



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms M A Joralemon

v

The Governors of Ipswich School

Heard at: Bury St Edmunds (via CVP)

On: 17 and 18 March 2021

Before: Employment Judge M Bloom

Appearances

For the Claimant: In person

For the Respondent: Mr T Sheppard, Counsel

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was by Cloud Video Platform (V). A face to face hearing was not held because it was not practicable during the current pandemic and all issues could be determined in a remote hearing on the papers.

JUDGMENT

1. The name of the Respondent is amended from Ipswich School to The Governors of Ipswich School.
2. The Claimant's Claim of Unfair Dismissal fails and is consequently dismissed.

REASONS

Background

1. Throughout the course of the Hearing the Claimant represented herself. The Respondent's were represented by Mr T Sheppard of Counsel. Before me was a voluminous Bundle of Documents consisting of some 1,243 pages. It soon became apparent that the vast majority of those documents were not relevant to the issues to be determined by me. However, my attention was drawn to and I duly considered all of the relevant documents, some of which are referred to in my Judgment below.

2. I heard evidence from the Claimant. The Respondents called two witnesses: Mr Paul Wranek, the School's Bursar; and Mrs Amanda Childs who is the Head of the School's Preparatory Department. Due to the Coronavirus restrictions, the Hearing was conducted using CVP.
3. The Claimant's Claim was presented to the Employment Tribunal on 23 March 2020. The Claim consisted of numerous allegations against the Respondent, many of which do not fall within the jurisdiction of Employment Tribunals. Rather late in the day and not long before this Hearing, Employment Judge King conducted a remote Preliminary Hearing on 9 February 2021, during the course of which the relevant issues were identified. It was necessary for me at the commencement of this Hearing to again identify those issues. The Respondent's case was that the Claimant was dismissed for a potentially fair reason namely one of redundancy. In the alternative they pleaded that the reason or principal reason for the Claimant's dismissal was "Some Other Substantial Reason", namely business re-organisation. The Claimant's case was, in effect, that the purported redundancy was a sham. She believed that the reason or principal reason for her dismissal was due to the fact that the School's Headmaster, Mr N Weaver, wanted to terminate her employment as a result of her involvement in some historical disciplinary matters and the fact that she had subsequently raised grievances both to himself and to the School Governors. These allegations were denied by the Respondent.
4. On the balance of probabilities and having considered the evidence called before me and having considered the relevant documents contained within the Bundle, I come to the following findings of fact.

Findings of Fact

5. The Claimant's employment at Ipswich School began on 5 September 2012. She was employed as the School's Archivist. Ipswich School is a private fee paying school which has over 1000 pupils ranging from the Reception year up to and including students in their final year of A Level studies. The Claimant's role of Archivist was a standalone role. At the time her employment began she had two children of her own at the school. These children left the school in due course and on 1 September 2017 the Claimant became a full-time employee undertaking the Archivist role. She enjoyed her work and was very much committed to that role.
6. Relationships between the Claimant and members of the school's Senior Executive (including Mr Weaver and Mr Wranek) unfortunately deteriorated in the autumn of 2018. The Claimant had been actively involved in the organisation of the School's commemoration of the 100th anniversary of the end of the First World War in November 2018. Matters such as an exhibition were being arranged at the school. There is no need for the purposes of this case for me to go through all of those matters in detail, save to say that it was subsequently alleged that the Claimant had

removed, without permission, two particular items of value belonging to the school which would have formed part of that exhibition. Not only had she not sought permission to remove those items, had they subsequently been lost or stolen they would not have been covered by the School's insurance policy. Various other matters of dispute took place between the Claimant and the School's then Director of Marketing Mr Peter Grey. Again, the rights and wrongs of the breakdown in that relationship were not relevant to the issues to be determined before me and therefore I do not propose going into them in any further detail. What did however occur was that on or around 6 February 2019 the Claimant raised grievances relevant to those issues. Shortly afterwards on 14 February 2019, the Claimant was instructed to attend a disciplinary hearing relating to the removal of the School's property referred to above. The hearing did not conclude on that day and was scheduled to be reconvened on 20 March 2019. Unfortunately, in March the Claimant's health suffered. She was suffering from symptoms of stress and anxiety and was diagnosed with Shingles. Save for a few days she did not return to work full-time at the School until May 2019. During that period of time the disciplinary proceedings were effectively put on hold.

7. Whilst the Claimant was away from work Mr Wranek, who in his capacity as the School's Bursar has responsibility for financial matters within the school, had a number of matters to consider. First, the school had projected a potential decline in the numbers of fee paying pupils for the academic year beginning in September 2019. A reduction in fee paying pupils obviously would have an adverse effect on the School's income. Another contributory fact was the uncertainty regarding Brexit which would possibly have an adverse effect on the number of, particularly overseas students, joining the School. As a general point costs of the School began to escalate. That point was further aggravated by the substantial increase (of approximately 40%) required to be undertaken by the School in respect of Teachers' pensions. The statutory Teachers' Pensions Scheme required the School to increase the employer contributions towards each Teacher's pension. Mr Wranek gave evidence and I accept that the increase in the employer pension contributions would increase the costs applicable to pensions by almost 40% which in monetary terms was an increase in the region of £360,000.00. The combination of all of these matters resulted in the Senior Executive and including Mr Wranek giving due consideration as to how costs across the School could be saved. These discussions took place in March 2019 when the budgets for the financial year 2019/2020 were being considered.
8. Active consideration was given by Mr Wranek to the reduction of costs. I accept that by far and away the largest costs incurred at the School were staff costs. Mr Wranek considered that the School could save the Claimant's salary and ancillary costs of around £40,000.00 if her post were declared redundant. I accept that the Claimant's post was not the only post under consideration for redundancy. In August 2019 a member of the P.E. Department was made redundant. Four other teaching roles were not

replaced when their incumbents left the school's employment towards the end of 2019.

9. Discussions took place with Senior Executives regarding the requirement to make costs savings. I have noted the content of such meetings beginning on 23 November 2018 and continuing through to February 2019 (pages 129 – 132 of the bundle). Reference in those notes is made to Teachers leaving and not being replaced and there is a particular note referring to a meeting later on 7 May 2019 regarding the “cost effectiveness of the Development Office”. The Claimant's role of Archivist fell within the ambit of the Development Office. Although the Claimant's role is not specifically referred to in those notes it is clear to me that her role together with other roles within the school were being actively considered. Indeed there is a short note that follows the extract of the meeting on 7 May 2019 that refers to the Claimant's role of Archivist.
10. At 8:35 a.m. on 15 May 2019 Mr Wranek sent an e-mail to the Claimant asking her to attend a meeting with himself at 12 noon that day to “talk about the Archivist role”. Mr Wranek intended that meeting to be the commencement of a consultation process with the Claimant. The meeting did not take place however because the Claimant declined to attend. Instead, later that morning, she hand delivered to the School her additional written grievances. It is important to note that the timing of Mr Wranek's e-mail, i.e. prior to the delivery of the Claimant's grievance, is important. The Claimant alleged that the redundancy process was only instigated as a result of her submitting that grievance. Mr Wranek's e-mail which came before the Claimant's submission of her grievance clearly does not support the Claimant's allegation. I do not accept that the institution of the redundancy process was brought about as a result of the Claimant submitting her grievance that day, or indeed on any other day either before or after May 2019. Similarly, I do not accept the Claimant's allegation that the redundancy process was only instigated as a result of previous disciplinary proceedings.
11. The Claimant alleged that Mr Weaver, the Headmaster, “wanted her out”. Had that been the case it is more than likely that the disciplinary proceedings that were postponed in March 2019 would have been concluded on or around that time. It is inconceivable that the Headmaster and the School, if that allegation were correct, would have continued with the Claimant's employment until the end of 2019 incurring additional salary costs and the additional Statutory Redundancy Payment cost. The redundancy process undertaken by Mr Wranek on behalf of the school was, in my Judgment, a genuine one. There was the need for the School to reduce its costs and one way was to make the Archivist role redundant.
12. The Claimant, during the course of the Hearing, suggested there were a number of additional ways or even alternative ways the School could have saved money. However, it is not for me to substitute my view for that of a reasonable employer. It was a reasonable response of the School in this

case to take a decision to remove the role of Archivist as one of a number of cost saving exercises.

13. Three very detailed consultation meetings took place between the Claimant and Mr Wranek. I have read the detailed minutes of those meetings as they were, by consent, recorded at the time. The first took place on 17 May, the second on 22 October and the third and last on 5 November 2019. The Claimant was accompanied by her Union Representative at the hearings. During the course of those hearings Mr Wranek explained in detail to the Claimant the need for the School to reduce its costs, specifically making reference to the cost to be incurred by the School in respect of increased pension contributions and the prospective reduction in the numbers of pupils. The Claimant did not contest those points during the course of those meetings. Reference was made to alternative employment. Advertisements for vacancies in the School are advertised and specifically all staff, including the Claimant, received by e-mail notifications of any vacant posts. It appears there was a vacancy in catering but the Claimant did not apply for it. A new role was being considered by the School in October 2019. The previous Director of Marketing had left. Not surprisingly the School was keen to increase its revenue and although there were serious concerns regarding the financial position of the School, they regarded it as an important factor to recruit not only a replacement for Mr Grey but someone who could progress other issues relevant to marketing in the future. This new post was called Director of Admissions, Marketing and Outreach. The post was advertised between 27 September 2019 and 10 October 2019. The Claimant was still at the School during that period. In evidence she accepted that she had seen the e-mail advertising that post but did not consider further its content and did not apply for the role. In any event I am satisfied, having heard Mr Wranek's evidence, that the Claimant was not suitable for that post. Although the new post would include to a limited degree some of the work previously undertaken by the Claimant in her Archivist role, it was substantially more than that. Considerable experience and expertise in marketing was required for that post and I am satisfied that the Claimant did not have that level of experience and skill. It was reasonable in my Judgment for the Respondent not to consider and not to therefore subsequently discuss the possibility of that role with the Claimant. The Claimant failed during the course of the consultation meetings to attempt to persuade Mr Wranek that his view about her ability to undertake the role was wrong in any event.
14. I am satisfied that, in particular, during the course of the third consultation meeting discussions took place as to whether or not the Claimant could continue in her employment in a part-time capacity. Mr Wranek rejected the suggestion and considered that the role of Archivist would have to go in its entirety and that the School could not sustain the Claimant's continued employment, even in a part-time capacity. That in my Judgment was a reasonable response.

15. The Claimant complains that the School Governors were not directly involved in the decision making process regarding her redundancy. That is not something in my Judgment that has any foundation. Governors of any school are not expected to become involved in day to day operational matters. Those matters such as the viability of the Archivist role are a matter for senior members of the School to consider, in this case the School's Senior Executive. As stated, the Senior Executive including Mr Wranek gave those matters their full consideration.
16. After the third consultation meeting Mr Wranek gave the matter final consideration. He came to his final conclusion that the Claimant's role of Archivist was redundant. He concluded there were no suitable alternative posts within the School for the Claimant. He rejected the Claimant's suggestion that the role could be undertaken on a part-time basis. His decision was conveyed in a letter to the Claimant (pages 653 – 654) dated 13 November 2019. The Claimant was provided with her statutory notice and the effective date of termination was given of 31 December 2019.
17. The Claimant was offered the right of an appeal against Mr Wranek's decision. She exercised that right and duly submitted a letter with supporting grounds of appeal on 19 November 2019 (pages 694 – 695).
18. I note that specifically the Claimant's allegation before this Tribunal, namely that the sole purpose of the Claimant's termination of employment was Mr weaver's desire to see her leave was not specifically identified within her grounds of appeal. The appeal was to be heard by Mrs Childs. She was a member of the Senior Executive. The Claimant agreed in evidence that it was appropriate for her to hear the appeal. Appeals of this nature are not heard by Governors. The appeal was scheduled to take place on 18 December 2019 but unfortunately at short notice Mrs Childs had to cancel it due to a hospital appointment. Efforts were made thereafter to see if a Governor could possibly hear the appeal at short notice but unfortunately none were available. The Claimant did not complain about that and was happy for Mrs Childs to continue to consider her appeal after the Christmas holiday break. Mrs Childs offered the Claimant a further appeal hearing date. However, the Claimant felt that, due to stress and anxiety issues, she was unable to attend a face to face appeal hearing and was content for Mrs Childs to deal with the matter in writing. I am satisfied that Mrs Childs gave all the relevant points raised in the Claimant's grounds of appeal full and due consideration. Having done so she wrote to the Claimant by a letter dated 17 January 2020 (pages 835 – 838) rejecting the Claimant's appeal.
19. I must also mention not only the fact there were three lengthy consultation meetings with the Claimant but also the length of time, particularly between the first and second meeting. The Claimant, as I have stated above, raised additional grievances on 15 May 2019. The Respondents took the correct view to consider all of those grievances before progressing the redundancy issue any further. There were grievance meetings held on 25 June 2019 and 29 July 2019. Thereafter the school

summer holidays took place. It was reasonable in my Judgment for the Respondents to resurrect the redundancy process and to continue with the second meeting on 22 October 2019.

The Law

20. It is for the Respondent to prove, on the balance of probabilities, that there was a potentially fair reason for the Claimant's dismissal. Redundancy is a potentially fair reason pursuant to the provisions of Section 98(2)(c) Employment Rights Act 1996. For the Reasons given above I am satisfied that the Claimant's position of Archivist was redundant within the definition contained in Section 139(1)(b)(i) Employment Rights Act 1996. The requirements of the School for the Claimant to carry out the work of an Archivist had ceased or was expected to cease or diminish as a result of the need to cut costs. On the balance of probabilities the Respondents have shown that the reason, let alone the principal reason for the Claimant's dismissal, was due to redundancy.
21. That is not an end to the matter because I must go on to consider whether or not the dismissal was fair within the criteria referred to in Section 98(4) Employment Rights Act 1996 namely –

“the determination of the question whether the dismissal is fair or unfair (having regard to the reasons shown by the employer) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and (that) shall be determined in accordance with equity and the substantial merits of the case”.
22. I have reminded myself that it is not for me to substitute my view for that of a reasonable employer. I must consider whether or not the decisions and subsequent actions taken by the Respondent in this case fell within the Bands of Reasonable Responses. In Williams -v- Compare Maxam Limited (1982) ICR 156, the Employment Appeal Tribunal laid down well established guidelines that a reasonable employer might be expected to follow when considering and subsequently making redundancy dismissals. That case sets out a number of issues that must be considered such as whether or not selection criteria were objectively chosen and subsequently fairly applied; whether or not the affected employee was warned and consulted about the potential redundancy; and whether or not there were other suitable alternative positions available.
23. For the Reasons I have set out above in this Judgment I consider that the Respondents undertook a proper and meaningful period of consultation with the Claimant. There were three lengthy meetings with her over the course of five or six months. It was reasonable to postpone the process between the first and second meeting due to the Claimant's ongoing grievances. In those consultation meetings the Claimant was advised that her role was at risk of redundancy and the reason why the Respondents

were considering their position, namely due to financial constraints and concerns about additional costs. There was no question of the Claimant being considered in a pool for selection alongside other employees. Her role of Archivist was a standalone role which only she undertook. There were no suitable alternatives available for the Claimant as an alternative to the termination of her employment. She was advised throughout of all vacancies but applied for none. Although she now says that she should have been considered for the role of Director of Admissions, Marketing and Outreach, I am satisfied that the Respondents took a fair decision not to consider her for the role. It was not within her level of experience and skill. The role was a senior one in fact carrying a salary of more than £20,000.00 in addition to the salary paid to the Claimant for the Archivist role. The decision of the Respondent not to consider the Archivist role in a part-time capacity was also a reasonable one in all the circumstances.

24. Having considered those matters it was proper for the Respondent to come to the decision that there was sadly no alternative other than to terminate the Claimant's employment. That decision as stated was conveyed to her by a letter dated 13 November 2019. The Respondents undertook a fair and meaningful appeal process. It was the Claimant's desire that the process should be conducted only in writing and I am satisfied that Mrs Childs gave the various issues which were relevant full consideration prior to coming to her decision to reject the Claimant's appeal. The Claimant's allegation made during the course of the Hearing that Mrs Childs undertook that process "in bad faith" is not supported by the evidence and is one which I completely reject.
25. In all the circumstances I am entirely satisfied that the reason for the Claimant's dismissal was redundancy. I reject completely her suggestion that the underlying reason was because of a desire by the School's Headmaster to terminate her employment for reasons connected with previous disciplinary proceedings and grievances. The Respondents have proved on the balance of probabilities that redundancy was the reason for dismissal and in all the circumstances I consider that the dismissal was fair.
26. As a consequence the Claimant's Claim of Unfair Dismissal fails and is therefore dismissed.

29 March 2021

Employment Judge Bloom

Sent to the parties on:01/04/2021.
THY

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For the Tribunal Office