



EMPLOYMENT TRIBUNALS

Claimant: Ms Malabver-Goulbourne
Respondent: Arbor Academy Trust
Heard at: East London Hearing Centre
On: 16 January 2024
Before: Employment Judge Jones

Representation:

Claimant: Ms A Palmer, Counsel
Respondent: Mr M Palmer, Counsel

JUDGMENT having been given to the parties on **16 January 2024** 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

1. This judgment was given in court on 16 January 2024. These Reasons are provided on the request of the Respondent.
2. The Claimant was successful in her complaint of unfair dismissal. This was her remedy hearing. The Claimant sought a basic award and compensatory award. Although she had initially claimed wrongful dismissal, the Claimant withdrew that complaint at the start of the liability hearing on 3 October 2023. This is recorded in paragraph 1 of the written Reasons for the liability judgment.
3. The Tribunal apologises to the parties for the delay in the promulgation of these reasons. This was due to pressure of work on the judge.
4. In this remedy hearing, the Tribunal heard from the Claimant in evidence and considered the documents presented to it.

Law

5. The Tribunal had submissions from both parties. It considered the following law in reaching a judgment on the remedy to award the claimant for her successful complaint of unfair dismissal.
6. At the start of the remedy hearing, the Respondent submitted that even though the Claimant proposed to take complaint of wrongful dismissal elsewhere, the Tribunal ought to take into account the period of time her notice pay would have covered. Respondent's Counsel referred to the Tribunal making '*statutory enquiry*' to look at all the losses sustained by the Claimant, arising from her dismissal. The Claimant submitted that the Tribunal should award the Claimant a remedy for her successful complaint of unfair dismissal only, as that is the only claim before the court. The Respondent was unable to provide any caselaw that required the Tribunal to consider the wrongful dismissal claim and remedy, especially when that claim had already been withdrawn. The Claimant wished the Tribunal to begin calculating the remedy from 1 January 2023, at the end of her notional period of notice, rather than on 6 May 2022, as the Respondent submitted.
7. The remedies a tribunal can award in a successful complaint of unfair dismissal are as follows:
8. In a successful unfair dismissal claim where it is agreed by all parties that neither reinstatement nor re-engagement would be an appropriate or possible remedy for the claimant, any award by the tribunal will be monetary. A remedy award in an unfair dismissal case is made up of two main elements: a basic award and a compensatory award.

Basic Award

9. This is set out in **Section 119 of the Employment Rights Act (ERA)** and is calculated using a formula that relates to the age and length of service of the successful claimant. It is calculated in units of a week's pay up to a ceiling. If the amount of a claimant's week's pay exceeded that ceiling, then the amount of the award is restricted to it. The Tribunal can reduce the basic award in certain circumstances where it is expressly permitted by statute.
10. The parameters of the compensatory award are set out in **Section 123 of the ERA**. It is intended to compensate the claimant for losses arising out of the dismissal, so far as that loss is attributable to action taken by the respondent. It is not to be used to punish the respondent. Such losses as can be compensated would include not just wages lost due to being unfairly dismissed but also any additional benefits attached to the employment that had been lost, such as pension contributions. The compensatory award can take into account losses extending into the future. The Tribunal has to rely on its relevant findings of fact in order to determine how much and for how long it would be just to award to the claimant compensation for such future losses.

Mitigation of Loss

11. The claimant is under a duty to mitigate her loss. The tribunal would need to consider whether this has been done in deciding which losses will be compensated. This refers in particular to the duty on the claimant to make diligent searches for and secure alternative employment following dismissal.

Facts

12. The Claimant began working at Northwold Primary School as a teacher in 2005. She was promoted to Assistant Headteacher with responsibility for Curriculum and Assessments in September 2009. She was next promoted to the post of Deputy Headteacher in the academic year 2013-2014 with continued responsibility for Curriculum and Assessments. The Claimant became the school's Headteacher in September 2017. The school joined the Respondent Trust in January 2020.
13. It is this Tribunal's judgment that the Claimant was unfairly dismissed from the post of Headteacher on 5 May 2022. The Claimant had tapped her son on the back of his hand, after school, to get his attention in order to explain to him the dangers of playing with hand sanitizer, in circumstances where he had failed to heed her when she told him on an earlier occasion of the dangers of doing so.
14. When the Claimant was dismissed, the Respondent also referred her to the Disclosure and Barring Service (DBS) and the Teacher's Regulation Agency (TRA). In addition, a reference provided by the Respondent stated that the Claimant had been dismissed for gross misconduct. Following her dismissal, the Claimant registered with three teaching agencies and made enquiries of others. She informed them of the circumstances of the termination of her employment and of the referrals to the DBS and TRA, who were both conducting their own investigations. The Claimant was advised that, in those circumstances, it would be difficult for her to find work, even though she had many years of teaching experience and had been in a position of seniority when her employment was terminated. The Claimant was only able to secure one day's teaching in 2022. The Claimant lived off her savings at that time and did not claim any state benefits.
15. On 25 April 2023, the Claimant was informed by the DBS that following the conclusion of their investigation, their decision was that her name would not be included in the barred lists. This was a relief to her and led her to chase up the agencies with whom she had registered. Eight days later and on 5 May 2023, the Claimant started a temporary supply teaching job at a school in Edmonton. The Claimant remained at that school until the end of the summer term in late July 2023 and then resumed there for the following autumn term, from September 2023. The Claimant was paid at a lower rate at this job than her pay as Headteacher for the Respondent. It increased slightly for the autumn term beginning September 2023 as she was no longer being paid under an umbrella company. Although she was enrolled in a pension scheme, it was not as favourable as that with the Respondent.

16. At the end of the liability hearing, on 6 October 2023, the Tribunal gave its judgment in open court that the Claimant had been unfairly dismissed and that the decision that she had committed gross misconduct was not based on reasonable grounds. Later, in November the Claimant was informed that the TRA had decided to close its investigation. In its decision letter to the Claimant, it stated that *'the alleged conduct, at its highest, would not amount to unacceptable professional conduct, conduct that may bring the teaching profession into disrepute or conviction, at any time, of a relevant offence...'*
17. The Claimant informed the school at which she was supply teaching and the agency of the decisions of the TRA and of the Employment Tribunal. She was offered and accepted further supply teaching work for the rest of the academic year.
18. In this hearing, the Claimant was challenged about why she did not immediately apply for and secure Headship roles after November 2023. The Tribunal accepts her evidence that her dismissal caused her to lose her self-confidence and to experience mental health problems. The Claimant had 10 sessions of talk therapy with Improving Access to Psychological Therapies (IAPT) and once that ended had a further 5 sessions with another provider.
19. However, the Tribunal finds it likely that at the same time, the Claimant has made herself available for work since her dismissal and that she doubled those efforts following the Tribunal judgment that she had been unfairly dismissed. It is highly unlikely that the Claimant could have *'walked into'* a Headteacher role as soon as the judgment was issued. The Claimant finished the academic year at the school where she was a supply teacher. She hoped that the Headteacher at that school would be a referee for her so that she could be in with a chance of obtaining either a class teacher or Assistant Headteacher post from September 2024. She would also need a reference from the Respondent as most schools would require two references.
20. The Claimant has been successful in her case but that does not detract from the fact that she has been out of school management since she was suspended in January 2022. It is unlikely that she would move from a supply teacher post back to a senior leader post. It is more likely that she will have to rebuild her career and that she can expect to be in a leadership position in a few years' time. The Tribunal had no doubt, after listening to the Claimant's evidence that she continues to be committed to teaching and that she will be back in a senior leadership role as soon as possible but that this was likely to take more than one further academic year.
21. At the time of the judgment and even up to the date of this hearing there were no senior leadership positions at the school where the Claimant is a supply teacher, but it is hoped that should there be a role by September 2024, the Claimant would be considered as she is now known to the school. Vacancies at schools are usually advertised at the end of an academic year and it would be unusual to see any attractive vacancies during the school year. The Claimant's evidence was that she was not aware of anyone in senior leadership in that school leaving or retiring soon. She continued to scour the Times Educational Supplement and a range of other places to see

if any jobs come up that she can apply for. She has also worked on regaining her confidence to ensure that she can be the best leader possible.

22. The Claimant acknowledged that there have been adverts for deputy and headship roles in London schools since her dismissal, but she believed that those posts were usually filled with internal candidates as schools worked to retain their talent and reward loyalty. She has informed her agencies that she is willing to consider roles in West London – in Brent and Hackney – and in the interim, she continues to work through the agency. The Claimant hoped that by September 2024, she would be directly employed either at the school where she presently works as a supply teacher or elsewhere as a Class Teacher. She also hoped to be able to progress to an Assistant Headteacher role from September 2025 and a deputy Headship from September 2026.
23. Lastly, the Claimant obtained an MA in Human Resources while working at the Respondent. When she was dismissed, the Claimant did consider changing careers and looked at roles in HR. This would have meant starting at the bottom because although she had the degree she had never worked in HR. She would need to start at a junior level. By contrast, the Claimant had been teaching for over 25 years and therefore decided to continue to pursue work in that field.

Judgment

24. It is this Tribunal's judgment that the Claimant is an experienced and committed teacher and that it is appropriate and reasonable for her to continue to seek work in that sector.
25. The Claimant was unfairly dismissed. At the time of her dismissal, the Claimant was a Headteacher and therefore someone with responsibility for safeguarding in the school. It is unlikely that even with a judgment of unfair dismissal that she would have been able to walk back into a Headteacher or other senior leadership role straightaway. She was dismissed on 5 May 2022. It was not until October 2023 that she had a judgment from an employment tribunal that her dismissal had been unfair and in November 2023 that she received the written judgment and had been cleared by the TRA and DBS. During that time the Respondent had given the Claimant a written reference referring to the reason for the termination of her employment being gross misconduct. The Claimant had therefore had 18 months where she had been unable to go after senior leadership roles in schools. Yet within 5 days of the judgment, she was able to secure a supply teacher role which she has managed to keep to the remedy hearing date.
26. It is this Tribunal's judgment that this Claimant is committed to teaching and that she wishes to get back to a senior teaching role as soon as that is possible. The Claimant has worked since she received the judgment. She was unable to work in teaching before that, given the circumstances of her dismissal. It is this Tribunal's judgment that the Claimant has mitigated her loss and that she has done all she can to secure employment as a teacher and will progress to senior leadership either at the present school or any school where she is given the opportunity. As the Respondent submitted –

the Claimant continues to have great enthusiasm for the education sector – and it is likely that she will secure senior leadership roles, if one becomes available, once she is able to do so. It is likely that this might take a year or two because, although those jobs are regularly advertised, the Claimant has been away from senior leadership for some time and there will be other candidates with more recent experience who would be preferable, until she has obtained recent experience from other jobs in the interim.

27. The Claimant has mitigated her loss. The Respondent submitted that the Claimant should secure a senior leadership role from August 2024. Although the Claimant did not agree, she agreed to limit her claim for loss of earnings to the period 1 January 2023 – 31 August 2024.
28. The Respondent indicated that it would ensure that any reference that it provided post receipt of the Tribunal's judgment, will take account of it and that it would be reflected in its wording. The Respondent's HR manager was present in court, and it was confirmed that she understood and would take the message back to the Trust. The Claimant worked for the Trust for many years in a variety of posts and this could also be reflected in any reference in order to assist the Claimant in getting her career back on track.
29. The Tribunal had indicated at the end of the liability hearing when it gave judgment that its judgment was that the Claimant had contributed 20% to the situation that led to her dismissal and therefore her remedy will need to be reduced by 20%. The law on contributory fault and that decision is set out in the written liability judgment.
30. The Tribunal adjourned to allow the parties to compare their figures and agree them. Once they resumed the parties gave the Tribunal the agreed figures which are set out below.

Remedy

31. The Claimant's date of birth is 29 August 1977.
32. The Claimant began her employment on 1 May 2005, and it terminated on 5 May 2022. The Claimant began supply teaching on 5 May 2023.

Basic Award

33. The Claimant is entitled to a Basic Award that was agreed between the parties of **£8,450.80** (18.5 weeks x 571 = £10,563.50 less 20% = £2,112.70 = £8,450.80).
34. If the Claimant had not been summarily dismissed and had instead been dismissed on notice her notice period would have been up to 31 December 2022.
35. The Claimant asked for compensation for loss of wages between 1 January 2023 – 31 August 2024, less the amounts earned from supply teaching in that period and reduced by 20% for contributory fault.

Compensatory Award

36. The calculations were done in two periods to take into account school academic years. Period 1 = 1 January 2023 – 31 August 2023, and Period 2 = 1 September 2023 – 16 January 2024 (remedy hearing) and continuing on to 31 August 2024, being the end of the academic year.

37. As stated above, it is this Tribunal's judgment that the Claimant has mitigated her loss and that she is entitled to a remedy from 1 January 2023 to the end of the academic year on 31 August 2024. The Claimant, after receipt of her liability and remedy judgments, after counselling and taking the time since her judgments to rebuild her confidence; is likely to be able to secure a job taking her back up to a senior leadership position from September 2024.

Losses in period 1 = 34.7 weeks x £1,623.55 = £56,360.22
Losses in period 2 = 19.7 weeks x £1,737.04 = £34,244.50
£90,604.72

Less net earnings from supply teaching in mitigation = £18,348.38
Less estimated earnings from the period 1 - 16 January 2024 = 2 weeks @
£816.19 = £1,632.38, and
Less credit for 3% pension contributions = £599.42

£18,348.38 + £1,632.38 + £599.42 = £20,580.18.
£90,604.72 - £20,580.18 = **£70,024.54**

38. The Claimant is entitled to £500 for loss of statutory rights = **£500.00**

39. The sum for the losses continuing to 31 August 2024 = 32.6 weeks between 16 January and 31 August 2024 = £1,185.82 x 32.6 = £38,623.98.

40. The Compensatory Award calculations are therefore £70,024.54 + £38,623.98 = **£109,148.51**.

41. This sum has to be reduced by 20% for contribution = £109,148.51 x 20% = £21,829.70.

42. £109,148.51 - £21,829.70 = £87,318.81.

43. This sum has to be grossed up to ensure that the Claimant receives the sum of £87,318.81 after tax. The grossed-up figure is £145,003.00. This exceeds the statutory cap of a year's wages. The Tribunal has to apply the cap of £93,878.00 which was the Claimant's annual wage (gross salary + Employer's pension contributions).

44. The Claimant is therefore awarded a Basic Award of **£8,450.80** and a Compensatory Award of **£93,878.00** as her total compensation for her successful complaint of unfair dismissal.

45. The Respondent is ordered to pay the Claimant the total sum of **£102,328.80** as her remedy judgment.

Employment Judge Jones
Dated: 4 June 2024