



EMPLOYMENT TRIBUNALS

Claimant: Ms D Campbell

Respondent: Birmingham City Council

Heard at: Midlands West

On: 15 February 2021

Before: Employment Judge Woffenden

Representation

Claimant: In Person

Respondent: Mr Paul Epstein ,Queens Counsel

Judgment that the claimant's equal value claims be struck out under section 131 (6) Equality Act 2010 having been announced and reasons given orally and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction

1. On 15 February 2021 I conducted a stage 1 Equal Value Preliminary Hearing. during which the claimant's equal value ('EV') claims were struck out under section 131 (6) Equality Act 2010 ('EqA') and the claimant requested written reasons be provided.
2. The claimant had presented claims of direct race discrimination and for equal pay on 10 January 2020.
3. On 3 August 2020 (in compliance with an order made by Employment Judge Dean at a preliminary hearing on 8 June 2020) the claimant clarified her EV claims .
4. At a preliminary hearing before me on 22 October 2020 it was confirmed the respondent was contending there had been a job evaluation study ('JES') , the claimant being grade 3 and the comparators being grade 4 (paragraph 7.3 of the amended response) but no details of the JES could be provided.
5. Where a question arises as to whether the work of one person (A) is of equal value to the work of another (B) and A's work and B's work have been given different values by a JES a tribunal has to decide that A's work is not of EV to

B's work unless the tribunal has reasonable grounds for suspecting that it was based on a system which discriminates because of a) sex or b) was otherwise unreliable (sections 131(5) and 131(6) EQA).

6. I therefore ordered the respondent to provide full details of the JES so that the claimant could make representations about whether the JES fell within section 131 (6) (a) or (b) EQA and listed today's Stage 1 equal value hearing at which one of the issues to be determined was whether to strike out the EV claim.
7. The respondent sent a copy of the JES ('The Green Book JES') to the claimant.
8. The claimant made the following representations on 6 January 2021 :
'The job evaluation exercise from the Respondent is dated as far back as 2002, the information is inaccurate, therefore, the job evaluation study is unreliable.
 - *The job evaluation exercise provides information regarding the jobs in 2002. This is considerably outdated as it does not accurately reflect the roles and responsibilities required for the position and, therefore, the job evaluation exercise raises a question regarding whether or not the work is deemed as being of equal value.*
 - *The job descriptions contained in the job evaluation exercise are also inaccurate and unreliable.*
 - *The work has changed significantly since the job evaluation exercise was carried out as a number of additional responsibilities and duties have been added to the role over the years, which are over and above the responsibilities and duties of the grade 3 post.*
 - *The job evaluation exercise discriminates against me on the grounds of sex and the male comparators I have identified illustrate and support my claim.*
 - *I was treated less favourably than my grade 4 comparators. I was carrying out work of equal value, but I was not paid a grade 4 salary.*
 - *I did not receive an increase in salary and I was denied the opportunity to have my post re-evaluated.*
 - *A review of my grade was not carried out, if the exercise had been completed, my post would have been evaluated as a grade 4 or grade 5 post. 107*
 - *There is sufficient evidence to raise a reasonable suspicion that the Respondent's job evaluation exercise is unsuitable to be relied upon.'*
10. There was an agreed bundle of 1409 documents. I read only those documents to which I was referred by the parties .
11. After Mr Epstein made his oral submissions and prior to making her oral submissions the claimant complained that she had only received a hard copy of the agreed bundle on 12 February 2021 .She confirmed however that she was not making an application to postpone the hearing but had felt inconvenienced and put under pressure by this. It was therefore agreed that before making her oral submissions there would be a 30 minutes adjournment.

The Law

12. Under section 80 (5) EqA:
'A job evaluation study is a study undertaken with a view to evaluating, in terms of the demands made on a person by reference to factors such as effort

,skill and decision making ,the jobs to be done –

a) *by some or all of the workers in an undertaking or group of undertakings .*

13. I remind myself that the burden of proof in relation to section 80 (5) EqA falls on the respondent and under section 131 (6) EqA falls on the claimant (**Armstrong v Glasgow City Council [2017] CSIH 56 Court of Session [57], Brennan v City of Sunderland 250 3297/2006 [2006]**). The factors required to be proved by the respondent are that the job evaluation study must be thorough in its analysis objective transparent accurate internally sound and consistent sufficiently detailed and fair .As far as the claimant is concerned what is required is sufficient evidence to raise a reasonable suspicion that it was based on a system which discriminates because of a) sex or b) was otherwise unreliable.
- 14.As Mr Epstein submitted there is a difference of view between different constitutions of the Employment Tribunal in **Hartley v Northumbria Healthcare NHS Foundation Trust, ET, 6 April 2009** and in **Brennan v Sunderland CC, 31 January 2012** about its meaning (it was then section 2A(2A)(b) EqPA). **Hartley** decided that that subsection should “*as a matter of law be confined to cases where there are reasonable grounds for suspecting direct discrimination or an act or omission motivated by bad faith or an improper motive.*” and **Brennan** doubted that the subsection should be confined to bad faith/improper motive. but accepted “ *... that the legislation is concerned with sex discrimination in pay and that it would be contrary to the purpose of [the subsection] for arguments to be advanced to the effect that a particular evaluation is unsuitable to be relied upon [NB the word is now “unreliable”] merely because it is said to be wrong. However, we would not have thought that a dispute of opinion over the accuracy of an evaluation would as such ever render it unsuitable for reliance.*” I accept Mr Epstein’s submission that, whichever view is adopted, section 131(6)(b) EqA is not intended to be a gateway to differences of view about scoring in an evaluation; there needs to be something far more serious involved.

Facts

15. Under the Green Book JES, the claimant’s job at the relevant time (14 August 2013 to 9 September 2019) was grade 3 and those of her equal pay comparators were grade 4.
16. There were 13 Green Book JES factors as follows:
‘Knowledge and Skills 1. Knowledge 2. Mental Skills 3. Interpersonal and Communication Skills 4. Physical Skills Effort Demands 5. Initiative and Independence 6. Physical Demands 7. Mental Demands 8. Emotional Demands Responsibilities 9. Responsibility for People 10. Responsibility for Supervision/Direction/ Co-ordination of Employees 11. Responsibility for Financial Resources 12. Responsibility for Physical Resources and Environmental demands 13. Working Conditions’. There was a detailed scoring and weighting matrix for each of the factors.
16. The grade 3 Legal Assistant(‘LA’)post, called role JB74, was evaluated at 397 points on 9 June 2004, and on 12 July 2005 at 417 points. The grade 4 Principal Legal Assistant (‘PLA’) post, called role DB71, was evaluated at 550 points on 14 July 2004, and on 29 June 2007 also at 550 points.

17. The National Joint Council for Local Government Services produced Job Evaluation Technical Notes and Guidance for the Green Book JES (postdating the evaluations), one of which (Technical Note No. 3) explains the role of benchmark jobs (which refers to ‘ a representative sample of jobs’) in implanting job evaluation. Technical Note No 4 concerns options for dealing with ‘non benchmark jobs’. Under the heading ‘ Introduction’ , paragraph 1.1 states ‘Local authorities using the Local Government NJC JES have been recommended to select and evaluate a benchmark sample of jobs, in order to develop local conventions and test their evaluation procedures (for advice on selecting benchmark jobs, see Technical Note No. 3; for advice on drawing up local conventions see Technical Note No. 1). Paragraph 1.3 ‘of the Introduction states’ *In practice, only a small district council could feasibly ask all its employees to complete Job Description Questionnaires (JDQs) or to participate in job interviews with Gauge facilitators. For most local authorities, some form of simplified system for dealing with non-benchmark jobs is inevitable if the exercise is to be completed within a reasonable timescale and costs.*’
18. The respondent deployed proprietary software (Gauge) for the purpose of evaluations .It is described as a ‘software tool designed to optimize the efficiency of the Job Evaluation process incorporating the NJC’s jointly agreed ’13 factor’ scheme.’ The respondent set grade boundaries : Grade 3 posts from 400 to 480 points and Grade 4 posts from 481 to 577.
19. The evaluations were carried out on the basis of detailed and lengthy job evaluation questionnaires. In accordance with the Technical Notes (paragraph 17 above) ,the respondent did not evaluate every single grade 4 PLA role. It treated evaluated grade 4 PLA role DB71 as the generic role and allocated the equal pay comparators’ jobs to that role. The grade 3 LA job was allocated to the evaluated grade 3 role JB74.

Submissions

20. I thank both parties for their written and oral submissions which I summarise below.
21. Having referred me to the specific contents of the Green Book JES and the relevant law ,Mr Epstein submitted that the representations made by the claimant were wholly lacking in specificity. Nothing could be found in what the claimant had said in her representations which could properly be said to amount to a realistic criticism of the Green Book JES under section 131 (6) (a) EqA. He therefore focused on section 136 (6) (b) EqA. The two main strands of the claimant’s representations were first that the Green Book JES was old and that the jobs had changed and secondly that the job descriptions used were inaccurate .She had said that the evaluations were carried out in 2002 but the most recent was in 2007. She had complained that the job descriptions were inaccurate and unreliable but these were used for internal and external advertisements ;the relevant information about roles for the purposes of equal value came from the job evaluation questionnaires. The respondent had acted permissibly in allocating the comparators’ jobs and the claimant’s grade 3 role to generic roles. There were no reasonable grounds for suspecting the Green Book JES was unreliable.

22. The claimant submitted the grade 3 role had changed significantly since the evaluations had been carried out. She was carrying out work over and above grade 3. She had been grade 4 on two fixed term contracts and to ensure permanent employment she took a grade 3 role but had already acquired the skills needed for a grade 4 job. She used those skills and her knowledge to carry out the role of a PLA. The Green Book JES could not be relied upon for grade 3 roles because it was out of date. A job evaluation should be triggered by a permanent change to duties. She had been working over and above grade 3 for a number of years. CIPD advised that they be carried out every 10 years. The job had changed dramatically in the three years after 2011. In the years 2011 to 2015 she had gained the requisite experience but was denied the opportunity to have her post re-graded. She had presented cases at employment tribunals with Counsel had conducted mediations and was the respondent's point of contact with ACAS. These were tasks that used to be carried out by grade 5 roles. She was carrying out work of equal value to PLAs working closely with a comparator (James Banner) whose work was not broad enough in range to enable him to complete his portfolio and she did not see he was working at a higher level than her. She did not understand how information could be used when it was so out of date. She reminded me that the burden on the claimant in relation to section 131 (6) EqA is much less.

Conclusions

23. I conclude on the basis of the facts I have found above that the respondent has discharged the burden of proof on it to prove the Green Book JES was thorough in its analysis objective transparent accurate internally sound and consistent sufficiently detailed and fair. The Green Book JES falls within section 80(5) EqA.
24. There was no information put before me from which I could conclude there were reasonable grounds for suspecting that the Green Book JES was based on a system which discriminated because of sex.
25. As far as section 131 (6) (b) EqA is concerned, the claimant complains the job descriptions in the job evaluation study were inaccurate and unreliable but I do not accept this; it used detailed and lengthy job evaluation questionnaires. She complains that the job evaluation exercise was old. The Equality and Human Rights Commission: Code of Practice on Equal pay (2011) recommends that all employers regularly review and monitor their pay practices and I have not been given any information from the respondent about what steps it has taken in this regard since the introduction of the Green Book JES and the job evaluations carried out as set out in paragraph 16 above. However the mere passage of time is not sufficient in and of itself to provide reasonable grounds for suspecting the evaluation in the Green Book JES is unreliable. The claimant has also made assertions about significant work changes over the years since the job evaluation was performed but has not provided any details about the nature number or timing of any such job changes. The passage of time and unparticularised job changes (together or individually) do not provide reasonable grounds for me to suspect that the evaluation in the Green Book JES is unreliable.

Employment Judge Woffenden

14 May 2021