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Title:	**Remittal and reasonableness in the refusal of suitable alternative employment**
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Date:	7/11/2013
Case Name:	SB READMAN v DEVON PRIMARY CARE TRUST (2013)
Court:	CA (Civ Div) (Pill LJ, Sullivan LJ, Tomlinson LJ) 06/02/2013
Subject:	EMPLOYMENT - HEALTH
Comment:	Mrs Readman was made redundant from her job as a community matron. The PCT offered her an alternative position as matron in a small community hospital. It was eventually conceded that this amounted to suitable alternative employment. Mrs Readman refused the offer. She explained that she had chosen a career in community nursing and had not worked in a hospital for 23 years. She acknowledged that she planned to emigrate to Canada but argued that this did not affect the reasonableness of her refusal. Her claim was for the redundancy payment that had been denied her pursuant to the Employment Rights Act 1996 s.141(2) . The employment tribunal correctly directed itself that "the reasonableness or otherwise of the refusal depends on factors personal to the employee and is assessed subjectively from the employee's point of view at the time of the refusal". It concluded that Mrs Readman had failed properly to consider how the offered position differed from her old job, found that her refusal was unreasonable and dismissed the claim. The EAT accepted Mrs Readman's submission that the core reason for her refusal was her commitment to community nursing and that the plan to emigrate was merely a background consideration. When asked to review its decision, the EAT went on to describe Mrs Readman's refusal as falling "within the band of reasonable responses which were open to her". It considered that there was no need for further findings of fact and substituted its own decision for that of the tribunal. On further appeal, the PCT sought to reinstate the tribunal's decision on reasonableness. It also argued that, even if the EAT had been right to allow the appeal, it ought to have remitted the case to the tribunal for further consideration. The Court of Appeal agreed with the EAT's criticism of the decision at first instance. It held that it was not enough to comment on Mrs Readman's alleged failure to explore how the two jobs differed. The

tribunal should have considered the "core reason" for her refusal and decided if it was reasonable or not.

Lord Justice Pill found the second issue more difficult to decide. The litigation had become seriously protracted with no less than four visits to the EAT. Nevertheless, he noted that the reasonableness of a refusal was a matter of fact for the tribunal and he concluded that there was no alternative but to remit the case.

The Court of Appeal was critical of the EAT's reference to the "band of reasonable responses" test. It reiterated the long-established approach set out in Everest's Executors v Cox (1980) ICR 415. Thus the question remains "whether this particular employee in this particular situation acted reasonably in refusing the offer of employment".

The band of reasonable responses is a tempting formulation. This decision makes clear that it has no place in the - essentially subjective - consideration of the reasonableness of a refusal of suitable alternative employment.

Document No. **CC9601642**