EMPLOYMENT TRIBUNALS

Claimant: Ms C Rautureau
Respondent: Lycee Francais Charles De Gaulle

Judgment

1) The Claimant's application dated 27 February 2024 for reconsideration of the Tribunal's judgment dated 7 February 2024, and sent to the parties on 13 February 2024, following an in-person hearing between 16 and 20 October 2023 and deliberations in Chambers on 1 February 2024, is rejected for the reasons set out below.

Reasons

2) Whilst the Claimant has requested that their application for reconsideration should be considered at a hearing the Respondent has stated that the application should be considered on the papers alone. Having considered the application I have decided in accordance with Rule 72 (2) of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 (the Rules) that a hearing is not necessary in the interests of justice. I have therefore considered and determined the application on the papers.

3) I have considered the application by the Claimant dated 27 February 2024 for reconsideration of the Tribunal's judgment dated 7 February 2024, and sent to the parties on 13 February 2024, following an in-person hearing between 16 and 20 October 2023 and deliberations in Chambers on 1 February 2024, and have rejected it for the following reasons.

4) I have considered the request in accordance with the provisions set out in Rule 70 which provide that reconsideration is only appropriate where it is necessary in the interests of justice and under Rule 72 there is a reasonable prospect of the original decision being varied or revoked.

5) Reconsiderations are limited exceptions to the general rule that employment Tribunal decisions should not be reopened and relitigated. It is not a method by which a disappointed party to proceedings can get a second bite of the cherry.

6) Reconsideration is not intended to provide parties with the opportunity of a rehearing at which the same evidence can be rehearsed with different emphasis, or further evidence adduced, which was available before.

7) A Tribunal dealing with the question of reconsideration must seek to give effect to the overriding objective to deal with cases 'fairly and justly' — Rule 2.

8) In considering the application regard needs to be given to not only the interests of the party seeking the reconsideration, but also to the interests of the other party to the litigation and to the public interest requirement that there should, so far as possible, be finality of litigation.

Discussion and conclusions

9) Whilst it is acknowledged that paragraphs 192 to 194 of the judgment in themselves contain limited reasoning or basis for the decision to apply a Polkey reduction of 65% to the compensatory award and under paragraph 195 of the judgment to apply a further 50% reduction for the Claimant's contributory conduct he nevertheless considers that the findings of fact and conclusions are adequately documented elsewhere in the judgment to support these findings.

Polkey

10) At paragraph 170 the Tribunal found that the Respondent had genuine grounds for a concern that the Claimant's conduct had potentially endangered the safety of pupils in her care.

11) Whilst the Tribunal found that the Claimant's final written warning dated 3 May 2022 was manifestly unfair we nevertheless considered that it constitutes evidence that the Claimant had been placed on notice as to the Respondent's concern regarding any breach of her duty of vigilance involving endangerment of students.

12) At paragraph 187 the Tribunal distinguished the Claimant's situation of letting pupils leave before the end of the school day outside the school premises from incidents of other teachers allowing pupils to leave before the bell on school premises and/or not at the end of the school day. It is apparent from this finding that the Tribunal found that the Respondent had legitimate and serious concerns regarding the Claimant's conduct.

13) At paragraph 195 the Tribunal found that it should have been obvious to the Claimant that whatever the ambiguity regarding the school's open/closed status on the afternoon of 10 May 2022, and the approach which should have been taken in the event that pupils returned prior to the end of the school day from an external event, that her action of leaving pupils unattended, and to their own devices, prior to the end of school bell was contrary to established, safe and best practice. We accept the Respondent's evidence that a distinction existed between pupils being let out of class early during the school

day, and whilst on the school premises, from pupils being left unattended outside the school when there would have been a potential issue regarding the legal liability of the school in the event of a pupil being involved in an accident and a question as to whether the school's insurance policy would thereby be compromised.

14) As such the Tribunal considers that adequate reasons were provided to justify the 65% reduction of the compensatory award pursuant to Polkey. Notwithstanding the above, given the acknowledgement that paragraphs 192 to 194 of the judgment contained relatively limited reasons and basis for the decision to apply the Polkey reduction, the Tribunal refers to the following factors which were within its mind in reaching this conclusion but have not necessarily been expressly set out within the Tribunal's written judgment.

    a) That teachers have a paramount obligation to ensure the safety of pupils within their care particularly when those pupils are off the school premises during the school day.

    b) That in circumstances where uncertainty existed regarding the arrangements for the departure of returning pupils prior to the end of the school day, and given the specific circumstances which existed on 10 May 2022, the Claimant should have erred on the side of caution by staying with her pupils whether outside or inside the school premises and/or seeking guidance from other staff within the vicinity as to the appropriate procedure to follow. She did neither.

Contributory conduct

15) There is inevitably a degree of overlap between the Tribunal's findings on Polkey and contributory conduct. As such there is no need for me to repeat the factors taken into account in making the Polkey reduction. However, the Tribunal placed particular emphasis on the following factors.

    a) It should have been obvious to the Claimant that whatever the ambiguity regarding the school's open/closed status on the afternoon of 10 May 2022, and the approach which should have been taken in the event that pupils returned prior to the end of the school day from an external event, that her action of leaving pupils unattended, and to their own devices, prior to the end of school bell was contrary to established, safe and best practice.

    b) A distinction existed between pupils being let out of class early during the school day, and whilst on the school premises, from pupils being left unattended outside the school.

16) As such the Tribunal considers that adequate reasons were provided to justify the further 50% reduction of the compensatory award for contributory conduct. Notwithstanding the above, given the acknowledgement that paragraph 195 of the judgment contained relatively limited reasons and basis for the decision to apply the contributory conduct reduction, the Tribunal refers to the following factors which were within its mind in reaching this conclusion but have not necessarily been expressly set out within the Tribunal's written

judgment.

a) That teachers have a paramount obligation to ensure the safety of pupils within their care particularly when those pupils are off the school premises during the school day.

b) That in circumstances where uncertainty existed regarding the arrangements for the departure of returning pupils prior to the end of the school day, and given the specific circumstances which existed on 10 May 2022, the Claimant should have erred on the side of caution by staying with her pupils whether outside or inside the school premises and/or seeking guidance from other staff within the vicinity as to the appropriate procedure to follow. She did neither.

Overlap and possible duplication of the deductions under Polkey and for contributory conduct

17) As a matter of law it is open to a Tribunal in principle to make both a Polkey deduction and a contributory fault deduction. That principle was established in Rao v Civil Aviation Authority [1994] ICR 495. In each case the question which must be asked is whether it is appropriate to do so on the facts of the particular case.

18) The Tribunal considered whether it was appropriate to make both deductions. The factors relied upon for the Polkey deduction and the contributory fault deduction overlap significantly. We took account of whether there was therefore a risk of double-counting with the Claimant being penalised twice for the same conduct. We nevertheless considered that the overall deduction in applying a 65% reduction under Polkey and a further 50% reduction for the Claimant's contributory conduct, was appropriate given the seriousness of the factors which were taken into account under both headings.

19) Whilst it would have been possible for the Tribunal to make a single higher deduction, but at the same overall level, under either Polkey or contributory conduct, had we done so the same aggregate percentage deduction would have applied. In assessing this question the Tribunal considered what overall deduction would be appropriate and then made appropriate apportionments between the two categories to achieve that overall figure.

Final conclusions

20) I do not consider that a further hearing is required given that under Rule 72 I do not consider there is a reasonable prospect of the original determinations being varied or revoked. However, given that the reconsideration has supplied without a hearing be parties are given a period of 14 days from this judgment being sent to them to make any further written representations in accordance with the rule 72 (2). This would include the claimant having a further opportunity to set out why, notwithstanding the Employment Judge's written determination, that a hearing should take place to consider the reconsideration application.

21) Further, on the basis of this judgment the parties are asked to explore whether a settlement can be reached without recourse to a remedies hearing. If the parties should require a remedies hearing they should notify the Tribunal accordingly with a list of a mutually convenient dates and an indication as to whether they would wish this hearing to take place in person or via CVP.

Employment Judge Nicolle

Dated: **20 March 2024**

Sent to the parties on:

4 April 2024

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For the Tribunal Office