



EMPLOYMENT TRIBUNALS

Claimant: Mr Trevor Farley

Respondent: Sunderland City Council

HELD at Newcastle CFT

ON: 8 September 2022

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: In person

Respondent: Ms L Heard of Counsel

EQUAL PAY STAGE 1 PRELIMINARY HEARING JUDGMENT

The claimant's complaints of failure to pay equal pay, contrary to the provisions of the Equality Act 2010, have no reasonable prospect of success. Those claims are struck out and dismissed.

REASONS

1. This matter came before me this morning as the postponed stage 1 equal pay hearing, which had originally taken place on 11 May 2022. On that occasion, various case management orders were made, particularly relating to the claimant's challenge to the respondent's Job Evaluation Scheme known as "Work Force Transformation" (WFT). By Notice of Hearing dated 22 July 2022 the parties were informed that the postponed hearing would resume on 8 September 2022 at 10 o'clock at the Newcastle upon Tyne hearing centre. A copy of the Notice of

Hearing appears on the Employment Tribunal file, addressed to the claimant at the address which appears on his claim form. The Tribunal file shows that the notice was sent to the claimant by email. The claimant's out-box shows that the notice was sent to the claimant at 11:39am on 22 July and was not "bounced back" to the Tribunal. I am satisfied that the claimant was properly served with the Notice of Hearing. By 10am this morning the claimant had failed to attend the hearing and had not arrived 10:50am. A telephone call was made to the claimant, who indicated that he was unaware of today's hearing. The claimant nevertheless agreed to travel to the Employment Tribunal as quickly as possible and eventually arrived at 12 noon. Mr Farley explained that he had not received Notice of Hearing and apologised for any oversight which may have been involved. I accepted that Mr Farley has always attended previous hearings in these proceedings and I am satisfied that he would not have deliberately failed to attend. The hearing therefore commenced at 12 noon.

2. The claimant has brought a number of complaints against the respondent, including unlawful age discrimination, unlawful sex discrimination, unlawful disability discrimination, unlawful deduction from wages and a claim for Equal Pay. Some of those claims have already been struck out and some are to proceed to a final hearing with a time estimate of 5 days, on 17 October 2022. The complaint relating to Equal Pay has been separated from the other claims.
3. The source of Mr Farley's complaint is that in 2015-2016 the council undertook a Job Evaluation Scheme known as "Workforce Transformation", as a result of which his job was re-graded and as a consequence of which his salary was reduced by some £2,500 per annum, following a period of pay protection. The claimant's various complaints to the Employment Tribunal relate to the injustice he believes he has suffered because of that re-grading and deduction in his salary.
4. The claimant's complaints of failure to pay equal pay are brought pursuant to the provisions of the Equality Act 2010. Those provisions outlaw gender-related pay differences. They do not legislate for fair pay, nor do they enable tribunals to award a claimant more pay than a comparator. A claim of equal pay is thus a complaint which involves unlawful sex discrimination. If there is no sex discrimination involved then, whether Mr Farley is happy with his pay or not, there can be no successful equal pay complaint. Throughout this stage 1 hearing, the Tribunal endeavoured to remind Mr Farley of that basic principle. Unfortunately, Mr Farley continued to refuse to accept that basic premise. It is difficult not to sympathise with Mr Farley, who genuinely believes that the re-grading of his role and subsequent reduction in salary was not only unfair, but a grave injustice imposed upon an employee with over 20 years' service to the council. Throughout this hearing, Mr Farley remained unable or unwilling to accept that this perceived injustice did not of itself mean that there had been a breach of the equal pay provisions in the Equality Act 2010.
5. The claimant's equal pay complaint has already been case managed at 3 earlier hearings before Employment Judge Martin and Employment Judge Sweeney. At the hearing before Employment Judge Sweeney on 25 May 2021, the claimant was invited to identify those posts with which he wished to compare his pay. Those were identified and agreed by the claimant as follows:-
 - (i) Environmental Health Officer (undergrad) - trainee to qualified.
 - (ii) Building surveyor.
 - (iii) Private sector housing initiations officer.

- (iv) Housing officer.
- (v) Development officer, housing.
- (vi) Enforcement technical support officer.

The claimant confirmed that all of those posts are graded higher than his (which is at Grade 5). However, he says that his work is very similar to those posts and he believes that those roles have a mix of men and women. It is therefore for the claimant to establish that the duties he undertakes in his role as a technical officer (Grade 5), are similar to those, following the downgrading of his previous role as a building surveyor. The claimant must then go on to show that female employees undertaking those broadly similar duties are paid more than him. That is the irreducible element of a complaint under the equal pay provisions.

6. At the original stage 1 hearing on 8 July 2022, it was clearly recorded that those are the 6 roles which the claimant names as comparators for the purpose of these proceedings. The respondent's defence to the claimant's allegations in simple terms is as follows:-
 - (i) There are no female private sector housing initiatives officers, nor are there any female housing officers. Accordingly, the claimant could not possibly succeed in a complaint of failure to pay equal pay in relation to those posts. The respondent maintains that the female building surveyors and private sector housing initiatives officers are all paid less than the claimant and accordingly there could never be a successful complaint of failure to pay equal pay in respect of those posts. Finally, in respect of the other two roles, the respondent's position is that there is or was in place at the relevant time a valid Job Evaluation Scheme, which amounts to a valid job evaluation study which produced higher grades for those two posts than the post occupied by the claimant. Pursuant to section 131) (5) and (6) of the Equality Act 2010, the respondent maintains that the Tribunal must therefore determine that the claimant's work is not of equal value to either of those roles, unless the Tribunal has reasonable grounds to suspect that the evaluation contained in the study was based on a system that discriminates because of sex or was otherwise unreliable.
7. The claimant today did not challenge that there are no female private sector housing initiatives officers or housing officers. The claimant did not challenge that the female building surveyors and private sector initiatives officers are paid less than him. Accordingly, the complaints in respect of those comparators can have no reasonable prospect of success.
8. That leaves the posts of EHO (undergraduate), development officer (housing) and enforcement technical support officers. The respondent says that those are covered by the WFT Job Evaluation Scheme. The respondent invites the Tribunal to dismiss the claims based upon those comparators on the basis that the WFT determined that the claimant's work is not of equal value to any of those roles.
9. Section 131(6)(a) and (b) permit the claimant to show that the job evaluation study was based on a system that discriminates because of sex or was otherwise unreliable. It is for the claimant to establish either of those. The burden of proof lies upon the claimant, although the threshold is accepted as being relatively low. In **Bromley and Others v H&J Quick Limited** [1988 ICR 623] the Court of Appeal found that the onus is on the employer to show that the job evaluation study does

not discriminate on the grounds of sex. However, that decision was prior to the implementation of the Equality Act 2010, under which the Tribunal **must** find that the work is not of equal value, unless it has reasonable grounds for suspecting that the valuation was based on a discriminatory system or as otherwise unreliable. The claimant must therefore point to evidence relating to one or more of the evaluations contained in the study. It is not sufficient for the claimant to rely upon mere assertions. (**Hartley and Others v Northumbria Healthcare NHS Foundation Trust** – ET case number 2507033/2007). The evidence should be strong enough to give the Tribunal “reasonable grounds” for suspicion that there might be such grounds. That would require the claimant to show at least something which may cause the Tribunal to suspect that the system used in the WFT discriminates because of sex. That means the values the system sets on different demands are not justifiable regardless of the sex of the person on whom the demands are made. Equal regard must be had to factors favouring men (physical effort) and to those which are neutral or favour women (mental effort) and any difference between the values set by the system on the different demands must be objectively justified.

10. At the hearing on 8 July 2022 the claimant was ordered to provide further information in the following terms:-

“The claimant must send to the respondent (and copy to the Employment Tribunal) the basis of any challenge the claimant wishes to make against the respondent’s grading scheme known as Work Force Transformation, which the respondent maintains amounts to a Job Evaluation Scheme within the meaning of section 55(4) and (5) of the Equality Act 2010. If the claimant maintains that Work Force Transformation was based on a system that discriminates because of sex, a claimant must explain in detail how the system discriminates because of sex. If the claimant maintains that the Work Force Transformation was “otherwise unreliable” then the claimant must explain in detail the basis of that unreliability.”

11. The claimant subsequently produced two documents, which he today informed me were his compliance with those Orders. Those documents are dated 18 July 2022, headed “Witness statement of Trevor Farley” and one dated 19 August 2022, headed “Basis of claims challenges as at Point 3 of EJ Orders received 22 July 2022”. The first of those runs to 10.5 pages and the second one runs to 21.5 pages. At today’s hearing I invited the claimant to identify to me those parts of either document where he identified any part of the Work Force Transformation which was tainted by discriminatory factors. The claimant was unable to do so. His response was that, following the Work Force Transformation, the only roles which were downgraded, were those of himself and his two male colleagues. The claimant could not identify any job classification system where the criteria for men and women was different or drawn up in any way so as to indicate any discrimination on the grounds of sex. The claimant took me to the scores allocated to his role, which appear at pages 243-244 in the bundle. I explained to the claimant that it was not the role of the Employment Tribunal to undertake a reassessment of any other criteria or the scores allocated under that criteria. At page 244 the claimant identified that the assessment form contains spaces for 5 signatories to sign the form and only 3 signatures have been provided. The claimant’s case was that this made the scheme “unreliable”. Ms Heard reminded the Tribunal that the requirement in the scheme was for a minimum of 2 persons to carry out the assessment and that in the claimant’s case it had been carried out

by 3 persons. The claimant then pointed out that one of the missing signatories related to “assurance rep”, that this meant that the study had not been “quality assured” and was therefore “unreliable”. Again, Ms Heard pointed out that there was no requirement for the individual assessments to be “quality assured”, whatever that meant. There had been no challenge at the time by the trade union relating to the number of signatures or the absence of a “assurance rep”. The claimant had failed to show that the absence of an assurance rep made any difference to the assessment or the outcome of this study. The claimant had certainly not shown that any such absence amounted to reasonable grounds for suspecting that the study was unreliable.

12. In neither of his documents and in none of his submissions was the claimant able to satisfy the Tribunal that the assessment carried out under the Work Force Transformation in terms of effort, skill and decision making was possibly tainted by sex discrimination. The claimant could not produce any evidence which could lead the Tribunal to suspect that the system discriminated because of sex because any difference between the values that the system sets on different demands was not justifiable regardless of the sex of the person on whom the demands are made.
13. The real thrust of the claimant’s dissatisfaction with the scheme is shown on page 12 of the document dated 19 August 2022 when the claimant states:

“The respondent has provided no discernible defence as no evidence has been provided to justify the pay cut.”

As is referred to in the paragraphs above, the claimant has throughout these proceedings failed to differentiate between a difference in pay and a difference in sex, rather than continue to rail against the re-grading of his role and subsequent reduction in pay. Paragraph 7 on page 13 of the same document the claimant again states:

“I will ask the judiciary to consider a legitimate basis for a £2,500 pay cut be justified by respondent when the factors of:-

- *Knowledge/educational qualification requirements/skill based.*
- *Responsibility for people – (duty of care is a fundamental daily requirement of my role).*
- *Responsibility for outcomes.*
- *Communications/liaison requirements and IT skills.*
- *Mental demands/capabilities.*
- *Interpersonal skills.*
- *Initiative and independence.*
- *Responsibility for physical resources, among others.*

do not appear to have been assessed via accurate job description and person specification as these were not indicated or provided up to and for 8 July 2022 hearing or any allocation rationale”.

Much of the claimant’s complaint in that regard is that the respondent had “deliberately withheld” the various job descriptions and person specifications, which the claimant says he required to enable him to carry out his analysis of the reliability of the Work Force Transformation. It had already been pointed out to the claimant that he had at an earlier hearing confirmed that he was in possession

of a full copy of that job evaluation study. The Tribunal rejected the claimant's argument that because the respondent had failed to provide the job descriptions and person specifications in a timely manner, then the entire job evaluation study was unreliable.

14. Section 131(5) and (6) of The Equality Act 2010 states as follows:

(5) Subsection (6) applies where —

(a) a question arises in the proceedings as to whether the work of one person (A) is of equal value to the work of another (B), and

(b) A's work and B's work have been given different values by a job evaluation study.

(6) The tribunal must determine that A's work is not of equal value to B's work unless it has reasonable grounds for suspecting that the evaluation contained in the study—

(a) was based on a system that discriminates because of sex, or

(b) was otherwise unreliable.

15. The Tribunal found that the claimant had failed to establish any evidence which could amount to reasonable grounds for the Tribunal to suspect that the Work Force Transformation was based on a system that discriminates because of sex or was otherwise unreliable.

16. Rule 37 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 states as follows:-

(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of a claim or response on any of the following grounds —

(a) that it is scandalous or vexatious or has no reasonable prospect of success;

(2) A claim or response may not be struck out unless the party in question has been given a reasonable opportunity to make representations, either in writing or, if requested by the party, at a hearing.

17. In respect of the comparators identified by the claimant, they are either not females, or are paid less than the claimant or involved in roles which fall foul of section 131(5) and (6). The Tribunal is satisfied that the Work Force Transformation satisfies the definition of "a job evaluation study" set out in section 80 of the Equality Act 2010 which states as follows:-

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(5) 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.

18. The Tribunal is satisfied that none of the claims relating to the equal pay provisions of the Equality Act 2010 have any reasonable prospect of success. Those claims are struck out and are dismissed.

G Johnson

Employment Judge Johnson

Date: 27 September 2022

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