



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Barbara Parsons

**Respondent:** (1) Alpha Schools (Holdings) Limited (R1); and  
(2) Wellesley House School Limited (R2)

**Heard at:** London South (by CVP)

**On:** 22 March 2023

**Before:** Employment Judge Carney

## Representation

Claimant: Mr C Canning, counsel

Respondent: Ms Mayhew-Hills, consultant

**JUDGMENT** having been sent to the parties on **23 May 2023** 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. The claimant, Mrs Barbara Parsons, is a 56-year-old woman. She was employed as Bursar and Clerk to the Governors at Wellesley House prep school (the "School") from 14 October 2014 by Wellesley House and St Peter's Court Charitable Trust, a charity that owned and operated the School. After a series of TUPE transfers, the business of the School was transferred to R2 around 1 December 2021. On 25 March 2022, the claimant was dismissed with immediate effect. R1 is a holding company of R2.
2. Immediately before her termination, the claimant was earning £54,218.04 per year (gross) and also receiving benefits of life assurance, a free lunch and employer pension contributions.
3. The claimant brought claims that her dismissal was unfair and wrongful (without notice or pay in lieu of notice). She also claimed that she was not paid for accrued and untaken holidays.
4. The claimant also brought claims in respect of a failure to consult under S.188 Trade Union and Labour Relations (Consolidation) Act 1992 and

Regulation 13 Transfer of Undertakings (Protection of Employment) Regulations 2006. The claimant withdrew these claims in the hearing and they were accordingly dismissed on withdrawal.

5. The respondents presented their response to the tribunal claims late, together with an application for an extension of time. At a hearing on 15 February 2023 (the “Preliminary Hearing”) the application for an extension of time was refused. A liability judgment was therefore entered against the respondents in respect of the claims for unfair and wrongful dismissal and holiday pay and sent to the parties on 21 February 2023. A remedies hearing was listed for 22 March 2023 (this hearing) to determine the amount of compensation for these claims.
6. At the Preliminary Hearing, the judge ordered that the respondents would only be permitted to lead evidence on the issue of whether or not the respondents had unreasonably failed to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures (the “ACAS Code”) at the remedies hearing. The respondents were therefore entitled to participate in the remedies hearing to cross-examine the claimant on her evidence to the tribunal, present evidence-in-chief on whether the respondents unreasonably failed to comply with the ACAS Code and to make legal submissions to the tribunal on the issues to be decided at the hearing.
7. The issues to be determined at this hearing were set out in the 15 February 2023 hearing’s case management orders.
8. For this hearing, I was given a bundle of documents of approximately 506 pages, a chronology and a “note for the remedies hearing” containing a skeleton argument prepared on behalf of the claimant. Immediately before the hearing, the claimant also provided three spreadsheets setting out in more detail how she had calculated her losses. The respondent did not object to the spreadsheets being introduced into evidence. I heard evidence from the claimant and was given a witness statement from Mr Aftab Ahmed (Chief Information Officer for R1) in respect of the respondents’ compliance with the ACAS Code. As the claimant accepted in the course of the hearing that the ACAS Code had been adhered to, Mr Ahmed was not cross-examined on his statement. All page numbers in this decision refer to the bundle unless otherwise stated.

### **Holiday pay claim**

9. The respondents’ do not set out a specific amount in respect of the claimant’s gross weekly pay in their counter schedule of loss but it is evident from the amount they give for basic pay for the notice period that they agree with the claimant’s figure for gross weekly pay (which is £1,039.80).
10. The claimant’s unchallenged evidence was that on termination of her employment she was not paid for accrued but untaken holiday which amounted to 4.8 weeks (24 days). She said that this amount was agreed with the respondents’ finance manager on 31 March 2022. The respondents’ do not deal with holiday pay in their counter schedule of loss. The respondents did not cross examine the claimant on the amount of holiday she said she was owed, nor did they mention holiday or holiday pay

in their closing submissions. The tribunal therefore accepts the claimant's account that she was owed in respect of 24 days holiday. She is entitled to 4.8 weeks multiplied by her gross weekly pay (£1,039.80) amounting to £4,991.04 (gross, subject to tax and national insurance contributions).

### **Wrongful dismissal claim**

11. It was agreed between the parties that the claimant had been dismissed without notice or pay in lieu of notice. In their counter schedule of loss, the respondents' said that the claimant was entitled to statutory notice of seven weeks' only, as she did not have a written contract of employment. The claimant disclosed her original offer letter dated 7 July 2014 which stated that after the probationary period was completed "two terms' notice in writing is required" (page 68). The respondents did not cross examine the claimant on her notice entitlement or direct the claimant in cross examination to any other documentary evidence indicating a different notice period. And the respondents did not dispute this period of notice in their closing submissions. I therefore find that the claimant was entitled to two terms' notice.
12. As the claimant was dismissed before the start of the summer term, two terms' notice would have ended on 31 December 2022 at the end of the Autumn 2022 term (40 weeks and two days from the date of dismissal).
13. The respondents did not cross examine the claimant on the lost benefits she claimed, nor on the amounts she claimed in respect of each benefit. Nor did the respondents make any closing submissions in respect of the amounts claimed in respect of benefits for the notice period and beyond.
14. The claimant's evidence was that, in addition to her salary during the notice period, she was entitled to a free lunch at the School, to a pension benefit and to life assurance cover.
15. The claimant gave evidence that during employment she would receive a free lunch at the school, which was a choice of either a buffet salad, sandwiches or a hot meal, together with pudding. Free tea and coffee was also available. The claimant said that the cost of replacing this benefit was £8 a day. The respondents in their counter schedule of loss contended the loss amounted to £5 per day.
16. The tribunal accepts that the cost to the claimant of replacing a main course, pudding and tea or coffee would be £8 per day for each working day during the notice period (112 days). This amounts to £896.
17. The claimant had obtained five quotes for the equivalent life assurance cover (pp. 176 – 182), which ranged from £22.91 to £24.12 per month. The amount the claimant is seeking for the loss of this benefit is in line with these quotes. The tribunal therefore accepts the figure sought by the claimant in respect of the loss of life assurance during the notice period (£223.38).
18. The amount the claimant was seeking for employer pension contributions was agreed by the respondents in their counter schedule of loss (£4,173.75)

19. The figure for gross weekly salary was, as set out above, agreed by the respondents. Gross salary for the notice period amounts to £41,737.57.
20. Total loss of salary and benefits for the notice period amounts to £47,030.70 (gross). The claimant did find work during the notice period and the amount due must be adjusted to take account of this mitigation of her losses.
21. The claimant worked as a self-employed bookkeeper as clerk to the Wellesley House trust, and for a golf club and a charity called Hazelbank. She later became employed by the golf club and then a holiday home company. She gave evidence that her income during her notice period was £15,819.08. The respondent's submitted that the claimant had not done enough to mitigate her loss. For the reasons set out in the section on unfair dismissal compensation, the tribunal does not accept that the claimant failed to mitigate her loss sufficiently.
22. The claimant is therefore entitled to £31,211.62 (less appropriate deductions for tax and national insurance contributions) in respect of the notice period. This amount has been calculated gross because of the respondents' statutory obligation under the Finance (No 2) Act 2017 to deduct tax and national insurance contributions on any post-employment notice pay.

### **Unfair dismissal claim**

#### *Basic award*

23. The claimant was employed for seven years and given her age at the effective date of termination and length of service she is entitled to an unfair dismissal basic award of £5,712.

#### *Compensatory award*

24. During the hearing the claimant withdrew her allegation that the procedures in the ACAS Codes had not been complied with and confirmed that she was not seeking an uplift to compensation in this respect.
25. The claimant was suspended on 13 January 2022 and dismissed by a letter sent on 25 March 2022. On 30 March, she appealed the decision to dismiss and the appeal hearing was held on 3 May 2022. The appeal outcome was communicated on 6 June 2022. The claimant made her first job application on 18 April 2022 (p. 114). She applied for 15 jobs in total over the remainder of that year.
26. In addition to applying for permanent positions, the claimant procured freelance work.
27. On 23 May 2022 the claimant started doing freelance work for a golf club at an hourly rate. She submitted her first invoice on 1 June 2022.
28. On 1 June 2022, the claimant was appointed Clerk to the Governors of the Wellesley House trust, part-time and on a self-employed basis for which she was paid £12,000 per year.
29. From 1 August 2022 the claimant was employed as Finance Officer for the golf club, working 26 hours per week on a salary of £15,000. She continued

to make job applications to try to procure a higher paying position and from 28 November 2022 she obtained another job and was employed as a part time Finance Assistant for a holiday home company on a salary of £28,000 per year and ceased her employment with the golf club.

30. She currently works 25 hours per week for the holiday home company, which enables her to continue with her other freelance work (as Clerk to the Governors and for another charity called Hazelbank). The claimant set out in the spreadsheets her income from all these sources, which amounts in total to slightly over £38,000 a year (gross).
31. The claimant has had limited time to search for other jobs, whilst working in her current roles and learning a new accounting system for her job. Her current workload is nearly full time (about 35 hours per week). However, she has continued to receive email notifications from 'Indeed', a job listings website about possible job opportunities and so has been looking for better paid opportunities for which she could apply. She got her current employment through 'Indeed'. As well as 'Indeed', she also searched through NAG (a Kent recruitment agency), Reed and Facebook (for local positions). Since she took the job with the holiday home company, she has not seen a full time job advertised within a reasonable travelling distance, for which she is qualified, in which she would earn more than her current income.
32. There are only two prep schools with Bursar's positions within 30 minutes drive. These were not recruiting and no jobs identical to her previous job have arisen (and may never arise). She is not familiar with the accounting or reporting systems used in State schools. Her current combination of roles brings in over £38,000 per year, which is a good salary for the area. A local job at a managerial grade would pay less than this.
33. The claimant lives in Thanet, which is a small place with limited well-paying employment opportunities. She gave evidence that she was prepared to travel 30 minutes to work. She was not cross-examined about any online employment opportunities, and I heard no evidence about whether any were available. She said that she had bought a dog and wanted to be able to get home to let it out during her lunch hour. But she did say that if she found a job within a 30-minute travel time and could not get home in her lunch hour, she would ask her husband or son to help out with the dog, so this would not prevent her taking the job.
34. The claimant has a Master of AAT (Association of Accounting Technicians) qualification but does not have chartered or certified accountancy qualifications, limiting the range of accountancy jobs she can get.
35. The claimant was summarily dismissed and not given a reference. She noted in her evidence her concern about the difficulty of applying for jobs with employers who would make telephone reference enquiries of the respondents (where it was common knowledge she had been summarily dismissed).
36. The disciplinary and appeal process (which was very drawn out, lasting 20 weeks) was difficult for the claimant and understandably caused her

anxiety, for which she was prescribed medication. She was reducing the dosage as a prelude to coming off the medication on the date of this hearing. She needed to build up her confidence again and also needed to find a job that did not require a reference. The job for the golf club suited her in these respects. When she applied for the job for the holiday company she was able to provide references from the golf club and charity trustees without having to approach the respondents. The claimant said she had never asked the respondents for a reference. On the other hand, at no point during this hearing was it put to her on behalf of the respondents that they would have been prepared to offer her one (even one limited to factual matters setting out dates of employment and job title).

37. The claimant gave evidence that her confidence has taken such a knock she was not sure whether or not she would be able to do her previous role again, although working has helped her build up her confidence. And she was clear she would apply for a role like her previous role if one came up.
38. The note for the remedies hearing sets out the claimant's ongoing loss until the end of 2028, when she would be 62 years old. The statutory cap would apply to limit the loss claimed. The claimant did not deal with her anticipated retirement age in her witness statement. The respondents' representative did not cross-examine the claimant on when she might retire or on any other matters which might cause her to cease work. I note that even if the claimant was to choose to retire at 60, her loss would still exceed the statutory cap.
39. The respondents' principal submissions were that the claimant had not done enough to mitigate her losses. They said she should have been prepared to travel further than a 30-minute journey from her home. They also said she should not have been limited in her job search by the fact she had chosen to buy a dog.
40. The claimant's counsel submitted that the claimant had done everything possible to find an equally well paying job but that it was not possible, given the claimant's age and lack of suitable jobs in her area. He said that in the circumstances she had made reasonable efforts to search for work and mitigate her loss. He also submitted that her loss was likely to continue into the future. She had been assiduous in looking for a better-paying job which suited her experience and qualifications within a reasonable distance and had not found one. Given the local market conditions in Thanet and thereabouts, she had been paid well as a Bursar. She could not get another job in the education sector if one did arise without a reference and she was not on good terms with the respondents who had not offered her a reference. When aged 56 it is harder to find well-paid stable employment and it is likely the claimant will continue to struggle despite all her efforts.
41. The burden of proof is on the respondents to show that the claimant failed to make reasonable efforts to mitigate her loss. I find that they did not show on the balance of probabilities that the claimant unreasonably failed to mitigate. It is reasonable that she should choose not to commute more than an hour each day. She accepted that if she found a suitable job within that travel time, she would apply for it and make arrangements for her dog. I accept the claimant's (unchallenged) evidence that the job market in and around Thanet is difficult and that there were no other better-paid jobs she

was qualified to do for which she could have applied. She has shown that she started trying to mitigate even before her appeal was heard and she is now working almost full time. I also accept the claimant's evidence about the difficulties in obtaining work, given the lack of reference and I find on the balance of probabilities, the respondents would not offer her a reference (given their failure to offer one to date). She would be unable to get a Bursar's job, or similar, without one.

42. I find that, given the location, and as a suitable job has not arisen in the last year, a better paid job is unlikely to arise within the next few years. I also find on the balance of probabilities that, even if a vacancy did arise, the claimant would be unlikely to be offered it, given the knock to her confidence, her particular accountancy qualifications and experience, the lack of a reference and her age.
43. I find that, had she not been dismissed, the claimant would have continued working for the respondents until at least age 60, given the unchallenged submissions on this point. I therefore find she has ongoing loss until age 60, by which point the statutory cap of 52 weeks' gross pay would apply to limit her compensation in any event.
44. For the reasons set out above, I accept the claimant's figures for basic pay and for loss of pension, lunch and life assurance benefits.
45. The claimant's ongoing weekly loss is therefore £789.76 (a week's pay) + £103.98 (a week's pension contributions) + £29.12 (weekly lunch benefit on school days) + £5.59 (a week's life assurance) = £928.45. Her income for 2024 is likely to be the same as the previous year (£652.92/week). Her ongoing weekly loss after mitigation is therefore £275.53.
46. I am awarding the claimant £500 in respect of the loss of her statutory rights.
47. I am awarding the claimant £54,218.04 for unfair dismissal compensatory award. The attached table shows the compensatory award calculation, setting out the claimant's past and future loss of earnings and benefits. I accept Mr Ahmed's unchallenged evidence that the ACAS Code was complied with and I make no adjustment in this respect. The respondents did not make any representations in respect of contributory fault or *Polkey* and I have made no adjustments for those matters.

#### **Failure to provide statutory employment particulars**

48. The parties agreed the claimant had not been given a written statement of terms as required by section 1 Employment Rights Act 1996 ("ERA"). Where the claimant has brought other claims and I have found for her (as I have) I must make an award of two weeks' pay unless it would be unjust or inequitable to do so and may if I consider it just and equitable in the circumstances make an award for four weeks' pay (sub-sections 38(3) Employment Act 2002). A week's pay for these purposes is capped at the statutory amount and the weekly limit at the relevant time was £544. Despite the claimant's submissions to the contrary, I do not find that there were any aggravating factors making it just and equitable to award more than two weeks' pay. I therefore award the claimant two weeks' pay amounting to £1,088.

**Correct respondent**

49. The case management orders from the preliminary hearing on 15 February 2023 record that the respondents at that hearing said that the correct employer was R2, not R1. This is also what the payslips in the bundle indicate. There are other documents in the bundle (pp. 103, 105, 106, 108, 110) which show that the claimant's wages were paid by R1. At this hearing Mr Aftab Ahmed (Chief Information Officer for R1) on behalf of the respondents told the tribunal through their representative that the order should be made against R1. The claimant's position was that she thought she was employed by R2 but given the lack of certainty, she requested that the judgment be made against both respondents. Given the respondent's change of position between the two hearings about who the correct respondent is and the disagreement in the documentary evidence, the tribunal finds that the claimant was jointly employed by both respondents.

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Employment Judge **Carney**

**7 June 2023**

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Date **03 Jul 2023**

REASONS SENT TO THE PARTIES ON

FOR THE TRIBUNAL OFFICE



**Mrs Barbara Parsons v (1) Alpha Schools (Holdings) Ltd and (2) Wellesley House School Limited. Case number: 2302340/2022**

**Compensatory award calculation**

*Loss from end of notice period to date of liability hearing (15.02.2023)*

	£
Net pay	5,078.16
Pension	668.59
Lunch benefit	184.00
Life assurance	35.94

*Ongoing loss from liability hearing to 31 December 2023*

	£
Net pay	36,889.69
Pension	4,856.90
Lunch benefit	1,104.00
Life assurance	261.11

	£
Mitigation	-32,121.66
<b>Sub-total</b>	<b>16,956.73</b>

*Ongoing loss until age 60*

	£
Per week	275.53
<b>Sub-total</b>	<b>42,156.09</b>

*Loss of statutory rights*

	£
Statutory rights	500.00

**Total loss: £59,612.82**

Statutory cap applies (52 weeks' gross pay)

**TOTAL COMPENSATORY AWARD: £54,218.04**