Case Nos. 2404433/2018
2404434/2018
2404435/2018

EMPLOYMENT TRIBUNALS

Claimants: Mrs J Fitzgibbon
Mrs P Jones
Miss K WIlliams

Respondent: Knowsley Metropolitan Borough Council

Heard at: Liverpool **On:** 24 and 25 September 2018

Before: Employment Judge Robinson
Mr A G Barker
Mrs J C Ormshaw

REPRESENTATION:

Claimants: Mr J Jenkins of Counsel
Respondent: Mr P Harthan of Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The claims by the three claimants for unfair dismissal by reason of redundancy fail and are dismissed.

2. The claims for age discrimination and claims for a breach of the duty to provide terms and conditions were withdrawn by the claimant's representative during the course of the hearing.

3. No further order, direction or judgment need be made.

REASONS

1. We have only to deal with the issue of unfair dismissal for the three claimants, Mrs Fitzgibbon, Mrs Jones and Mrs Williams. There is no claim now for age discrimination. That was withdrawn at the outset of the hearing by Mr Jenkins, and there is no specific claim for failure to provide the terms and conditions required by section 1 of the Employment Rights Act 1996.

Findings of Fact

2. All three claimants were level 3 teaching assistants at Yew Tree Community Primary School. All were experienced with long service at that school, and other schools.

3. In early summer of 2017 this school found itself in financial difficulty and the governors decided in May 2017 to reduce staff. They discussed amongst themselves how best to do that. They decided that they would reduce the number of teaching assistants and the number of learning mentors from two to one and to appoint an Assistant Head instead of a Deputy Head to save money on a Deputies salary.

4. The pool that the claimants were in was a TA3 pool which comprised 11 teaching assistants. There was a separate pool for level 2 teaching assistants. Those two jobs were different. The TA3s could do the TA2s job but the TA2s were not trained up to do the TA3s job. The TA3s were highly qualified and experienced personnel.

5. A restructure document was put in place and meetings arranged with the unions and with the staff. Although the respondent witnesses were unsure about the exact date, the proposal to reorganise was probably ratified by the governors on 25 May 2017. A timeline was put in place.

6. The staff were given staffing review papers and the rationale for the decision was set out for them in June 2017. All the TAs knew that they were at risk of redundancy and knew the pools they were in.

7. Questions were sent in by both the unions and the staff and were answered. Requests for volunteers for redundancy were made but nobody volunteered. Expression of interest forms were sent out and each of the claimants before us applied for a role as a TA3. The process was similar to a recruitment process.

8. Interviews were arranged with each of the teaching assistants. Mrs Fitzgibbon's interview, for example, was arranged for 17 July 2017.

9. The panel dealing with the redundancy process included the Head Teacher, Mrs O'Hanlon, from whom we heard, and we also heard from Anne Farrell, a governor. Mr Collard presented a statement to us but was not called as a witness. He is an ex teacher and was seconded to the panel as the independent voice.

10. Each teaching assistant at risk was taken through exactly the same process. Each of them had to carry out a SPAG test (a spelling, punctuation and grammar test), a maths test, deal with a classroom task and then have an interview with a series of questions. Those questions were asked of each and every teaching assistant. No-one objected to the process and scores were given for each element and for the interview. Scores of 1-4 were given to each teaching assistant, where 1 equated to a limited response and 4 a detailed response with good examples

11. The scores were amalgamated for each teaching assistant. The three members of the interview panel scored each member of staff separately against each answer given, and those scores were added up and divided by three.

12. More weight was put on the interview scores than the scores for the other tasks that they had to do. It was decided that the interview scores were to be the tiebreaker in the event of teaching assistants having the same scores.

13. Going through that process, all the available posts were filled by successful candidates. A league table was set up with the top members of the staff going into the new jobs under the reorganisation and the bottom members losing their jobs. The three claimants that we have before us were the applicants that failed.

14. There was a blip after the process was completed because two successful candidates decided that they wanted to job share. That left one full-time post open and available. Sarah Rogan (who initially was made redundant), as the next person in the league table, was given that job rather than Mrs Fitzgibbon who was just below her in the table.

15. The claimants were telephoned and told that they had been unsuccessful. It was a fairly perfunctory telephone call but they were written to in early September to say that they were dismissed for redundancy but should work their notice. They were paid their redundancy monies.

16. The terms and conditions from Knowsley give the employees no right to appeal in these circumstances.

The Law

17. In a redundancy exercise the employer must make sure that the selection criteria are, as much as feasibly possible, objective; that employees are warned and consulted prior to the redundancy process, and that if there is trade union involvement the trade union's views are sought, and, for those who are made redundant, alternative work is offered if available. The pool at risk should be fairly and properly set up. Redundancy is a potentially fair reason for dismissal. The burden is upon the respondent to show that the reason for dismissal was redundancy. Thereafter the burden is neutral as to whether the dismissals were fair or unfair.

Conclusions

18. Applying that law to the facts of this case we recognise that after the decisions to dismiss were made, the claimants were upset that they had lost their jobs and that seemingly their loyal to the school, their experience and length of service, and also their attendance records, were not taken into account when the decisions were made.

19. However, we find that all the claimants knew the criteria and the process that was to be gone through. There was no objection to the process from the trade unions. All the claimants went through the exercise without objecting and only objected once the process was completed and they had lost their jobs.

20. Most criteria that are set up in a redundancy exercise will have some subjective element to them, but there was no unfairness in the way that the reorganisation was gone through. The panel itself was a fair mix of individuals: one who knew the "at risk" employees intimately - the Head; the governor, Mrs Farrell, who knew something of

those employed at the school; and Mr Collard who had little knowledge of the "at risk" candidates but who, because of that, could score them objectively.

21. When one looks at the questions raised in the interviews, they were prepared to give objectivity and allowed all the candidates to give their reasons as to why they should remain in employment. The tests and tasks criteria were objectively applied. More weight was given to the interview scores but there was nothing unfair in that especially as each panel member marked independently. If other criteria had been used by the respondent, such as length of service or absence record, the process might have been tainted by, say, age or disability discrimination. No procedure is fool proof.

22. We cannot substitute our views for the views of the panel, nor can we re-run the redundancy exercise. We do not find, firstly, that the procedure was unfair in the way it was set up. There was consultation and warnings. Secondly, the way the selection criteria were implemented was fair. Consequently, the school dealt with the redundancy processes in a manner which cannot be interfered with by this Tribunal.

23. We did consider whether a right of appeal should have been given. There is no contractual right for employees to appeal and there is no statutory right to appoint an appeal panel or give the right of an appeal to any person who is made redundant. This was not a conduct dismissal where an appeal is a necessity. The reason for dismissal was redundancy. The ACAS procedures do not require an employer to offer an appeal in these circumstances.

24. We considered whether alternative work was offered to the claimants. In the final letter to them, they were told that they would be notified of vacancies in the Borough, their actual employer, and they were asked to inform the Head Teacher of their email addresses so that they could get information with regard to any vacancies available.

25. Finally, with regard to Mrs Fitzgibbon losing out to Sarah Rogan, when a full-time job became available, we see no unfairness in the way that Ms Rogan was offered that job on a 30 hour per week basis. Ms Rogan was offered the post because her score was superior to that of Mrs Fitzgibbon.

26. Consequently, for all the above reasons, the three claims fail and are dismissed.

Employment Judge Robinson

Date 6 December 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON
20 December 2018

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