



EMPLOYMENT TRIBUNALS

Claimant: Ms T James and others

Respondent: (1) Reading Borough Council
(2) John Madjeski Academy
(3) Reach2

Heard at: Reading

Before: Employment Judge Gumbiti-Zimuto

Representation:
For the Claimant: Written submission from Paul Doran Law dated 21 February 2018 and 7 March 2018
For the Respondent: Written submission from Boyes Turner LLP dated 5 March 2018

JUDGMENT

1. The claims of the claimants as set out in the schedule below are well founded in respect of their comparison to Mr Peever, a tractor driver, for the periods listed.
2. The claims continue as against all remaining comparators.
3. If the claims succeed as against any remaining comparators for a sum higher than awarded under this judgment, the claimants will give credit for any sums paid.

Schedule

Case No	Period of claim	Name	Loss	Interest	Total
2701696/08	21 Aug 2002- 30 June 2010	Barbara Clifford	£141,938.68	£31,510.39	£173,449.07
2701600/08	29 June 2005- 30 April 2011	Linda Elmore	£112,248.67	£15,189.47	£127,447.14
2701603/08	09 July 2002 – 26 July 2009	Shelia Hall	£168,532.55	£37,852.41	£206,384.97
2702229/08	25 Sept 2002 – 31 May 2008	Patricia Haslam	£79,437.62	£17,333.29	£96,770.91
2701641/08	13 Aug 2002 – 30 April 2001	Juliet Mtetewaunga	£152,097.15	£33,719.94	£185,817.09

REASONS

1. In this judgment reference to the respondent is a reference to the Reading Borough Council. In this judgment reference to the claimant is a reference to Barbara Clifford, Linda Elmore, Sheila Hall, Patricia Haslam and Juliet Mtetwaunga.
2. The claimants seek a judgment against the respondent declaring that their claims are well founded in respect of a comparison to Mr Peever, a tractor driver. The claimants will continue their claims against the respondent in respect of the remaining comparators. The precise terms of the Judgment sought are set out in the draft judgment accompanying the claimant's written submissions.
3. The claimants are night care assistants employed by the Reading Borough Council. The effect of the concessions of the respondent and the decisions of the Tribunal is that the claimants' jobs, care assistants, are of equal value to that of Mr Peever, tractor driver.
4. The claimants provided an interim schedule of loss setting out what they consider they would receive as an absolute minimum if the respondent succeeded with any remaining arguments it had on remedy. The respondent provided a counter schedule. The claimants accept the figures as set out in the respondent's counter schedule.
5. The claimants state that what is sought is "*a final declaration as to the claimant's rights as against the respondent in respect of the comparison to the tractor driver comparator and an award of arrears of pay and damages.*"
6. The claimants state that they have established that their work is equal in value to Mr Peever and the respondent has failed with its material factor defence. The claimants' contracts are modified by section 66(2)(b) Equality Act 2010 and they are entitled to a declaration and damages in accordance with section 132 (2) Equality Act 2010.
7. The claimants rely on the decision in Redcar & Cleveland Borough Council v Bainbridge & Others [2008] IRLR 776¹ as support for the approach that the claimants ask the Tribunal to adopt.
8. The respondent says that the order sought by the claimants cannot be issued.
9. The respondent contends that the Employment Tribunals' Rules of Procedure distinguish between orders and judgments. A judgment is a decision "*finally determining*" matters (rule 1(3)(b) of the Employment Tribunals' Rules of Procedure). Subject to exceptions which do not apply to this application a judgment ought only to be made at a public

¹ At paragraphs 213-266 and specifically paragraph 255.

hearing. In the absence of consent from the relevant parties a preliminary or final hearing is required to determine the issue.

10. The claimant points out that the rules do not state that judgment is only to be made at a public hearing. Rule 60 provides the tribunal with the power to make a decision without a hearing. A decision is a case management order or a judgment (rule 1(3)). I am of the view that the claimant's contention in this regard is correct and that it is within the scope of the Employment Tribunals' Rules of Procedure for me to make the order sought adopting the procedure being followed.
11. The respondent states that: "*The essence of the present application is that the claimants can have a number of different judgments on equal value entered at different times against different comparators, subject only to giving credit in respect of one comparator for sums paid in respect of another comparator.*" The respondent states that the circumstances in this case are different to the scenario in Bainbridge. "*What Paul Doran are saying is that in a single equal value claim there can be multiple judgments at different stages against different comparators. There are a number of difficulties with this.*"
12. The difficulties that the respondent refers to are as follows:
 - a. A judgment is supposed to be a "*final determination*" of matters (rule 1(3)(b)). It is inconsistent with this for there to be multiple final determinations in respect of the same claim. The argument from Paul Doran Law raises the prospect of there being many different judgments arising out of the same underlying claim or cause of action. In her original tribunal claim, Barbara Clifford, one of the relevant claimants, claimed against 24 different comparators. If the application pursued by Paul Doran Law is correct, then she would be entitled over time to 24 different "final determinations", for and against her, with associated remedy calculations.
 - b. It potentially gives rise to some formidable technical problems if there are multiple different judgments. Whilst it may be possible to say in the abstract that credit will be given for payments previously made, that becomes a highly complicated process when dealing with interest and periods of comparison that may well run over different times in respect of different comparators.
13. The claimant says that the "formidable technical problems" referred to by the respondent are not defined. The claimants state that they are "entitled to "multiple judgments at different stages against different comparators."
14. My conclusion in respect of this issue is that there is nothing in the employment tribunal rules that prevents the tribunal making the order requested by the claimants in an appropriate case.

15. In my view where the remedy sought is clear and not capable of being contested by the respondent it is an appropriate case. In this case the sums that the claimant seek represent the minimum award that the tribunal will make in their cases.
16. I have gone on to consider whether there is any other reason why it would not be in the interest of justice to make the judgment and I do not consider that one has been made out. I reject the notion that there are formidable technical problems. What has been described by the respondent amount to complications relating to the calculation of arrears of pay and damages. It is not unusual that remedy compensation gives rise to the calculation of interest or involves taking into account sums that have already been paid to a party at another point.
17. If the order sought by the claimants is made there is a requirement by rule 66 that it is complied with within 14 days. This would mean that the claimants who have been litigating their claims since 2008 would now be entitled to received money which in some cases has been due to them since 2002.
18. To the extent that there is prejudice arising from making the order or not making the order, I am of the view that the prejudice suffered by the claimants in my not making the order is far greater than any prejudice to the respondent. Not making the order means that the claimants are deprived of their money. Making the order means that the respondent has to pay to the claimants what they are due in 14 days, and possibly have to pay the balance of what is due to them at a later date.
19. The claimants are entitled to the order sought and I make the Judgment in the terms requested with some minor alterations.

Employment Judge Gumbiti-Zimuto

Date: 21 March 2018

Sent to the parties on:

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For the Tribunals Office