



EMPLOYMENT TRIBUNALS

Claimant: Mrs P Bradley

Respondent: The Governing Body of St Edward's Catholic Primary School

Heard at: Liverpool

On: 16 March 2020

Before: Employment Judge Sherratt
Ms F Crane

REPRESENTATION:

Claimant: Ms R Wedderspoon, Counsel

Respondent: Mr D Welch, Counsel

JUDGMENT ON REMEDY

The judgment of the Tribunal is that the respondent shall pay to the claimant a basic award without reduction based on 3 complete years of service and a compensatory award to the extent of 60% of her lost income and pension contributions from 1 September 2017 to 31 August 2018 based on the weekly hours worked by CW paid at grade M6 but bringing into account the claimant's earnings in the period.

REASONS

1. This is a remedy hearing following the Tribunal's Reserved Judgment sent to the parties on 3 June 2019.
2. There are only two members of the Tribunal as one of our number is currently self-isolating. The parties have agreed in writing that the Tribunal should continue with only one of the two lay members sitting.
3. We have for the purposes of the remedy hearing received a witness statement from the claimant and she has been cross examined. We have received a

witness statement from the Head Teacher, Mrs O'Hare, and she also has been cross examined. We have had a substantial bundle of documents.

4. In reaching our conclusions we have taken into consideration the evidence and the submissions of counsel. We have taken into account sections 119 to 124 of the Employment Rights Act 1996 and the guidance given by the Employment Appeal Tribunal in **Software 2000 Ltd v Andrews and others** UKEAT/0533/06/DM.

5. We find the claimant's documentary evidence in respect of job applications to be unreliable on the basis of the matters brought out by counsel for the respondent in his careful cross examination of the claimant.

6. However, having considered the claimant's explanation we are satisfied that the claimant is not dishonest. We find she has a complete lack of IT skills and when it comes to IT is disorganised. In our judgment the claimant has written over documents, she has amended documents without saving them properly, and this explains the complete shambles. We do not doubt that the claimant has applied for the jobs she said she has applied for. However, those inconsistencies being apparent to the respondent it is surprising that the claimant did not deal with them in her witness statement and explain the reason for them, but the principal finding in respect of the claimant is that we do not find her to be dishonest.

7. The Tribunal at the liability hearing took the view that the claimant was "at risk" and under the Borough Council's policies the claimant should have been interviewed for the available post regardless of the application process. Had the claimant been interviewed she would have been able to call upon her experience of working at St Edward's and the fact that she was a practising Catholic. We have been taken by the claimant's counsel to the reference from Mrs O'Hare stating that she would employ the claimant again and that she was a dedicated teacher who worked hard, but in her statement Mrs O'Hare speculates that the claimant would not have succeeded. The claimant in her witness statement speculates that she would have succeeded and been appointed to the post.

8. Mrs O'Hare tells us based on the claimant's own comments that the claimant would have been likely to have been nervous at interview. She tells us that the claimant was given the opportunity to be the Humanities Lead in the school but that in the relatively short time she was acting as such she did not make any whole school impact. It was a role that the claimant could have moulded and used to boost up her CV and her self confidence and her presence within the school. She told us that the claimant did not manage to deal with disruptive children in relation to classroom activities and football where more boys were involved.

9. We have considered the evidence. In the liability hearing we saw and read the claimant's application form together with the application forms prepared by the other candidates. We have seen their CVs. We understand why, using the flawed selection process that was used for all candidates, the claimant was not selected for interview.

10. In our judgment the whole of the evidence is not so unreliable as to make it impossible to make any sensible predictions. In our judgment it is not likely that the

claimant following an interview would have got the job when compared with the other candidates. We accept that Mrs O'Hare completed a reference that said she would have employed the claimant again but in our judgment writing this in a reference does not mean that Mrs O'Hare in a competitive situation would be bound to select the claimant against other candidates for a permanent post. For these reasons we reject what the claimant has called option A.

11. As to option B, appointment to the part time role filled by CW, in our judgment the claimant was out of sight, out of mind, and thus not considered for it. We know that she had been off sick for a little time before the end of the term when consideration was being given to extending the contract of CW. We found in our earlier Judgment that Ms O'Hare did not consider the claimant for the part-time role when she should have done.

12. We are satisfied that the claimant wanted regular hours into the future and that she was willing to commit herself to those hours. We have heard evidence that CW had expressed a desire to leave teaching for a religious role. CW was initially paid on a higher grade than the claimant. Mrs O'Hare thought that it was only fair that they were both paid on the same grade. It was a one year fixed-term role and not a full-time role that would have gone on until otherwise determined. We refer to the willingness of Mrs O'Hare to employ the claimant set out above.

13. Had the claimant and CW both been considered for the continuing part-time temporary post, in our judgment there is a 60% chance that the claimant would have been appointed to that role for one year to 31 August 2018, and on the basis that it was a part-time role for a year then the claimant should and could have been (had she been appointed) looking for new employment for the 2018/19 academic year.

14. We therefore find for the claimant in respect of option B but only to the extent of 60% of what CW was paid at grade M6 for the hours, not the days, that she worked and only in respect of losses to 31 August 2018 when the fixed term expired and CW's employment ceased.

15. We are satisfied from the evidence, notwithstanding the state of the claimant's documents, that in the period to 31 August 2018 the claimant made a reasonable attempt to mitigate her losses and that the income earned by the claimant in the period should be brought into account when calculating her compensation.

16. There shall be a basic award without reduction.

17. The parties were not able to agree the amount of the claimant's award based upon the figures available to them in the hearing and therefore it would not have been possible for the Tribunal to have made an accurate determination of the compensatory award.

18. The parties are therefore invited to reach agreement upon the basic and compensatory awards on the basis set out in this judgment. When this is done the amount can be paid without further reference to the Tribunal or the parties might wish to have a judgment by consent for payment of a lump sum.

19. In the absence of agreement the parties are at liberty to apply for a further hearing to have the issue determined.

Employment Judge Sherratt

17 March 2020

JUDGMENT AND REASONS SENT TO THE PARTIES ON

19 March 2020

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