



EMPLOYMENT TRIBUNALS

Claimants Mrs D Shaw
Mrs S Smith

Respondent: The Governing Body of St Martin's Church of England (Aided)
Primary School

HELD AT: Hull

ON: 29 and 30 May 2019
8 July 2019 (reserved
decision in chambers)

BEFORE: Employment Judge Cox

Representation:

Claimants: Mr N Shaw, lay representative

Respondent: Mr D Bayne, counsel

RESERVED JUDGMENT

1. The claims for statutory redundancy payments and damages for breach of contract are dismissed on withdrawal by the Claimants.
2. The claims of unfair dismissal fail and are dismissed.

REASONS

1. Mrs Shaw and Mrs Smith presented claims to the Tribunal alleging that their dismissals by the Respondent ("the School") were unfair and in breach of contract. They also claimed statutory redundancy payments. During the course of the Hearing, they withdrew their claims of breach of contract and those claims were dismissed. At the conclusion of the evidence they also withdrew their claims

for redundancy payments, having accepted that the reason for their dismissal was that they were not willing to accept a reduction in pay and that that reason did not fall within the statutory definition of redundancy in Section 139 of the Employment Rights Act 1996 (the ERA). Those claims were also dismissed.

2. At the Hearing, the Tribunal heard oral evidence from both Claimants and from Mrs Susan Adamson, who had also been dismissed for refusing to agree to a reduction in her pay. For the School, the Tribunal heard oral evidence from Mrs Alison Stephenson, the School's Headteacher; Mrs Jayne Fountain, Chair of the School's Governing Body and of the Governing Body's Finance Committee and a member of the three-person Selection Committee which made the decision to dismiss the Claimants; Mrs Louise Hanks, chair of that Selection Committee; and Professor Chris Garforth, the Chair of the Governing Body at another school, who was asked to chair the three-person panel that heard the Claimants' appeals against their dismissal.
3. On the basis of that evidence and the documents to which the witnesses referred it, the Tribunal reaches the following findings in relation to the claims.

The legal issues

4. The Claimants worked for the School as Teaching Assistants (TAs). On the basis of the evidence given at the Hearing, the Claimants accepted, and the Tribunal finds, that the reason the Claimants were dismissed was that they refused to accept a change in their contracts of employment that would involve them being paid for term time only (TTO), rather than for the full calendar year. The Tribunal must decide whether that was "some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held", a potentially fair reason for dismissing the Claimants with Section 98(1)(b) ERA.
5. If there was a potentially fair reason for the dismissals, then the issue for the Tribunal is whether in the circumstances, including the School's size and administrative resources, the School acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the Claimants. That question must be decided in accordance with equity and the substantial merits of the case (Section 98(4) ERA).

The facts

6. The School is a Voluntary Aided school maintained by North Yorkshire County Council (NYCC). Mrs Shaw joined the School as a General Teaching Assistant (GTA) in September 2000 and was promoted to become an Advanced Teaching Assistant (ATA) from September 2003. At the time of her dismissal she worked 17.5 hours a week. Mrs Smith joined the School as a GTA in September 2005 and was promoted to ATA in April 2013. At the time of her dismissal she worked

29.75 hours a week. Teaching Assistants (TAs) assist class room teachers in various ways to support the learning of pupils. For that reason they are referred to as teaching support staff.

7. The Claimants' employer was the School's Governing Body (Section 36(2) of the Education Act 2002). The core functions of the Governing Body are to: ensure clarity of vision, ethos and strategic direction of the School; hold executive leaders to account for the educational performance of the School and the performance management of staff; and oversee the financial performance of the School and make sure its money is well spent and well managed. In 2014 Mrs Fountain became Chair of the Governing Body.
8. Mrs Fountain also chairs the Finance Committee of the Governing Body, which has strategic responsibility for ensuring the School's budget is spent wisely. She is a practising solicitor of 25 years' standing and has also lectured for a number of years at postgraduate level on accounting and taxation practice. She has undertaken the "Finance in North Yorkshire Schools" governor training provided by NYCC. She has taken a particular interest in the issue of national education funding policy because of its relevance to strategic planning for the School. She has followed the issue in the media's coverage, information provided by NYCC and in the work of the House of Commons Education Select Committee. In summary, Mrs Fountain has substantial expertise in school funding.
9. The School also has access to financial advice from a professional school bursar employed by NYCC to help inform its operational and strategic financial decisions. The School purchases the services of the bursar to prepare budgets, maintain records, provide monitoring services and give expert advice on school financial management. The bursar attends all Finance Committee meetings to help the Governors interpret the budget summaries she has produced and to provide information on NYCC's position relating to delegated funding and its application to the School.
10. In managing the School's finances, the Finance Committee works closely with NYCC. The School must adhere to the financial management system adopted by NYCC. The School is not permitted to submit a deficit budget unless there are exceptional circumstances and NYCC has given its advice and written agreement. The Finance Committee needs to ensure that sufficient funds are carried forward to ensure pupil provision, curriculum planning and school improvement are not adversely affected by in-year or year-to-year fluctuations and variances. Historically, as a rule of thumb, the Committee has aimed to carry forward a sum equal to the cost of one full-time teaching post. The School has agreed not to carry forward more than 15% of its annual delegated budget of around £1.1 million from one fiscal year to the next.
11. Until 2013/14, each local education authority used its own formula to divide up the block grant funding it received from central government between the schools

in its area. The Government then proposed to introduce a nationally-determined set of funding formulae for schools. In 2015/16, NYCC received money to ease the transition to this National Funding Formula (NFF), and this resulted in the allocation of a lump sum of around £90,000 to the School. In December 2016 the Department for Education began a second stage of consultation into school funding, proposing the full introduction of the NFF in April 2020. Until the report on that consultation was published, it was uncertain whether a minimum funding guarantee, which had limited the losses incurred by schools because of the changes, would remain in place. It was also unclear how NYCC would deal with the allocation of funding in the transitional period of 2018/19 and 2019/20. The bursar advised the School that NYCC's deficit in relation to funding for High Needs was so great that cuts in funding to the School were very likely.

12. ATAs and Higher-Level Teaching Assistants (HLTAs) in the NYCC area were originally employed on contracts under which they were entitled to be paid for the full calendar year, albeit that their contracts did not require them to work outside term time. In contrast, GTAs were paid for TTO. In 2013, NYCC proposed that all TAs in the schools it funded be moved to TTO pay. No agreement could be reached with the recognised trade unions on that proposal. NYCC therefore wrote to schools suggesting that they reach their own decisions on how they would take forward any such proposal in their own schools.
13. In view of the uncertainties surrounding the impact of the NFF, the School decided to appoint all new support staff, including ATAs and HLTAs, on TTO pay from January 2014. It also made cost savings wherever it could in relation to non-staff costs.
14. In 2017 Mrs Stephenson joined the School as Headteacher.
15. In May 2017 the School's budget monitoring showed the expected in-year out turn for 2016/17 as a deficit of £62,759. Although this would not result in an overall deficit, largely because of the £90,000 lump sum the School had received in 2015/16, the Finance Committee was concerned about the School's future financial position, particularly in the light of the continuing uncertainty about the income that could be expected under the NFF. At its meeting in June 2017 the Finance Committee decided that redundancies were likely to be needed in early 2018 and the Governing Body as a whole agreed the need for a staffing restructure at its meeting in September 2017.
16. At its meeting in November 2017 the Finance Committee reviewed benchmarking data produced by the bursar which showed that the School had the highest education support staff costs to teaching staff costs ratio of 10 comparable schools and the second highest cost per pupil. At the same time, the School's financial forecast for revenue continued to show in-year deficits for 2017/2018, 2018/19 and 2019/20. The School was forecast to have an overall surplus of £1,500 by the end of 2017/18 and an overall deficit by 2018/19.

17. In December 2017, the Finance Committee recommended a restructuring of support staff, to include possible redundancies and a review of their pay structure. The Governing Body accepted that recommendation and a Selection Committee was established to implement it. In January 2018 the Selection Committee began considering options for reducing support staff salary costs.
18. On 8 February 2018 Mrs Stephenson wrote to the support staff telling them that the Governing Body was reviewing the staffing structure and budget for the next academic year and that there may need to be redundancies. She invited the staff to a consultation meeting. In the event, that meeting was cancelled because some staff resignations, including the unexpected resignation of a member of the teaching staff, meant that the School was in a financial position to retain more hours and posts for support staff than it had previously envisaged.
19. On 26 February 2018 there was a meeting between Mrs Stephenson, Mrs Fountain, the bursar and a Human Resources advisor (whose services the School also purchases from NYCC). It was agreed that, whilst immediate redundancies could now be avoided, financial savings still needed to be identified and the proposal was made that all support staff not currently on TTO pay should be moved onto it. This would avoid the need for a full restructuring of support staffing, in the current academic year at least, and give more time for clarity to emerge on the impact of the NFF and other staffing issues and whether any more substantial restructuring was still necessary. Moving all remaining support staff onto TTO pay would save £8,600 on staffing costs to the end of the financial year 2017/18 and £14,800 in 2018/19. It would also have the benefit of resulting in equal treatment for all support staff.
20. The Selection Committee began its consultation on the proposal on 26 March 2018. The formal consultation period was to run from 20 April to 21 May. The School sent invitations to consultation meetings about the proposal to the affected staff and to the representative of UNISON (the recognised trade union). The invitations enclosed financial illustrations of what the proposal would mean for salaries. For Mrs Shaw, it would mean a reduction of 11% reduction in her salary, from £8,664.36 to £7,727.16. For Mrs Smith it would involve a reduction from £14,729 to £12,853, a 13% reduction.
21. On 28 March 2018 the Claimants replied, enclosing the responses they had provided when the change to TTO pay had been proposed by NYCC in 2013. Mrs Fountain responded on 14 April 2018, encouraging the staff to raise their concerns during the consultation process. On 17 April Mrs Shaw sent in a written submission in advance of the forthcoming consultation meeting.
22. On 20 April Mrs Hanks, as Chair of the Selection Committee, chaired two consultation meetings. Also present were Mrs Stephenson, Mrs Fountain, a local

authority Governor and an HR advisor from NYCC. Mrs Fountain was there to answer questions on the financial background to the proposal.

23. The first meeting was with the UNISON representative. Later the same afternoon there was a meeting with the affected staff, the UNISON representative and a representative from the GMB. (The GMB is not a recognised union, but as its representative happened to be in the School at the time he was invited to attend so that he was better able to support those staff who were members of the GMB.) A two-and-a-half-page consultation document and a sheet of “frequently asked questions” was distributed at the meeting, giving more detail about the proposal and the consultation process.
24. The staff raised the point that they were doing a substantial amount of work in the evenings and during the School holidays that they would no longer be prepared to do if they were paid for TTO. They suggested other ways in which the School could make savings as an alternative to cutting their salaries. They asked for information about the budget and the savings that had already been made by the recent departures of various staff members. Mrs Fountain responded that she did not have this information immediately to hand.
25. Mrs Shaw’s evidence was that Mrs Fountain acted aggressively at the meeting and inhibited staff from raising further comments. The Tribunal prefers the evidence of Mrs Fountain and Mrs Smith that whilst emotions were running high on both sides at the meeting, Mrs Fountain did not act aggressively or prevent staff from having their say. The notes of the meeting also indicate that the employees had a fair opportunity to raise the points they wanted to make.
26. Mrs Shaw responded to the consultation the same day. UNISON also responded on 24 April, pointing out that the School was forecast to be in surplus as at 1 September 2018 but was proposing to cut staff pay by an average of £1,150. He pointed out the impact this would have on staff morale, their willingness to work beyond their contracted hours and the subsequent effect on the quality of the teaching and learning that was provided by the School.
27. As a result of the points the staff had raised on working outside school time, the Selection Committee asked Mrs Stephenson to review the working practices of the affected support staff to ascertain how much work they were doing outside their contracted working time and whether teachers were asking them to work outside those hours. In summary, the responses were that, whilst teachers did not ask support staff to work outside their contracted hours, in practice they did do work outside their contracted hours, including some in the school holidays.
28. On 10 May 2018 the Selection Committee met to agree an interim response to the consultation submissions received to date. On 17 May, the School sent the affected staff and UNISON revenue financial forecasts for 2018/19, 2019/20 and 2020/21 showing the position with and without the change to TTO pay, and the

Selection Committee's interim responses to the points raised during the consultation to date.

29. This information was provided only a day or two before the formal consultation period was due to expire. The budget forecast in existence at the start of the process, which was the one before the Finance Committee in November 2017, was by this time out of date. The School's budget, always subject to change, was in a particularly fluid state at this time because there were unresolved personnel issues affecting staffing costs that could not be made public. Mrs Fountain was hoping that the accuracy of the information would improve as those variables resolved themselves over time. In the event, the forecasts the School supplied, updated to 16 May 2018, showed that the School was forecast to have an overall surplus of £21,400 at the end of 2018/19. If the move to TTO pay was not implemented, the School would have an overall surplus of £12,600 at the end of 2018/19, but it would be running an in-year deficit by 2020/21 and would be likely to have an overall deficit in the year after that.
30. In its interim response, the Selection Committee responded to all the points raised by the affected staff, whether in writing or at the consultation meeting. So, for example, it explained that the staff's suggestion that savings be made by a pay cut for all staff rather than just the affected TAs was not feasible because staff were on pay rates set by national collective bargaining machinery. Voluntary redundancy was not possible because all the staff currently in post were needed and redundancies would leave the School unable to make adequate provision for the children. The Committee agreed to explore further the staff's suggestion of raising revenue by running a summer holiday club.
31. On 18 May UNISON again wrote asking the Governors to withdraw the proposal to cut the support staff's pay on the basis that the union and the staff would work with the School to consider alternatives such as efficiency savings and/or income generation ideas.
32. At its meeting on 21 May 2018 the Selection Committee considered the letter from UNISON and four further letters received from the affected staff. The Committee also considered new financial and staffing information, which included a drop in roll numbers not yet reflected in the budget forecasts, which would result in a fall of £20,000 in income for the School in 2018/19. Taking into account all the information it had and the consultation responses it had received, the Committee decided to implement the proposal to move all remaining support staff to TTO pay.
33. On 23 May the affected employees were told of the decision and asked to agree to a variation in their terms and conditions by 13 June. They were informed that if they did not agree to the variation the School might terminate their contracts and offer re-engagement on the new terms. Staff were told that if they wanted to discuss the matter or arrange a further meeting they should contact Mrs Hanks.

UNISON again asked the School to reconsider its decision and delay its implementation for 12 months, given that the School was not currently in deficit.

34. On 14 June the Selection Committee met again and letters were sent to employees enclosing copies of the minutes of that meeting, setting out their response to the further points that had been raised. The letters confirmed that the School's pupil intake from September 2018 was to be eight fewer than the School had budgeted for, involving a loss of £20,000 in NYCC funding. This meant that the Governing Body was unable to postpone the decision on TTO pay to a later date, as suggested by UNISON, because if it did so the School would be running at a deficit, which was not permissible. The Committee extended the deadline for acceptance of the variation to TTO pay to 18 June.
35. On 18 June the School wrote to all the employees who had not accepted the new terms giving them notice to terminate their existing contracts with effect from 9 September 2018. At the same time, they were offered re-engagement on the new terms and were asked to respond to that offer by 25 June.
36. Five of the affected staff members accepted the new terms, the Claimants and Mrs Adamson did not. Mrs Fountain invited the staff who had not accepted the new terms to meet her individually or collectively at a time to suit them. Mrs Smith met her but Mrs Shaw did not.
37. Mrs Stephenson was concerned to recruit replacement TAs if the Claimants and Mrs Adamson did not accept the offer of re-engagement. Other TAs had left earlier in the year and they also needed to be replaced. After assessing the School's needs, Mrs Stephenson, in consultation with Mrs Fountain, decided to advertise for three GTAs. The advertisement was placed on 29 June.
38. On 3 July the Claimants and Mrs Adamson lodged a grievance. They argued that, as the School had advertised for GTAs, that must mean that the Claimants' roles as ATAs had been made redundant and they believed they had been unfairly dismissed. They should have been offered redundancy. The School treated the grievances as appeals against their dismissals.
39. Mrs Shaw's appeal hearing was on 17 September and Mrs Smith's on 19 September. By the time of Mrs Smith's hearing, the support staff who had accepted the new contracts had produced a statement to confirm that they had done so reluctantly. Mrs Smith submitted that statement in support of the Claimants' appeal. The Tribunal accepts the evidence of Mrs Fountain and Professor Garforth that Mrs Fountain took no part in the appeal panel's decision-making. The reference in the notes of the appeal meeting to the NYCC HR advisor having discussed the statement submitted by Mrs Smith with the Chair of Governors was an error. Mrs Fountain happened to be in the School at the time of the appeal hearing, but only to discuss repairs to the School roof with Mrs Stephenson and the architect. The HR advisor put her head round the door to let

Mrs Stephenson know that the appeal panel was still deliberating, but she did not speak to Mrs Fountain.

40. On 20 September the Claimants were informed that their appeals had been unsuccessful. The panel acknowledged the value of the Claimants and their dedication and effectiveness in their roles. Nevertheless, having reviewed the financial data, the panel accepted that the business case for changing to TTO pay was strong. The modest currently forecast surplus was reasonable and prudent in the context of the continuing constraints of and uncertainties over school funding. The School's budget was tight and there were no grounds for complacency. The School needed to use its resources as efficiently as possible. Reviewing the documentation from the consultation period and the minutes of the Selection Committee's meetings, the panel was satisfied that all the points raised during the consultation had been addressed. Although the Claimants asserted that they were working outside their contracted hours, their job descriptions did not require this, and their assertion had prompted the Headteacher to review working practices amongst the support staff. Further, the panel accepted that it was reasonable for the Governing Body to have assessed the School's staffing needs after the Claimants' dismissals and decided to advertise for GTAs.
41. In summary, the appeal panel was satisfied that the Governing Body had made a reasoned and reasonable judgement about the balance of the impact of the proposal on staff and the quality of the educational provision in the School and that its decision was in proper discharge of its three core functions, and in particular its obligation to act prudently in relation to financial matters.
42. Although the appeal panel upheld the Selection Committee's decision, it also decided to advise the Governing Body to ensure that: support staff contracts and job descriptions made clear that they were not required to work outside their contracted hours; support staff had the opportunity to raise concerns about their workload; and the working hours of support staff were monitored so that, if they were working excessive hours beyond their paid hours, action could be taken to address this.

Applying the law to the facts

43. The Tribunal has considered whether the Governing Body's decision to dismiss the Claimants was for a substantial reason of a kind that justified the dismissal of employees holding the position that the Claimants held. The School was facing a period of financial pressure and uncertainty and needed to make savings where it could. It had a reasonable rationale for identifying support staff pay as a potential area for savings, namely, that some TAs were being paid for a full year when their contracts were to work for TTO and other support staff were already paid for TTO. Further, by the time the final decision to dismiss the Claimants was made, the School was facing the possibility of running at a deficit if the change to TTO pay was not made. In these circumstances, the Tribunal concludes that the

Claimants' dismissal because they would not accept the change amounted to a substantial reason justifying their dismissal.

44. The Tribunal has then considered whether the School acted reasonably in all the circumstances in reaching its decision to dismiss the Claimants for this reason.
45. The Claimants argued that it was unfair to dismiss them for refusing to move to TTO pay when they had in practice been working several hours a week in excess of their contracted hours during term time on tasks such as planning and record-keeping, and had been coming into School during the school holidays to do other work such as putting up displays. They had been doing this as a matter of goodwill and commitment to the School and because there was not enough time in their working day to complete all the tasks expected of them. They had nevertheless been more than happy to do this work because they were paid for the full year. The School would need to pay for the extra hours they had been working, which would cost substantially more than the School was proposing to save by moving to TTO pay.
46. The Selection Committee took this matter into consideration in its deliberations. As noted above, Mrs Stephenson was asked to look into the issue of the hours support staff were working when this was raised by the staff during the consultation process. She concluded that support staff were not being asked to work outside term-time hours by the teachers they worked with and that any work they were doing outside their contracted hours was voluntary. From Mrs Fountain's evidence and the interim response of the Selection Committee during the consultation process, it is apparent that the Committee took the view that support staff were entitled to restrict their working hours to their contracted hours only and that they could complete the essential duties of their posts during those hours. The benchmarking data showed that the support staff provision at the School was higher than in other comparable schools. In effect, the Committee was satisfied that the School could maintain a satisfactory provision for pupils if all support staff worked only their contracted hours and during TTO.
47. The Tribunal accepts that the Committee was acting reasonably in taking that view. Although the School had benefited from the work the Claimants had done outside their contracted hours, it was now, under financial constraints, effectively taking the position that the School could and should manage without those extra hours.
48. The Claimants argued that it was unreasonable to dismiss them to make insubstantial cost savings when they had provided such high quality and committed service to the School. The Tribunal finds that the Selection Committee accepted that the Claimants were very committed to the School and performed their roles to a high standard and with great ability. The children of Mrs Fountain and Mrs Hanks attended the School and both women were aware of and grateful for the Claimants' skill and commitment to the children. In effect, however, the

Committee's view was that the Claimants' qualities and commitment did not outweigh the School's need to make cost savings. The Tribunal accepts that that was a view that it was reasonable for the Committee to adopt in all the circumstances, given the School's financial position.

49. The Claimants pointed out that at the time of their dismissals the School was operating with a surplus budget. Further, the cost to them as individuals in cutting their already low salaries by 11 or 12% was disproportionately high when compared with the very modest amount of savings that would be achieved for the School. In those circumstances, the decision to proceed with the proposal was unreasonable.
50. The Tribunal acknowledges, as did the Selection Committee, that the move to TTO pay had a significant impact on the financial position of all the affected employees. The Tribunal also accepts, however, that the Committee acted reasonably in taking the view that it had to implement the proposal, in the best interests of the School overall. By the time of the dismissals, the School was facing the very real possibility of running at a deficit. The future income that it was budgeting for was uncertain and it had already seen a reduction in its income for the coming financial year because of a fall in the roll.
51. The Claimants argued that the School was acting unreasonably in not respecting a 2001 collective agreement between NYCC and UNISON that provided for ATAs to be paid on a full year basis. Although the Tribunal was provided with no evidence on the current status of this agreement, it accepts that it was more likely than not that this agreement was no longer in force at the time of the Claimants' dismissals. As mentioned above, there was an attempt in 2013 to reach a negotiated settlement at County level on TTO pay for ATAs and HLTAs but when this failed NYCC told schools that they could make their own decisions about whether to make the change. At this School, ATAs had been recruited on TTO pay since 2014 without any protest from UNISON.
52. The Claimants argued that the consultation with them on the proposal was flawed because they were given the consultation document only at the consultation meeting itself, and were provided with information about budgets only shortly before the formal consultation period ended. The Tribunal accepts that it would have been preferable for the consultation document and the "frequently asked questions" document to have been provided in advance of the consultation meeting, so that staff could have had the opportunity to consider them before the meeting took place. It is clear from the evidence of Mrs Hanks, which is supported by the documentation, that the most significant points in the consultation document were in any event raised at the meeting and that the Selection Committee gave full consideration to the points raised by staff during that meeting in its interim response document. Mrs Fountain delayed in providing the financial information to ensure that this was as up-to-date and useful as possible. Further, the Claimants had the opportunity, which Mrs Shaw took up, to

put their representations on the consultation document and the financial information in writing, and to raise them at their appeal hearings.

53. The Claimants effectively said that the consultation process was a sham because the Committee was not going to change its mind and “disregarded” their suggestions for savings. Having seen the Selection Committee’s written interim response to the consultation, the Tribunal is satisfied that the Claimants’ suggestions for saving money and raising income were given genuine consideration. The Committee gave well-supported reasons for why the various proposals were not appropriate or would not produce any or sufficient savings.
54. Looking at the reasonableness of the procedure overall, it appears that the School was broadly following the procedure that would have applied had it followed through on its original proposal for potential redundancies, namely the Reorganisation, Redundancy and Redeployment Policy and Procedure. The Tribunal accepts that the School did depart from that procedure in some respects, but it also accepts that it was unsurprising and not unreasonable that it did so, given that the procedure was drafted to deal with reorganisations, redundancies and redeployment, not changes in the terms and conditions of staff relating to pay.
55. The Claimants also had a fair opportunity to challenge their dismissals. Although the Claimants lodged grievances rather than appeals, the Tribunal accepts that the School acted reasonably in treating their grievances as effectively being appeals against the decision to dismiss them without giving them redundancy terms. When the appeal panel informed the Claimants at the appeal hearings that they proposed to treat their grievances as appeals, both Claimants confirmed that they wanted the hearings to continue. At the Tribunal Hearing, both Claimants accepted that their appeal hearings had been fairly conducted. Having heard Professor Garforth’s evidence, the Tribunal accepts that they were.
56. In summary, the Tribunal is satisfied that the Selection Committee adopted a reasonable procedure in implementing the proposal for TTO pay, including its decision to terminate the Claimants’ contracts because they refused to accept it. It gave the affected staff information about the proposal and the reasons for it and a fair opportunity to respond. It gave thorough and fair consideration to the responses and provided reasons for its position. The affected employees were given an opportunity to continue with their employment with all their other benefits intact. The Claimants’ complaints about their dismissals were given a fair hearing on appeal and they were provided with the reasons for their appeals being unsuccessful.

Summary and conclusion

57. Mrs Shaw effectively summed up the Claimants’ position in her witness statement. ATAs, she said, were doing a large range of skilled tasks “for a very

low wage compared to a teacher”. She went on: “Is it fair, morally correct, just or ethical for a Christian school to reduce the wages even further of such hard working, committed, loyal, long serving, dedicated, experienced members of staff?”

58. That is not, however, the question that the Tribunal must answer. The question for the Tribunal is that posed by Section 98(4) ERA, namely, did this employer act reasonably in deciding to dismiss these Claimants because they would not agree to TTO pay?
59. The Tribunal accepts that the School’s decision was reasonable. The School had good reason to be concerned about its finances and was aware of the need to avoid going into deficit. It had good reason to believe that it needed to make any cost savings that were possible whilst still maintaining proper provision for the pupils. It wanted to avoid making redundancies. It had considered alternative ways of saving money, including those raised by the recognised union and the affected staff, but had concluded that they were not sufficient to avoid the need for the changes it proposed. The Claimants were given a fair opportunity to state their case and their views were taken into account. They were invited to accept continued employment at the School with unbroken service on TTO pay but they decided not to take up that offer.
60. The Tribunal has substantial sympathy for the Claimants. It can fully appreciate why they were upset at the School’s decision and understands their perception that the School has placed insufficient value on their contribution, skills and commitment. For the reasons stated, however, the Tribunal accepts that, objectively assessed and taking into account the overall interests of the School, the Governing Body acted reasonably in all the circumstances in deciding to dismiss them. Their claims of unfair dismissal therefore fail and are dismissed.

Employment Judge Cox
Date: 8 July 2019