



# THE EMPLOYMENT TRIBUNALS

BETWEEN

*Claimants*

*Respondent*

**Mrs B Pearson & Others**

**AND**

**Cumbria County Council**

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**Held at: North Shields**

**On: 2 & 3 January 2018**

**Before: Employment Judge Hargrove**

**Members: Mrs D Newey  
Mr T D Wilson**

### *Appearances*

**For the Claimants: Mrs Pearson, also in person for herself**

**For the Respondent: Mr S Sweeney of Counsel**

## JUDGMENT ON STRIKE OUT APPLICATION

The unanimous judgment of the Employment Tribunal is as follows:-

- 1 Margaret Starkie's claims in respect of the comparator Meloy, and Barbara Pearson's claims in respect of the comparators Meloy, James and the road worker 3 are not struck out as having no reasonable prospects of success. Ms Starkie's claim in respect of the comparator Crosby is struck out as having no reasonable prospect of success.
- 2 Lisa Armstrong's claims in respect of the assistant buyer and Elaine Chambers' claims in respect of the highways maintenance team leader and buyer are struck out as having no reasonable prospects of success.
- 3 Any other claimant whose claim stood behind Lisa Armstrong and/or Elaine Chambers is also struck out.

- 4 It is noted and recorded that the claimants standing behind Ms Starkie whose claims are likewise not struck out are Finlay and Holliday; and the claimants whose claims stand behind Ms Pearson, Balance, Harper, Heaney and Norman are likewise not struck out.

## NOTE

- 1 Reasons were given for the above judgment orally and the parties do not ask for written reasons. We however record a summary of our reasons for future reference.
- 2 There were four lead claimants for the purposes of this hearing to strike out. Ms Armstrong was the lead claimant for teaching assistants with SEN and sought to rely on assistant buyer Crosby. Mr Crosby's job had been a purple book job in SCP21.

Ms Starkie was the lead claimant for senior teaching assistants with no SEN pre 2013. She relied upon the painter Meloy. His was a red book job and he was in receipt of a bonus calculated at 34% of the white book salary at SCP7. A second comparator was the assistant buyer Crosby.

The third lead claimant was Ms Pearson who was a STA with special educational needs post 2013 who relied upon road worker 3 white book job who was also in receipt of a bonus of 39%, Mr Meloy as above and a street mason Mr James, whose job was also a red book job with a bonus.

Finally there was the lead claimant E Chambers for the higher level teaching assistants who relied upon the highways maintenance team leader Fielding whose job was a purple book job on SCP27 including six increments, and a buyer on SCP30 named West.

- 3 We concluded that Ms Benson's evidence as to the comparative hourly rates of pay of these claimants and comparators represented a robust analysis of the relevant available pay information and established that based on an hourly rate taking into account the few hours and weeks that the claimant earned in a year the hourly rate was comparable. However we find in this case that the hourly rate comparison was not the appropriate manner in which the existence of a pay difference was where there was inequality in gross salary but that the hourly rate may represent a material factor defence particularly if it is established as being the reason for the difference in pay. This was established in Leverton. Leverton's case concerned the comparison of her hourly rate in circumstances where the pay had been fixed by the CAC for both the claimant and the purple book comparator. In the present cases there has been a specific finding by the Tribunal, held by the EAT in 2008, that in the case of the painter Meloy there was no or no acceptable reason why he was being paid a bonus representing a 34% uplift, and in the case of the Mason and road worker 3 the earlier explanation of a genuine productivity related scheme had ceased to be valid as from about 1990 such that the 39% had become an automatic uplift. In Meloy's case the Employment Tribunal had held in 2006 that the uplift had been paid in each year

to Meloy for eleven years at least. It was a significant factor that these bonuses were paid to male dominated indeed probably exclusively male work groups, but not to female work groups, even those whose jobs might be amenable to a bonus. It was suggested during the 2006 hearing that the reason or justification for the payment was an entirely different one now being advanced; namely because a small proportion of the workforce worked a shorter working week and fewer weeks in the year, although we accept that it may be the case that there were no recognised claimants working 32.5 hours who were treated as working full time. A justification raised long after the event starts off as being of lower evidential value particularly when a different material factor defence, not this one, was put forward at the earlier hearing. It would in those circumstances be completely wrong to strike out claims in relation to the comparators who were in receipt of bonus though we accept that circumstances of the payment of the bonus to the road workers was slightly different than that relating to the painter.

- 4 We conclude that the other lead claimants have no reasonable prospects of success because the current comparators' jobs must have been rated considerably higher than these claimants at a Hay evaluation which dated from the 1990s although the claimants' jobs at that time were slightly differently characterised as nursery nurses and their jobs were reorganised in 2003 and later. We conclude that they would have been reassessed and there remains a substantial difference between the SCP levels of the claimants who rely upon their comparators were not in receipt of an established discriminatory bonus. The differences in the SCPs is significant enough for us to conclude that there is no reasonable prospects of the claimants Lisa Armstrong and Elaine Chambers being found to be of equal value.

**EMPLOYMENT JUDGE HARGROVE**

**JUDGMENT SIGNED BY EMPLOYMENT  
JUDGE ON  
12 January 2018**