



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MRS N THOMAS

AND

Respondent
THE GOVERNING BODY OF ST.
BRIGIDS SCHOOL (R1)

DENBIGHSHIRE COUNTY
COUNCIL (R2)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD : CAERNARFON

ON: 17TH MAY 2018

EMPLOYMENT JUDGE MR P CADNEY
(SITTING ALONE)

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:-

MR C ADKINS (TRADE UNION
REPRESENTATIVE)

FOR THE RESPONDENT:-

MR J SEARLE (COUNSEL)

JUDGMENT

The judgment of the tribunal is that:-

1. The claim against Denbighshire County Council is dismissed upon withdrawal.
2. The claimant's claim of unfair dismissal against The Governing Body of St Brigids School is dismissed.

Reasons

1. This is the decision of the employment tribunal in the case of Mrs M Thomas and the Governing Body of St Brigids School and Denbighshire County Council. It has been accepted that the correct respondent is the Governing Body of St Brigids School and the claimant accepts the claim against the second respondent should be dismissed.
2. By a claim form submitted on 15 December 2017 the claimant brings a claim of unfair dismissal arising out of a redundancy selection process which resulted in her dismissal. There is little dispute of fact between the parties, the only significant one for my purposes being whether the school did or did not intend to continue to provide Spanish going forward. The tribunal has heard evidence from the claimant, and on behalf of the respondent from Ms Dawn Docx (a school governor and a member of the redundancy selection panel) and Ms Jane Wood (a school governor and member of the redundancy appeal panel)
3. The respondent is a relatively small voluntary aided state middle school catering for students of ages 3 to 18 based in Denbighshire in North Wales. The claimant was employed as a full-time French teacher in the Modern Foreign Languages department. She taught French to years 7, 8, 9 10 and 11 and had in 2016/17 taught year 12, the first sixth form/A-level year. There was only one other teacher in the MFL department, Ms Ciara Brennan (CB) who was employed as a part-time teacher on a 0.6 FTE contract. She had applied specifically for an advertised post of a Spanish teacher but had since 2015 taught A-level French and Spanish to GCSE.
4. The respondent's evidence, which I accept, is that an Estyn inspection had criticised the level of staff salaries which were some 91% of the school's total budget. The school needed to reduce that to at most 85% if not lower. On 30 November 2016 there was a joint meeting of the curriculum and staffing committees which met to discuss proposed changes to the following year's curriculum to see whether it could be adjusted to result in a need for fewer staff. It was agreed that the MFL teaching provision could be reduced from a total of 1.6 FTE teachers (i.e. the combined total of the claimant and CB's employment) to 1.0 full time equivalent. As a result a redundancy situation had arisen within the MFL department.
5. A redundancy consultation document was drawn up and on 13th February 2017 a consultation meeting took place. On 21 March 2017 the NASUWT sent in a response to the consultation making a number of comments on the proposed redundancy. As modern foreign languages was one of the areas in which redundancies were proposed the claimant and CB completed a skills audit. When the two were compared there were a number of differences and originally CB scored 40 whereas the claimant scored 34. In respect of the area "Leader of Subject" CB scored three and the claimant scored one, which was subsequently revised upwards to 3 thus increasing the claimant's score to 36. However even with revised score she still scored less than Ms Brennan in respect of "Teaching Experience Other Subjects". In respect of Key Stage3 CB scored three and the claimant 1; and in respect Key Stage 5 again CB scored three and the claimant one. Thus even after some revision of the scores there remained an overall four mark difference in CB's favour.

6. On 4 April 2017 the redundancy committee met to apply the selection criteria and nominate employees for redundancy. The conclusion of the committee was that the claimant should be provisionally selected for redundancy, and a hearing was arranged on 2 May 2017. The meeting was chaired by Ms Dawn Docx, a governor of the school. The claimant was represented by Mr Adkins at the meeting (as she is before me). Central to Mr Adkins' contentions at the meeting was the proposition that the pool had not been correctly constructed. This derives from an argument that the redundancy selection pool should not be defined as modern foreign languages, but that French and Spanish should be treated as separate subjects not as part of the same department. He contended that if this analysis was correct then as Spanish was not to be taught the next year then Spanish teaching should be regarded as redundant and accordingly the claimant retained as a specialist French teacher. The head teacher who was present at the meeting asserted that there was an obligation to continue teaching both French and Spanish for years 11 and 13 for exam purposes and that in essence the school currently had two teachers one of whom was qualified to teach French and one of whom was qualified to teach both French and Spanish. The committee accepted this and concluded that the claimant would be made redundant.
7. The claimant appealed and the appeal was heard by the Redundancy Appeal Panel on 22nd May 2017. At the hearing Mr Adkins advanced similar arguments to those outlined above but the appeal committee confirmed the redundancy.

Conclusions

8. The arguments before me are very similar to those pursued in the internal process.
9. The first question is whether the respondent has established a fair reason for dismissal. In this case it is redundancy, which is potentially capable of being a fair reason within s98(2) ERA 1996. As set out above I am entirely satisfied that redundancy was the genuine reason for dismissal. I accept that in order to comply with Estyn inspection requirements that the proportion of the school's budget spent on salaries had to be reduced, and that for the reason given the only area in which those salary reductions could be made was in staff salaries by the point the respondent had reached in 2017. It is in fact in any event not for me to judge whether there were other ways of making those savings, simply that the reasons put forward by the respondent were the genuine reasons. I am therefore entirely satisfied that the genuine reason for dismissal was redundancy.
10. In order to judge the fairness of a dismissal for redundancy the tribunal has to assess whether the composition of the pool for selection was a reasonable one, whether the scoring criteria were reasonable and applied fairly, and whether there was sufficient consultation. In this case while the first two questions are in issue there has been no suggestion that there was insufficient consultation.

11. A significant part of the claimant's case is that the redundancy was selection was based on a factual misconception or misunderstanding. As advanced both in the redundancy and redundancy appeal meetings she maintains that it was not the school's intention to teach Spanish the following year with the consequence that if there were to be a redundancy that it should automatically fall within the field of Spanish teaching, or at very least that there should be no advantage in having the ability to teach Spanish if it were no longer to be taught. This is not accepted by the respondent which asserts firstly that it was intending to continue to teach Spanish in years 11 and 13 (the GCSE and A level years) and that whilst a decision had been made not to offer it in year 9 no decision had been made in respect of other years; and that in any event the school was obliged to continue to offer Spanish as it hosted Spanish A level for a consortium of schools across Denbighshire. I accept the respondents evidence as to this, and therefore that there was a genuine requirement for the provision for teaching both French and Spanish going forward.
12. As set out above one of the claimant's primary claims is that the pool for selection was wrongly identified as Modern Foreign Language teaching, as the two teachers involved should have been treated as teaching separate subjects. I confess this is an argument I do not follow. The school had identified that it could fulfil its language teaching curriculum requirements with one teacher, or at least a total of one full time equivalent even if not necessarily one individual. The curriculum that needed to be provided included both French and Spanish. It is therefore probably inevitable, and at very least within the range reasonably open to the respondent to construct the pool so as to include all those who taught French and Spanish.
13. The next issue is scoring. The claimant's submission is that if it was acceptable to include all language teachers in the same pool, then there should be no distinction made between them on the basis of languages they were able to teach. Put simply Mr Adkins contends on the claimant's behalf that if she is to be identified generically as a language teacher for the purpose of establishing the pool for selection, she should be deemed capable of teaching any language. In his final submissions he did not shy away from accepting that the logic of his position was that she should be deemed capable of teaching a language of which she did not speak a word. This seems to me an improbable suggestion. Self-evidently if a school is to reduce the number of teachers but maintain the number of languages, those who can teach more than one will score more highly than those who cannot. I agree with the claimant to the extent that where the pool consists of two teachers and one can and does already each both languages, and one does not, that the scoring and result might appear to be a foregone conclusion, and why the claimant should feel subjectively that she was effectively targeted in the redundancy selection process. However in my judgement it was reasonably open to the respondent to score in the way it did, and a scoring system which rewards more highly experience of and the ability to teach more than one language, is perfectly rational given that the outcome of the process was intended to allow the respondent to teach both languages with fewer teachers.
14. Looked at overall and in summary in my judgment the dismissal was genuinely by reason of redundancy, the pool was appropriately selected, and the scoring system

was a rational one open to the respondent; and the decisions of the redundancy panel and redundancy appeal panel were rational conclusions open to them to reach.

15. For these reasons the claimant's claim of unfair dismissal is dismissed.

**Judgment entered into Register
And copies sent to the parties on**

.....12 July 2018.....

**.....
for Secretary of the Tribunals**

EMPLOYMENT JUDGE Cadney

Dated: 10 July 18