms Bloomfield an HR Consultant. The Claimant was accompanied by Mrs Clarke Warren.
43. The minutes of the hearing were accepted as an accurate record of what was discussed. At the start of the hearing the Claimant objected to Mrs Edrich taking part in the appeal hearing because she had been involved in developing the restructuring proposals. Mrs Edrich was satisfied that she was not precluded from chairing the appeal panel and that there was no conflict of interest in her doing so. After discussion, the Claimant raised no objection to the hearing proceeding. The Tribunal have concluded that it was reasonable for Mrs Edrich to chair the appeal panel and the information provided to the Tribunal discloses no potential conflict of interest or prejudice in her having done so.
44. The appeal panel identified ten grounds of appeal. The minutes of the hearing confirm that the Claimant was able to set out his position in respect of all his grounds of appeal, and that all those grounds were discussed with him by the Panel. After the appeal hearing had ended the Appeal Panel delegated Mr Phelps and Ms Bloomfield to conduct an investigation into the grounds of appeal that had been submitted to them. After completing their investigation Mr Phelps and Ms Bloomfield provided a comprehensive

schedule which summarised each ground of appeal and their findings together with their recommendations in respect of those grounds of appeal. After a comprehensive investigation, they reasonably concluded that his grounds of appeal could not be sustained and that the decision to dismiss him by reason of redundancy should be upheld. The extent of their investigation and the contents of the schedule are commended by the Tribunal. They demonstrated a diligent and comprehensive consideration of all the matters which the Claimant had raised. Subsequently, Mrs Edrich wrote to the Claimant on 8 October to confirm that his appeal had failed.

45. Mrs Edrich was challenged by the Claimant as to the integrity of the digital strategy and the restructuring proposals. She referred the Tribunal to a Printing Report prepared by Auto Digital Lexmark Printers and MFDs to the College. This Report dealt with the usage and costing of printing at College covering two separate nine month periods.
46. The Report confirmed that over the period from November 2018 to May 2019 the College used 4,379,141 sheets of paper for printing and copying and were charged £40,524.29. The Report also confirmed that in August 2019, six MFDs were installed to work with eleven MFDs already in place and that between August and October 2019, 148 printers were returned to Auto Digital, which left 19 printers on site following which two printing and copying machines were returned to Auto in December 2019. The Report confirms that in the period from November 2019 to May 2020, 1,827,601 sheets were used by the College costing £15,036.88. The Report concludes that by making changes to printing as outlined in its digital strategy and implementing this change in August 2019, the College achieved efficiency savings of £40,000 in print costs and salary alone.
47. The Claimant put to Mrs Edrich that this Report had been fabricated by the Respondent and its supplier. The Claimant could provide no evidence to support what was a serious allegation questioning the integrity of Mrs Edrich, the Respondent, its supplier and the other witnesses who attended this Tribunal on its behalf. The Tribunal is satisfied that the allegation, which was unsubstantiated, is untrue. It is regrettable that the Claimant made such an allegation. It was not to his credit and substantially damaged his overall credibility before the Tribunal.
48. Ms Blake had overall responsibility for managing the redundancy procedure that followed from the Board's decision to proceed with the restructuring cost saving proposals recommended by the SMT. She was not involved with all the individual consultations (in excess of 60) that then followed. However, she was fully aware of the progress and outcome of each of those consultations and as already indicated above, had a direct involvement with the consultations with the Claimant.
49. The Claimant questioned her extensively about other areas of the College in which separate consultations had resulted in agreed restructuring arrangements with the relevant staff, as well as voluntary and compulsory redundancies. The Claimant's questioning relied on what he said he had been told by other employees as to what occurred in their areas of work at the Respondent. This was hearsay, unsupported by any evidence from those

unidentified third parties he referred to. The Tribunal records that in each area which the Claimant referred to Ms Blake she was able to fully explain how restructuring in that area was taken forward and, in general terms, the consultations that were undertaken with relevant employees and the eventual outcomes of those consultations. Her evidence satisfactorily established that this restructuring exercise had, as anticipated, resulted in fourteen redundancies (comprising compulsory and voluntary redundancies) all of which were referred to in the list of fifteen redundancies which the Respondent had anticipated would be required.

50. The Tribunal commends Ms Blake for her patience in dealing with hostile questioning from the Claimant in the course of which he accused her of lying to the Tribunal. It also commends Ms Blake for her helpful and extensive response to the Claimant's questions. Her evidence conclusively confirmed that the Claimant's assertion that the Respondent should have undertaken collective consultation with its recognised Trade Unions because it anticipated, and then implemented, twenty or more redundancies was incorrect. It was, once again, regrettable that the Claimant should resort to making serious and unsubstantiated allegations about Mrs Blake's evidence in the same way as that he had made unsubstantiated allegations that the Respondent had fabricated its supplier's report. Such unjustified conduct reflected very badly on the Claimant's integrity.
51. As already explained above, during the course of the hearing, it became clear to the Tribunal that the Claimant did not understand that when collective consultation is undertaken by an employer it does not remove the necessity for that employer to engage in individual consultation with those at risk of redundancy. Collective consultation involves a notification of the redundancies anticipated by the employer within a relevant period to its recognised Trade Unions together with the reason, or reasons, for those redundancies. The collective consultation that follows will usually lead to consideration of the framework in which consultation with individual employees will be undertaken and matters related to those consultations such as selection criteria and potential enhancement of severance payments. It can inform and support the framework of individual consultation or increase the number of people who can be involved in individual consultations but does not replace them.
52. The Claimant also accepted during the course of the hearing that his allegation that his Line Manager, Mr Lockey, had persuaded Mr Cox to make him redundant was entirely speculative and that he had no evidence to support it. It was Mr Cox who recommended closure of the Unit to the SMT and this recommendation was then approved by the Respondent's Board. The Tribunal finds it significant that in the course of his evidence the Claimant conceded that the Respondent had a valid business case for closing the Unit.
53. The Respondent did not notify the Claimant of any potential suitable alternative positions which could avoid his dismissal, until after consultation with him had been concluded and the decision (subject to appeal) had been made to dismiss him by reason of redundancy. Ms Blake notified the Claimant of potential alternative vacancies at that point which was in

accordance with the Respondent's published redundancy procedures. The Claimant asserts that in such circumstances the Respondent should have submitted job applications for him and that he should not have been required to make applications on his own behalf. Although he was given the opportunity to do so the Claimant made no applications for any of the vacancies notified to him. Furthermore, in a surprising admission, he told the Tribunal, when giving evidence that, after being informed that he had been dismissed by reason of redundancy, he did not want to stay working at the College and that, although he would have undertaken an alternative job for a trial period, if that had been offered to him, he would subsequently have left the College's employment.

54. The Claimant was unable to particularise his claim for unlawful deduction of wages. The Respondent was able to confirm that its wage records confirmed that the Claimant had been paid all wages and accrued holiday pay due to him up to the effective date of termination of his employment with it. The Claimant did not provide any evidence to the Tribunal that the Respondent's analysis of his wage records was incorrect.
55. These are the findings of fact which the Tribunal has made. The Tribunal now provides brief summaries of the oral submissions which it received from the Claimant and Mr Liberadzki.

### **Submissions**

56. The Claimant's case remained, inter alia, that the Respondent had proposed twenty two redundancies and utilised the wrong consultation procedure. He accused Ms Blake again of lying to the Tribunal and asserted that the Respondent had engaged in no meaningful consultation with him because the discussions had been time limited and a sham. He also maintains that the volume of printing had not, and would not, diminish and that the only saving that the Respondent made by making his job redundant was his salary, with parts of his job to be then undertaken by others. He further alleges that he was cherry picked because he was seen as a troublemaker. The Respondent had not established that there was a business case for his job to be made redundant. Finally, the possibility of redeployment was not discussed with him and he was wrongly expected to apply for the vacant posts that were notified to him if he was interested in them.
57. Mr Liberadzki referring to the evidence provided to the Tribunal submitted that the work undertaken by the Claimant was expected to diminish and that the requirement for his unique job would end in December 2019. He reminded the Tribunal that it was not its job to look behind the Respondent's business decision which the Respondent had fully explained to the Claimant at the time, and to the Tribunal.
58. Mr Liberadzki continued that there was no evidence before the Tribunal to support the Claimant's speculation that he was dismissed for another reason at the instigation of Mr Lockey. It had been reasonable for the Respondent to conclude that the Claimant's job did not require it to undertake a selection exercise or to undertake anything other than an individual consultation with him. This consultation extended over five meetings with the Claimant

choosing not to attend the sixth meeting he was invited to, which, as explained to him, would have had a particular focus on potential redeployment for him. This consultation extended over five weeks, during which, the information he requested from the Respondent was provided to him and he had the opportunity of submitting a counterproposal to the Respondent. The Respondent's appeal procedure was fairly undertaken and completed. The Claimant had the opportunity of presenting his appeal in full to the appeal panel and following that meeting, an independent investigation was undertaken on behalf of the appeal panel which reasonably concluded that the decision to dismiss the Claimant by reason of redundancy should be upheld.

59. Ms Blake's evidence confirmed that the SMT reasonably concluded that the Respondent would have to implement up to fifteen redundancies as a result of the restructuring arrangements they recommended to the Board and which were adopted by the Board. By the end of the internal consultation procedures, that number had dropped to fourteen redundancies all of which had been identified by the Respondent in the Agreed Bundle. Mr Liberadzki submitted that there was no evidence before the Tribunal on which it could, applying a balance of probabilities, find that the Respondent was proposing to dismiss twenty or more employees at the relevant time. Furthermore, because the Claimant had now accepted that the Respondent recognised two Trade Unions he has no status to pursue a protective award.

### Conclusions

60. In the record of the Preliminary Hearing held on 26 June, which Employment Judge Dawson sent to the parties after that hearing, he helpfully set out the issues that would need to be determined by the Tribunal which heard this matter. The Tribunal will return to those issues below.
61. Redundancy is defined in **s.139** of the **Employment Rights Act 1996**. This states as follows:

*"139(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) .....*

*(b) the fact that the requirements of that business:*

*(i) for the 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".*

62. **Section 188** of the **Trade Union & Labour Relations (Consolidation) Act**

1992 states as follows:

*"Where employer is proposing to dismiss as redundant twenty or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissal of all the persons who are appropriate representatives of any of the employees who may be [affected by the proposed dismissal or may be affected by measures taken in connection with those dismissals]"*

63. **Section 189(1)** of the **Act** states as follows:

*"(1) Where an employer has failed to comply with the requirement of section 188 or section 188A, a complaint may be presented to an Employment Tribunal on that ground:*

*(a) ...*

*(b) ...*

*(c) in the case of failure relating to representatives of Trade Unions, by the Trade Union,*

*(d) ...*

64. At paragraph 7 of Employment Judge Dawson's Reasons for making the Order at the hearing on 24 August 2020, he refers to the case of **Mercy v Northgate [2008] ICR 410** and what the Court of Appeal in that case said at paragraph 15 of their Judgment. The Tribunal does not set out below that paragraph in full but notes that it states, inter alia, as follows:

*"However, where employee representatives are appropriately in place, as they are conceded to have been in the present case, a complaint about a failure relating to them is susceptible to challenge only by them, or one of them, **just as a complaint about a failure relating to representatives of a Trade Union is susceptible to complaint only by the trade union under section 189(1)(c)**".*

65. It is important for this Tribunal to note that in the arguments before Employment Judge Dawson at the Preliminary Hearing held on 24 August 2020 the Claimant did not concede that the Respondent recognised any Trade Unions. During this hearing he accepted that the Respondent recognised two Trade Unions and it is not disputed that those Trade Unions were contacted by the Respondent and invited to attend a meeting with Mrs Edrich and Ms Blake as already described.

66. The Tribunal's findings of fact fully support the submissions that have been made by Mr Liberadzki. This allows the Tribunal to adopt these submissions. The Tribunal's findings of fact confirm that the Claimant was dismissed by the Respondent by reason of redundancy which is a potentially fair reason for dismissal. The redundancy arose from the Respondent facing serious financial pressures arising from a future reduction in government funding for FE colleges and declining student numbers. These pressures required its SMT to restructure its operations in a number of areas in addition to other

cost savings it made before embarking on that restructuring exercise. Mrs Edrich, the Respondent's CEO and Ms Blake, Head of HR ensured that the recognised Trade Unions were informed of the Respondent's proposals, the reasons for making those proposals and how the Respondent was going to implement them.

67. There was extensive individual consultation undertaken with those at risk of redundancy. This is well illustrated by the position in the Claimant's Department where three jobs were no longer required by the Respondent and three separate consultations were undertaken with those at risk of redundancy.
68. The Respondent anticipated that there were fifteen prospective redundancies arising from the restructuring exercise. When the consultation and restructuring had been concluded, there had been fourteen redundancies. The evidence before the Tribunal conclusively establishes that the Claimant's assertions that there were twenty or more redundancies arising from this restructuring exercise is unsustainable.
69. The Tribunal's findings of fact also confirm that the Claimant's job of Reprographics Assistant in the Unit was redundant for the reasons that were explained to him at the time both by a written rationale provided to him at the outset of consultation with him and then by Mr Cox during the course of what the Tribunal found to be extensive, comprehensive and fair consultations undertaken with him.
70. When this decision had been confirmed to the Claimant, he was given the opportunity to consider, and apply for, the vacant positions notified to him. He chose not to do so. He could also have remained in the Respondent's employment for four further months on an ad hoc basis, during which time he would have had the opportunity to investigate any other vacancies that may have arisen during that period and been suitable for him. He chose not to do so.
71. The Respondent was not required to undertake collective consultation in respect of the restructuring exercise and its recognised Trade Unions did not suggest that it should do so. The Tribunal has already explained that the Claimant misunderstood the purpose and extent of collective consultation. If the Respondent had been required to undertake such consultation and had not done so, the Claimant would have had no status to pursue a claim for a protective award. Such a complaint could only have been pursued by one or both of the recognised Trade Unions for the reasons which Employment Judge Dawson, and this Tribunal, have explained.
72. The recommendations made by the SMT were supported by its ongoing digital strategy which had been communicated to its employees in a variety of ways which the Claimant had chosen to disregard. The Claimant's unsubstantiated attack on the integrity of the Claimant's procedures and documentary evidence reflected badly on him. The Tribunal does not have to look behind an employer's business reasons in circumstances such as this, but in this case the Respondent's transparency has established that they had sound business reasons for taking the steps that they did and that those

steps have been successful. The Claimant's job was redundant within the terms of the Act set out above.

73. The Tribunal concludes these Reasons by dealing with the issues in respect of the Claimant's claim of unfair dismissal referred to in the Case Summary prepared by Employment Judge Dawson. The Claimant was dismissed by reason of redundancy. The Tribunal find that the Respondent acted reasonably in treating that redundancy as a sufficient reason for dismissing the Claimant. The Tribunal has found that the Respondent adequately warned, and consulted with, the Claimant, and took reasonable steps to notify the Claimant of potentially suitable alternative employment. The Respondent was not required to undertake collective consultation within the terms of **s.188 Trade Union and Labour Relations (Consolidation) Act 1992**. The decision to dismiss the Claimant was, taking into account all the relevant circumstances, a fair sanction which was within the range of reasonable responses open to a reasonable employer in these circumstances.
74. The Claimant was unable to particularise his claim of unlawful deductions from wages. The information which he provided to the Tribunal confirmed that this unlawful deduction was alleged to have been made in the previous year. Therefore, even if the Claimant had been able to particularise his claim, it would have faced the difficulty of being made substantially out of time.
75. However, the failure to particularise the claim means that it cannot succeed and it is dismissed for that reason.
76. Therefore, the Claimant's claims of unfair dismissal and an unauthorised deduction from his wages fail and are dismissed.

Employment Judge Craft

Date: 24 March 2021

Judgment sent to the parties: 30 March 2021

FOR THE TRIBUNAL OFFICE