EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr D Huxford	**v**	**British Airways Plc**

Heard at: Watford **On**: 20 and 21 September 2022

Before: Employment Judge Coll (In person)

Appearances
For the Claimant: Mr B Jones, Counsel (by CVP)
For the Respondent: Ms E Grace, Counsel (by CVP)

RESERVED JUDGMENT

The claimant was not unfairly dismissed by the respondent.

REASONS

1. Before the first day of the hearing, which took place on 20 and 21 September 2022, there was a joint bundle of documents which totalled 1,064 pages. On the second day of the hearing, after hearing an application by the respondent, I allowed in additional pages numbered 1,065 – 1,074. Page numbers in these reasons refer to that bundle. The respondent provided a skeleton argument towards the end of the hearing.

2. Although both claimant and respondent had a complete set of witness statements, these were missing from the tribunal file. The tribunal was provided with a set at the outset, which also included a mitigation witness statement from the claimant and a mitigation bundle.

3. Given that the three day hearing had been reduced to two days due to the funeral of HRH Queen Elizabeth II, I explained that the hearing would need strict timetabling and only liability could be determined. This meant that if the claimant were successful, a separate remedy hearing would have to be listed. The representatives confirmed that I would need to decide the question of Polkey at the liability stage. It was agreed that contributory fault was not relevant. I adjourned for 30 minutes to read the witness statements. The taking of evidence from witnesses therefore started at 11am.

4. I heard from four witnesses: three called by the respondent and the claimant. The respondent's witnesses were; Ms Lorraine Mason, Human Resources Manager, Mr Gavin Shearer, Business Improvement Manager and Mr Sukhdev Rai, Engineering Quality/Safety Manager.

The issues

5. Following a period of consultation from 26 November to 9 January 2021, the claimant presented a claim form on 4 February 2021 by which he complained of unfair dismissal. The respondent defended the claim by an ET3 form received on 12 March 2021. A case management discussion was conducted on 20 August 2021 by telephone, the record of which appears at pages 38 - 44; this concerned four claimants (including this claimant) whose claims were to be managed together. At that hearing, as appears from paragraph 5 of the hearing summary (page 41), the reason for dismissal (redundancy) was not in dispute. The questions identified at the case management discussion for the tribunal at the substantive hearing were listed as:

    5.1 Whether the respondent had acted reasonably or unreasonably in treating redundancy as a sufficient reason for dismissing the claimant. In particular,

    5.2 Whether individual consultation had been adequate or inadequate;

    5.3 Whether the selection criteria were fair or not fair;

    5.4 Whether they had been fairly applied or not fairly applied; and

    5.5 Polkey: would the claimant have been dismissed anyway?

6. It was agreed by the parties at the outset of the hearing before me that the issues remained as set out on page 41. I note that the claims of the other claimants would seem to have been disposed of prior to this hearing.

Law applicable to the issues in dispute

7. It is for the respondent to prove that the reason for dismissal was one of the potentially fair reasons set out in s.98(1) of the Employment Rights Act 1996 (hereafter the ERA) which include redundancy. An employee shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to a broad range of situations set out in s.139(1) of the ERA.

8. In the present case, the claimant accepted that his dismissal was because of the potentially fair reason of redundancy. I did not need therefore to consider the respondent's explanation that a redundancy situation existed and that that was the whole reason for the claimant's dismissal.

9. The tribunal must next consider the test for unfair dismissal under s.98(4) ERA. In Polkey v A E Dayton Services Ltd [1988] ICR 142, the House of Lords explained that a failure to follow correct redundancy procedures is likely to make the resulting dismissal unfair unless in exceptional cases the

employer could reasonably have concluded that doing so would have been "utterly useless" or "futile". Normally an employer contemplating redundancy dismissal will not act reasonably unless he

> "(a) Selects an appropriate pool of employees and applies objectively fair and justifiable selection criteria uniformly;
>
> (b) Consults with individual employees and/or their representatives, giving sufficient warning and engaging in meaningful consultation. This will include information regarding the reason for the redundancy, the fact of provisional selection and the employee's selection criteria score if this has been used;
>
> (c) Take reasonable steps to avoid or minimise redundancy by redeployment."

I note that (a) and (c) were not an issue in the present case.

10. In Williams v Compair Maxam [1982] ICR 156, the EAT emphasised that tribunals should not impose their own standards and decide whether, had they been the employer, they would have acted differently. Rather they must ask whether the employer's decision fell within the band of reasonable responses (paragraph 161 E-F). This can be summarised as requiring the tribunal to satisfy itself that the method of selection was not inherently unfair and that it was applied in the particular case in a reasonable fashion. Thus, employers are given a wide discretion in their choice of selection criteria and the manner in which they apply them, and tribunals will only be entitled to interfere in those cases which fall at the extreme edges of the reasonable band (see British Aerospace Plc v Green and Ors [1995] ICR 1006 CA.)

11. I am aware that Williams is also authority for the following principles as regards reasonableness where there is a recognised union and that there is no prescriptive list of things that an employer must do so that each case turns on its own facts. That aside, the following features are likely to be found where an employer is acting reasonably (see Williams at paragraphs 162 C-F):

Warning:

11.1 Give as must warning as possible to enable the union and employees who may be affected to take early steps to inform themselves of the relevant facts, consider possible alternative solutions and if necessary, find alternative employment in the undertaking or elsewhere.

Consultation:

11.2 Consulting the union is to the best means by which the desired management result can be achieved fairly and with as little hardship to the employees as possible. In particular, the employer will seek to

agree with the union the criteria to be applied in selecting the employees to be made redundant. When a selection has been made, the employer will consider with the union whether the selection has been made in accordance with those criteria;

Objective criteria:

11.3 The employer will seek to establish criteria for selection which so far as possible do not pend solely on the opinion of the person making the selection but can be objectively checked;

Objective application of criteria:

11.4 The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider any representations the union may make as to such selection;

Alternative employment

11.5 The employer will seek to see whether instead of dismissing an employee he could offer him alternative employment.

12. An employer adopting a fair process will also usually consult not only with the union but also with the individual, the failure to do so does not automatically render the redundancy unfair (Mugford v Midland Bank Plc [1997] ICR 399). In Gwynedd Council v Barratt [2021] EWCA Civ 1322, failing to provide any appeal at all is not a procedural defect in itself, though it may have an impact on reasonableness overall.

Finding of fact on credibility and liability

13. I make my findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral which was admitted at the hearing. I do not set out in this judgment all of the evidence which I heard but only my principal findings of fact, those necessary to enable me to reach conclusions on the remaining issues. Where it was necessary to resolve conflicting factual accounts, I have done so by making a judgment about the credibility or otherwise of the witnesses I have heard based on their overall consistency and the consistency of accounts given on different occasions when set against contemporaneous documents where they exist.

Witnesses

14. My impression of the witnesses was as follows:

14.1 Ms. Mason: She was at times quite precise and at other times vague. Her role had included discussing and agreeing selection criteria and the appeals process for mechanics with colleagues and union representatives. Since the unions had not engaged in collective consultation when first requested on 28 May 2020 because of objections to this taking place whilst many employees were on furlough, a number of meetings and discussions had been without

union input. Latterly, agreement had been reached on the selection criteria but Ms. Mason presented this as slightly more cut and dried than it was (which I explain below). She was also somewhat inaccurate in her presentation of the appeals process which according to her was a paper based one. This was inconsistent with the minutes of various meetings which showed a reference for most of the period of consultation with the unions to "appeal meetings". Only towards the end of the period was the reference only to paper reviews.

14.2 Mr. Shearer: He was essentially internally consistent and explained the selection process clearly. He was open; he said that the union representatives had approved the zero points awarded to the claimant by the software which had analysed the raw data. Mr. Shearer did not hesitate to say that he could not accept this and had persuaded the unions that the claimant should receive one point in acknowledgement of his higher qualification. He was also open in explaining that the respondent had wished to use higher qualifications as well as the qualifications preferred by the unions and explained why he considered the unions would have opted for their choice. He admitted that he had little or no knowledge of the claimant's work history at the time of taking part in the selection process.

14.3 Mr. Rai: He was essentially internally consistent and explained the process of the appeal clearly. He was prepared to say that he would have differed from Mr. Shearer, had he been scoring the claimant and would have awarded one point for the British Airways Plc ("BA") authorisation A3/2 instead of one point for the CAA Certificate A with restrictions (these "higher qualifications" are explained below). He accepted under cross examination that he had made a clerical mistake in thinking on his form that the claimant had A3 and not A3/2 authorisation; A3 equated to the CAA Certificate A without restrictions. As he did not explain why he had made this error, the reason for the error is not clear and undermines his evidence a little. Nevertheless, he was extremely frank which is why I place great weight on his oral evidence. He had used "unfortunately" and the phrase "Dave is better qualified than his colleagues" and evidently had some sympathy for the claimant. He said that if he had designed the selection criteria himself, he would have used higher qualifications.

14.4 The claimant's evidence was mixed. On a number of occasions his evidence was inconsistent with the case put forward in his ET1 and witness statement For example, he clearly said that he had been awarded M7, M6 and M5 on first coming across to BA under a TUPE transfer but that these had been deleted from his record in SAP (the qualification and training database in BA) by Mr Williamson, then Quality Manager, on being granted A3/2 by Mr. Williamson. This was not mentioned in his claim form or witness statement. He also said

under cross examination that what Mr. Rai had thought was his appeal was in fact his application to have an appeal, not his appeal. Yet in his witness statement, he considered that Mr. Rai had correctly noted the points in his appeal. He told the tribunal that he did not respond to the invitation to a one to one (individual) consultation because he did not realise that he was at risk of redundancy. In his witness statement, however, he said that he had not responded because the union had instructed him not to engage.

15. Having made those general observations, I find the evidence of Mr. Shearer and Mr. Rai to be more credible than that of the claimant because of their internal consistency, the consistency of their evidence with each other and with the contemporaneous documents. Where there is a dispute on the facts, I have therefore relied on the evidence of Mr. Shearer and/or Mr. Rai in preference to that of the claimant.

16. However, that does not mean that I do not accept some of what the claimant says. This is particularly in relation to his evidence about his wealth of experience, which was confirmed by Mr. Shearer and Mr. Rai.

Chronology of the events prior to the redundancies

17. The claimant started work with British Midland Airways ("BMI") as an upholsterer in October 1992. The claimant's skills had expanded to cover cabin maintenance. When in BMI, the claimant had studied certain modules and taken examinations which qualified him to have a Civil Aviation Authority ("CAA") Licence Category A (with 22 restrictions). This is also referred to as a Category A Licence with restrictions. This is distinct from a CAA Licence Category A.

18. The claimant's employment transferred under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the TUPE Regulations) to the respondent, BA, in September 2012. The claimant transferred as a mechanic at L3 which BA stated would decrease to a Level 1 basic salary over a period of time if the claimant did not achieve certain qualifications (see the BMI/BA Engineering Integration Individual Option Statement at page 946). The mandatory qualifications within BA were in ascending order: M7, M6 and M5 and Category A and Category B. Whilst in BA, the claimant did not apply for (in the case of M7, M6 and M5) or study for (in the case of Category A and B) these qualifications.

19. On joining BA, Mr. Williamson (the then Quality Manager) who worked for Mr Rai during certain periods and was thus his junior, encouraged the claimant to undertake various training modules, after which Mr Williamson awarded him A3/2. This was an internal BA authorisation which recognised and was equivalent to the CAA Category A Licence with restrictions.

20. The BA system upon which qualifications and training were recorded is called SAP. This existed when the claimant transferred into BA and continues to exist. There was a printout from SAP showing all of the

claimant's qualifications and training, including the date at which he obtained the CAA Category A Licence with restrictions and A3/2.

21. At some point after this but still during 2012, the claimant was asked to act up as a technician (the grade above mechanic). As he did not have the CAA Category A Licence (that is, without restrictions), he was neither eligible to receive the BA internal authorisation of A3 nor to be appointed as a technician.

22. The claimant enjoyed his job as a mechanic in the cabin. He also enjoyed acting up as a technician in the cabin and undertaking some activities outside the cabin on the exterior of the aircraft, when requested and under supervision. He received an acting up payment for the period 2012 to 2019. The claimant believed that he could continue to act up as a technician, even when BA stopped his acting up payment and informed him that they no longer required him to act up because all technician posts had now been filled. He lodged a grievance about the cessation of his acting up payment, continued to act up and was optimistic that BA would reinstate his acting up payment. He based this view on the fact that on a previous occasion or occasions, his acting up payment had been temporarily stopped but then reinstated.

23. He had worked for 27 years in total by the date of the announcement of restructuring. The claimant was focussed on the present and from that perspective, having M7, M6 and/or M5 would not have changed his day to day work. He did not consider studying for the full Category A Licence (i.e. without any restrictions) would have been viable. First, it would have entailed studying in his own time (rather than having study leave). Secondly, it would have been at his own cost. Thirdly, he considered passing all of the modules would have been problematic.

Chronology of events concerning the redundancies

24. In early April 2020, the respondent made various attempts to engage in collective consultation with the two relevant unions. Finally, on two separate dates in July 2020, meetings took place between the unions and the respondent. This was against a background of some 27 meetings having taken place since April 2020 without any union attendance for the reasons set out above, namely furlough.

25. In the second consultation meeting on 28 July 2020, the selection criteria choices were still being discussed by the respondent and the unions in order to find agreement. The unions identified hypothetical cases where engineers would either be penalised despite being meritorious and very experienced or would score too highly whilst being a relatively new joiner. The respondent asked the unions for solutions. The unions were unable to make any alternative suggestions.

26. I have been asked by the respondent to find that the selection criteria were agreed between the respondent and the unions. I find that this was the case

relying in particular on the minutes of these consultation meetings and the oral evidence of Mr Shearer and Mr Rai.

27. The unions wanted mandatory qualifications to be used and higher qualifications to be used only in tie-breaker situations. Mr Shearer and Mr Rai both considered that the system should have more directly taken account of higher qualifications. They considered that this was not compatible with the unions' stated objectives. The tenor of various letters and information packs in the bundle suggest that the respondent was very concerned about delaying the process on account of the rapidly worsening financial circumstances arising during the pandemic. For this reason, the respondent accepted the unions' preferences (to give priority to the mandatory qualifications) in order to reach a timely agreement. Even though the unions were not entirely satisfied with some of the consequences of the selection criteria proposed by them, they were unable to propose any modifications. Having failed to put their own alternative proposals, the unions impliedly accepted these selection criteria.

28. In terms of the thread of events involving the union, there were meetings in August 2020 to discuss the mechanics of how the process was working i.e. the application of the selection criteria.

29. All the mechanics were requested to write in stating their higher qualifications. After this, a copy of SAP which contained their qualifications and training was downloaded into a database and scored automatically by a software programme designed to focus on the agreed selection criteria. This produced a list of mechanics in rank order with their total weighted scores.

30. Mr Shearer was then provided with a printout of all the mechanics' scores which he used for the purposes of discussion with the union representatives.

31. In the meeting on 18 August 2020, the unions expressed some concern about specific people who were named in the printout (although redacted for the purposes of this hearing). (See page 755). The respondent listened to their concerns. The respondent raised concerns itself about some cases. The minutes show that the respondent took seriously any concerns raised by the Union representatives. There was debate and an agreed resolution.

32. There is a conflict of evidence about the dates at which the selection criteria had been applied and the union had finished interrogating the results. I was told by the respondent's counsel that 18 August 2020 marked the first point at which the selection criteria had been applied and points given discussed by the unions with the respondent. Counsel for the claimant contended that this could not be correct because the claimant was issued with his redundancy notice on 18 August 2020, the very same date (page 1054).

33. Taking the consultation minutes into account, in particular page 760, I find that the process of debate between the unions and the respondent about the outcome of the application of the selection criteria was not completed by

18 August 2020 and indeed continued until at least 19 August 2020 with respect to some of the 2,000 employees under consideration in the mechanic pool. With regard to the claimant's own case, however, Mr Shearer was the scorer and it is likely that he completed the process for the claimant sufficiently before 18 August 2020 to allow time to sit down with the union representatives to discuss the claimant's case.

34. In terms of the chronology of events, I also note the points at which the respondent communicated directly with individuals. On 16 June 2020, Mr Gary Exon, Engineering Director, wrote to all the mechanics asking them to consider voluntary redundancy against the backdrop of the pandemic and the need to make costs savings and restructure. This was accompanied by an illustrative pack. On 3 July 2020, Mr Exon wrote again about the restructuring in general and the need for each mechanic to make decisions about their preferred options. On 6 July 2020, under Mr Exon's direction, an information pack was sent to all mechanics. Team meetings were held remotely to engage in individual consultation and one to ones were also offered. On 16 July, a manger telephoned the claimant to invite him to a one to one consultation. As he did not respond to the telephone message, the manager emailed him the next day on 17 July 2020 to invite him to book in for a one to one consultation. The claimant did not reply to this.

35. On 18 August 2020, the claimant was sent a letter by Mr Exon, the Engineering Director which he accepts was received. This letter invited any recipient to request their scores which the claimant did. He received his scores on 27 August 2020. The claimant completed a form which was mentioned as the way to obtain a review or appeal of the outcome. This was allocated to Mr Rai and on 2 September 2020, he completed the review by filling in a form outlining his reasoning. On 17 September 2020 he wrote to the claimant with the outcome of the appeal.

36. The claimant's effective date of termination was 31 August 2020 because this was the date identified in the letter from Mr Exon. Thus, the respondent's review/appeal process was designed to take place after the individual had left its employment.

37. Having set out the chronology of collective consultation, individual consultation and the review/appeal process. I now turn to the individual questions which I must address, in the order set out in the case management discussion on 20 August 2021.

Individual consultation

38. There is no dispute about whether the claimant was offered one to one consultation or that he knew he had been offered an appointment for one to one consultation in the middle of July 2020. There is a conflict of evidence over why the claimant refused this opportunity.

39. The claimant said in oral evidence that he did not realise that he was at risk of redundancy and therefore he could see no purpose or need for individual consultation. This is inconsistent with his witness statement where he says

that he refused the opportunity because he had been instructed by the union not to engage in consultation. Even though it is unlikely but possible that the claimant read the letter from the Engineering Director, Mr Exon in June 2020 headed "Voluntary Redundancy" as of no relevance to him because he was never going to accept voluntary redundancy as a career option, I do not accept that Mr Exon's subsequent letter of 3 July 2020 and information pack of 6 July 2020 were ambiguous. The plain meaning of Mr Exon's letter of 3 July 2020 and the information pack was that there was a restructuring that would necessitate redundancies and each mechanic must think for themselves what they wished to do about a possible redundancy situation. It is unfortunately far-fetched of the claimant to say that those documents gave him no idea that he personally was at risk. He is an intelligent man who gained a Category A Licence (with restrictions).

40. I conclude that therefore that individual consultation was adequate.

Fairness of Selection Criteria

What were the selection criteria?

41. The selection criteria agreed between the unions and the respondent were as follows:

    41.1 The mandatory qualifications of M7, M6 and M5.

    41.2 M6 and M5 were obtained by logs of experience presented to Quality Assurance for ratification.

    41.3 M7 could be obtained by a log of experience presented to Quality Assurance but some engineers had obtained M7 by attendance at a course (in greasing) or by having their own stamp and could have been relatively new starters.

    41.4 It was possible to obtain M6 without ever having obtained M7.

42. The scoring of these was agreed as follows:

    42.1 M7 1 point

    42.2 M6 1 point because this qualification concerned the inside of the cabin and therefore regardless of which aircraft an engineer worked upon, there was only one M6 qualification.

    42.3 M5 1 – 7 points to reflect the fact that there were seven possible M5 qualifications available to obtain. Each related to a different aircraft.

    42.4 1 point for any mandatory qualification was weighted at 70% which meant that 1 point scored 0.7, 2 points scored 2.4 etc.

43. The mandatory qualifications were recorded in the system known as SAP.

44. Where there was a tie break between mechanics, an additional point was to be awarded for a higher qualification.

45. The Union representatives supported this system rather than one which recognised higher qualifications in a non-tie break situation or awarded more than one point for a higher qualification in a tie break situation. The minutes of the meetings make it clear that this was because the Union representatives wished to ensure that those wanting careers as mechanics were retained. They gave these mechanics greater importance than those who sought promotion or to become technicians.

46. The selection criteria were fair because they focussed on the group of mechanics as a whole and satisfied the unions' objectives which were consistent with the respondent's business objectives.

Outcome of application of selection criteria

47. Mechanics with a weighted score of 1.4 and above were successful and were not selected for redundancy.

The claimant's higher qualification

48. During his employment with BMI, (as mentioned above) the claimant had studied for and successfully taken examinations in modules within the Civil Aviation's qualification of a Certificate A Licence with restrictions. The respondent recognised this external qualification by granting the claimant an internal A3/2 authorisation. A mechanic with A3/2 could do more than a mechanic with M6, in that the former could self-certify.

49. Had the claimant continued with his studies and taken examination in other modules, he could have gained the Civil Aviation's Certificate A Licence. The equivalent internal authorisation was A3, which was the necessary authorisation to be appointed as a technician. Technicians were a higher grade than mechanics.

50. In the claimant's case, his A3/2 authorisation enabled the respondent to let him act up as a technician in the period 2012 and 2019.

Application of selection criteria to the claimant

51. The claimant did not have M7, M6 or M5. The claimant accepted that SAP did not show him to have M7, M6 or M5. The claimant accepted that at the relevant date (the cut-off set by the respondent of 31 March 2020), he did not have M7, M6 or M5.

52. Under the selection criteria as agreed with the Union representatives, the claimant scored 0 points.

53. At that meeting, the Union representatives raised no concern about the application of the selection criteria to the claimant and his 0 points. They did not request any additional points. Mr. Shearer, however, considered it fairer to reflect the claimant's higher qualification, even though he was not in a tie

break. He therefore treated the claimant's A3/2 qualification as the equivalent of M7 and awarded him 1 point (weighted 0.7). In this way, the respondent applied a modification of the selection criteria to take account of the claimant's situation.

54. The claimant with a weighted 0.7 score was below the cut-off. He was informed in a letter from Mr. Exon, Director of Engineering, that he had been selected for redundancy and that his effective date of termination ("EDT") would be 31/08/2020. The claimant left on that date.

The claimant's case that the selection criteria were unfairly applied

55. The claimant's position on the selection criteria and their application to his case was not clear at the outset. For that reason, I asked at the beginning of the hearing in what way the claimant considered that the selection criteria and their application to him had been unfair/outside the range of reasonable responses.

56. During cross examination in oral evidence and in Mr. Jones' closing submission, the claimant's case appeared to be different to the claimant's known case. It evolved and changed so that various permutations were canvassed and it is difficult to identify which was the predominant version. I discuss each below but not necessarily in the order raised or in the combination presented. What is important is that I deal with each proposed element of his case.

Did the claimant have or had he had the mandatory qualifications?

57. According to his oral evidence, the claimant had had M7 M6 M5 after the TUPE transfer to the respondent, given by Mr. Williamson and approved by his line manager in order to accelerate his ability to work in a fuller capacity. These had been on SAP. These qualifications had been removed from SAP on the grant of A3/2. Although the claimant seemed to be saying that he should have been treated as having M7, M6 and M5 (thus 3 additional points and an additional 2.1 points, making a total of 2.8 points), Mr. Jones indicated that this was not his case. The claimant accepted that he did not at the deadline (31/03/2020) have M7, M6 or M5. Given that the claimant appeared to be saying in oral evidence that he had had M7, M6 and M5 in 2012, I consider that I do have to make some findings about this.

58. I do not accept that Mr Williamson awarded the claimant M7, M6 and M5 as a preliminary step to enable the claimant to be granted A3/2. First, this was the first time the claimant had mentioned that he had at one point in time had M7, M6 and M5. This was neither in his claim form nor in his witness statement and I remind myself that he was at all times represented by solicitors.

59. Secondly, it was not possible to delete an entry from SAP, the qualifications and training database. Having considered the oral evidence of the claimant and of Mr. Rai, I prefer the latter's account of SAP and therefore find that SAP cannot delete any entry. First, Mr. Rai has been a Quality Assurance

Manager for many years, he has historical first-hand knowledge of SAP and Mr. Williamson had worked for him at the time. Secondly, Mr. Rai provided further evidence to demonstrate how SAP worked, if someone should try to delete a record in it. He showed that an attempt to delete an entry would result only in a change to its end date. The end date would then be the date of the attempted deletion. Thus, if the claimant had had M7 M6 and M5, these would still be on his SAP record with an end date of when Mr. Williamson had sought to delete them. His SAP printout did not show this.

60. In conclusion, the claimant had never had M7, M6 or M5.

What did the claimant consider would have been a fair application of selection criteria?

61. On one version, the claimant considered that he should have been given:

    61.1 1 point for a Certificate A Licence with restrictions (the CAA qualification) and

    61.2 1 point for A3/2 (the internal BA authorisation).

62. I do not accept the claimant's view. This would involve double counting, that is two points for what is the same qualification. The internal authorisation would not have been awarded but for the existence of the external qualification.

63. In a second version, the claimant considered that he should have been given:

    63.1 1 point to reflect his higher qualification and

    63.2 1 point to reflect that he had worked at least at the level of M6 and in fact beyond when acting up as a technician.

64. I do not accept the claimant's view. First, the agreed selection criteria did not award any points for experience itself (only for the recognition of it by Quality Assurance, after their assessment of the log of experience compiled by each mechanic). As already noted above, the claimant had not considered it necessary to make such a log or to submit it to Quality Assurance. Secondly, there was no dispute by Mr. Shearer or Mr. Rai that the claimant had worked beyond the remit of a M7 and M6. He regularly undertook tasks outside the cabin on the exterior of the aircraft (the area of operation of a mechanic with M5) in, for example, wheel-changing. The claimant accepted, however, that he had always performed tasks on the exterior of the aircraft under supervision. He was not at any time operating as a M5.

65. Taking all of the above into account, I find that the respondent applied the agreed selection criteria fairly.

Fairness of the Appeal

66. The appeal process required individuals who had received an unfavourable decision to register their disagreement with this outcome and reasons why the decision should be remade, using an application form on a website. The application form was to be filled in and an appropriate button pressed where upon the contents would be uploaded into BA's system for consideration by the relevant Appeal/Review Manager.

67. There is a conflict of evidence about the purpose of this form and therefore whether the appellant had merely registered his wish to appeal or had lodged an appeal. In his oral evidence, the claimant says that this was an application to appeal, in other words a notification to the respondent that he would like to have an appeal but that it was not the contents of his appeal. I prefer the evidence of Mr Rai in this respect who was the Review/Appeal Manager for the claimant. I also note the contents of the claimant's witness statement where he said that he considered that Mr Rai had correctly summarised the points of his appeal in his decision letter. I find that this form was the mechanism by which an individual, including the claimant, could register the grounds of their appeal with reasons. This was therefore the claimant's opportunity to put everything down which he wished to be considered. His witness statement confirms that he had put everything down which he wished to be considered. In other words, completion and submission of that form by the claimant constituted his having made an appeal.

68. There is also a conflict of evidence about whether the appeal process consisted of a hearing as an essential component or whether hearings were only offered on an exceptional basis. I find that the appeal process consisted for the majority of appellants of a paper review. I accept that the respondent had earlier envisaged that an appeal hearing would be a more common feature but this appeared to the respondent to be impractical as time went on and the sheer numbers of appeals and absent managers/managers working remotely began to dawn on the respondent.

69. I find that the respondent operated the best appeal system that it could in light of the pressures of the pandemic upon it. Face to face appeal meetings were reserved for situations needing clarification in person. There was also the option to telephone individuals to obtain more information. I found Mr Rai to be a balanced and thoughtful individual and his judgment that further enquiry of the claimant was not appropriate was reasonable, given that he understood the claimant's appeal grounds and his qualifications. I therefore find that the absence of a hearing did not render the appellant's appeal unfair.

70. Mr. Rai was allocated to decide his appeal. On 2 September 2020, he completed his analysis. On 19 September 2020, he wrote to the claimant, upholding the decision to make him redundant. Mr. Rai did not telephone the claimant for more information or invite the claimant to interview since as mentioned above, he did not require any more information.

71. Mr. Rai did not change the claimant's score of 1 (weighted 0.7). In oral evidence, he explained that he had arrived at the same conclusion as Mr.

Shearer but on different grounds. In his view, either the claimant's (external) CAA qualification of a Category A Licence with restrictions or his A3/2 internal authorisation equated to M6. 1 point (or a weighted 0.7) should have been allocated as the equivalent of M6.

72. Mr. Rai had used the word "unfortunately" in his analysis. In oral evidence, Mr. Rai acknowledged that it was unfortunate that the claimant's higher qualification under the agreed system would not have been given 1 point and that he could not be given more than 1 point for a higher qualification. Mr. Rai nevertheless adhered to the agreed selection process. This meant that he could not award the claimant any further points in recognition of his higher qualification. I conclude therefore that the appeal process was fair.

Summary of Conclusions

Individual Consultation

73. I find that individual consultation was adequate. The claimant accepted that he had been offered this twice and refused it.

Selection Criteria

74. I find the selection criteria were not outside the range of reasonable responses because:

74.1 The respondent aimed to retain mechanics who could do the greatest range of tasks in a mechanic's job with the minimum of supervision or intervention to maximise efficiency and effectiveness. That is a legitimate business purpose, especially in the difficult economic times of the pandemic.

74.2 The union representatives aimed to retain mechanics who were competent and wished to remain as mechanics.

74.3 Limiting the selection criteria to M7, M6 and M5 to rank order all candidates in the mechanics' pool, fulfilled the aims of both the respondent and the union representatives.

74.4 The respondent needed to use selection criteria which were fair to all mechanics. The respondent could not achieve this and use selection criteria which were fair to a minority or a particular group of mechanics only, for example, those with A3/2 or who had acted up as technicians.

74.5 If the respondent had done this, they would not have been fair to the group of mechanics as a whole.

74.6 The unions approved the use of these selection criteria.

Application of Selection Criteria

75. I find the application of the selection criteria was not outside the range of reasonable responses because:

75.1 The method of application was agreed by the unions with the respondent.

75.2 It was applied consistently and in line with the instructions of allocating one point for each mandatory qualification and one point in the event of a tie break for a higher qualification.

75.3 It was departed from by Mr. Shearer because he wanted to acknowledge the claimant's particular circumstances as far as the system permitted, even though the union was disinterested. Mr. Shearer considered that he should have 1 point for his higher qualification, although he was not in a tie break. He should not have had 2 points for his higher qualification because that would have been double-counting: allocating a point for the external qualification and a point for recognition of that qualification via internal authorisation. Furthermore, no higher qualification in the selection system counted for 2 points.

75.4 It was also not part of the system to award a point for experience, in the claimant's case of working outside the cabin under supervision, being able to self-certify his work in the cabin or acting up as a technician in the cabin.

75.5 Mr. Shearer was sympathetic to the claimant's potential in that he considered that the claimant could have logged his experience, made the necessary formal application and been approved by Quality Assurance. In other words, he was capable of obtaining M6 and M5 if he had been so minded. The claimant chose not to do this; he admitted that he had not considered it necessary. It would not have been fair to the majority of mechanics to award the claimant points for his potential or for what he might have done.

75.6 The cut off was a weighted score of 1.4. There was no suggestion from the claimant or Mr. Jones that 1.4 was not the cut off.

75.7 The claimant had a weighted score of 0.7 so was below the cut off.

Appeal

76. I find that the appeal was fair because:

76.1 Mr. Rai took account of all the points in the claimant's appeal. The claimant confirmed that Mr. Rai's analysis encompassed everything he had set out in his appeal.

76.2 Mr. Rai had everything he needed to undertake the appeal fairly. SAP clearly showed whether he had M7, M6 and/or M5 and any higher qualifications. The claimant had set out his appeal grounds clearly. Mr. Rai understood the claimant's grounds of appeal correctly, which the claimant admitted. Mr. Rai therefore did not need any further information to elucidate the claimant's case, either via a telephone discussion or a face to face appeal hearing.

76.3 The respondent had 2,000 mechanics in the selection pool. I do not have the figures of how many appealed but it could have been tens or hundreds of individuals. Due to the Covid 19 pandemic (furlough and sickness absence), the respondent did not have sufficient managers who were qualified and available to undertake appeal hearings for all those made redundant. This has not been challenged by the claimant. Furthermore, although initially in the consultation process the respondent had envisaged face to face appeal hearings, the circumstances of the Covid 19 pandemic obliged it to change its mind and the unions accepted this.

76.4 Mr. Rai approved the allocation of 1 point to the claimant. It is not material that this was on a different basis from Mr. Shearer. They both wanted to recognise his higher qualification but whether it equated to M7 or M6 would have made no difference.

76.5 Mr. Rai too felt sympathy for the claimant but he could not have awarded the claimant points for experience at a higher level within the selection system (be it for self-certification, for working on the exterior of the aircraft under supervision or for acting up as a technician (in the cabin)) without inventing a new dimension to the system.

76.6 Mr. Rai too took the view that the claimant could have obtained M6 and M5 if he had wanted to but he would have needed to put in the effort of logging his experience and making a formal application. Again, Mr. Rai could not have allocated the claimant 1 point for his potential to have gained M6 and/or M5 since that would have been to depart significantly from the agreed system which was entirely based on mandatory qualifications with a minor role for higher qualifications.

77. I do not discuss Polkey, given my conclusions above.

I confirm that this is my Reserved Judgment with reasons in Case No: 3300957/2021 Huxford and that I have approved the Judgment for promulgation.

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Employment Judge Coll

Date: 24 November 2022

Sent to the parties on: 28 November 22

For the Tribunal Office