



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Fahey

**Respondent:** Romero Catholic Academy Trust

**Heard at:** Manchester Employment Tribunal

**On:** 16 & 17 January 2025

**Before:** Employment Judge Rhodes  
Dr B Tirohl  
Ms K Fulton

## Representation

Claimant: Ms Margetts (counsel)

Respondent: Ms Quigley (counsel)

# RESERVED JUDGMENT

The claimant's complaint of less favourable treatment on the ground of part-time status is not well-founded and is dismissed.

# REASONS

## Introduction and issues

1. The claimant complained that he had been subjected to a detriment contrary to Regulation 5(1) of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.
2. The issues which the Tribunal had to decide had been identified at a preliminary hearing before Judge Johnson on 20 May 2024, save that the claimant no longer relied on Lindsay Allen as his comparator. Instead, he relied upon himself (in his previous, full-time role with the respondent) as his comparator.
3. The principal factual determination for the Tribunal was: in the academic years 2021/22 and 2022/23, did the claimant continue to carry out 100% of the teaching and learning responsibility ("TLR") duties that he

had performed when he worked full-time, notwithstanding that his TLR allowance had reduced to 60% of full-time following an agreed reduction in his contracted hours (to 60% of full-time)?

4. We heard evidence from the claimant, and from Michael Wright (Headteacher) and Beverley Bury (Assistant Headteacher) on behalf of the respondent.
5. References in this judgment to page numbers are references to pages in the agreed bundle (unless otherwise stated).

### **Relevant law**

6. The following are the relevant extracts from the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ("the Regulations).

The right not to be discriminated against is contained in Regulation 5:

*(1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker—  
(a) as regards the terms of his contract; or  
(b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.*

*(2) The right conferred by paragraph (1) applies only if—  
(a) the treatment is on the ground that the worker is a part-time worker, and  
(b) the treatment is not justified on objective grounds.*

*(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro rata principle shall be applied unless it is inappropriate.*

The definition of the "pro rata principle" is found in Regulations 1(2) and 1(3):

*(2) In these Regulations —  
"pro rata principle" means that where a comparable full-time worker receives or is entitled to receive pay or any other benefit, a part-time worker is to receive or be entitled to receive not less than the proportion of that pay or other benefit that the number of his weekly hours bears to the number of weekly hours of the comparable full-time worker;*

*(3) In the definition of the pro rata principle and in regulations 3 and 4 "weekly hours" means the number of hours a worker is required to work under his contract of employment in a week in which he has no absences from work and does not work any overtime or, where the number of such hours varies according to a cycle, the average number of such hours."*

Comparators are dealt with in Regulations 2(4) and 3(1):

*(4) A full-time worker is a comparable full-time worker in relation to a part-time worker if, at the time when the treatment that is alleged to be less favourable to*

*the part-time worker takes place—*

*(a) both workers are—*

*(i) employed by the same employer under the same type of contract, and  
(ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; and*

*(b) the full-time worker works or is based at the same establishment as the part-time worker or, where there is no full-time worker working or based at that establishment who satisfies the requirements of sub-paragraph (a), works or is based at a different establishment and satisfies those requirements.*

**3.—***(1) This regulation applies to a worker who—*

*(a) was identifiable as a full-time worker in accordance with regulation 2(1); and  
(b) following a termination or variation of his contract, continues to work under a new or varied contract, whether of the same type or not, that requires him to work for a number of weekly hours that is lower than the number he was required to work immediately before the termination or variation.*

*(2) Notwithstanding regulation 2(4), regulation 5 shall apply to a worker to whom this regulation applies as if he were a part-time worker and as if there were a comparable full-time worker employed under the terms that applied to him immediately before the variation or termination.*

*(3) The fact that this regulation applies to a worker does not affect any right he may have under these Regulations by virtue of regulation 2(4).*

The respondent accepted that the claimant can be his own comparator for the purposes of Regulation 3.

The burden of proof is on the claimant to establish less favourable treatment.

### **Findings of fact**

7. The respondent is a Roman Catholic academy school. At all relevant times, the claimant's role was a Lead Teacher within the respondent's Design and Technology ("D&T") Department. The claimant remains employed by the respondent.
8. During the academic years in question (2021/22 and 2022/23), the claimant's hours reduced to 60% of full-time following a flexible working application. This application was initially refused but subsequently granted after the recruitment of an Early Careers Teacher (ECT), Mr Heyworth, with whom the claimant jointly taught a year 11 D&T class in 2021/22 and a year 10 D&T class in 2022/23.

### **TLR payment**

9. The claimant's role attracted a TLR payment (level 2.1) for additional responsibilities, pursuant to the School Teachers Pay and Conditions ("STPD"). After the claimant reduced to 60% of full-time hours, his TLR payment reduced in proportion. The claimant's case, in a nutshell, was that he was still performing 100% (or, at least, more than 60%) of his TLR duties but only receiving 60% of the TLR payment.
10. The relevant section of STPD (2021), at pages 176 and 178, defines TLR as follows:

*A sustained additional responsibility for the purpose of ensuring the continued delivery of high-quality teaching and learning for which the teacher is made accountable.*

*The relevant body **must** be satisfied that the teacher's duties include a significant additional responsibility that is **not required of all classroom teachers and that***

- (a) is focused on teaching and learning*
- (b) requires the exercise of a teacher's professional skills and judgement*
- (c) requires the teacher to lead, manage, develop a subject or curriculum area; or to lead and manage pupil development across the curriculum*
- (d) has an impact on the educational progress of pupils other than the teacher's assigned classes or groups; and*
- (e) involves leading, developing and enhancing the teaching practice of other staff.*

11. It is worth noting the words and phrases we have emphasised in bold in the above definition. It is clear that TLR duties must go beyond what is required of a classroom teacher and must have an impact on the wider development of the curriculum, student attainment and staff development.

12. The parties had agreed (pages 84 to 95) that TLR involves the following duties:

- (i) To support the curriculum leader in maintaining the highest standards of student achievement within the curriculum area and to monitor and support student progress.
- (ii) To develop and enhance the teaching practice of others.
- (iii) To assist the curriculum leader in the provision of an appropriately broad, balanced, relevant and well-sequenced curriculum for students studying in the department in accordance with the aims of the school and the policies determined by the Governing Body and Headteacher.
- (iv) To support the curriculum leader in the managing and developing of the subject/curriculum area.
- (v) To help develop the effectiveness of teaching and learning within the department and to enhance the teaching practice of others.
- (vi) To contribute to the school procedures and appraisal for those staff under the line management of the lead teacher.
- (vii) To support the monitoring and evaluation of the department in line with agreed school procedures including evaluation against quality standards and performance criteria.
- (viii) To promote the ethos of teamwork and collaboration.

13. In addition, the claimant contended that the following duties also fell within TLR:

- (i) Meetings with Mr Heyworth, his subject mentor and professional mentor.

- (ii) Departmental meetings.
  - (iii) Producing materials for inspection.
  - (iv) Communication and liaison with parents.
  - (v) Liaising with external agencies.
  - (vi) Promotion of extra-curricular activities.
  - (vii) Health and safety provision, liaison and promotion.
14. The claimant accepted during cross-examination that items (i) to (iv) are among the duties of all classroom teachers. They therefore cannot be TLR for the reason highlighted at paragraph 9 above.
15. We find that items (v) and (vi) could be TLR (depending on context) but that item (vii) does not satisfy the criteria at (a) to (e) of the STPD quoted at paragraph 8 above because it is not focussed on teaching and learning.
16. We also find that activities related to the classes which the claimant shared with Mr Heyworth (including the preparation of materials, marking work, and reporting to and liaising with parents of their shared pupils) are not TLR. These are duties that any classroom teachers would do and they do not have an impact *"on the educational progress of pupils other than the teacher's assigned classes or groups"*.
17. We did not accept the claimant's argument that, for part of the week, the shared classes were not assigned to him because they were assigned to Mr Heyworth. The claimant and Mr Heyworth were jointly responsible for their shared classes. If the claimant was right, the implication would be that any classroom teacher who shares a class with another could seek to claim a TLR payment.
18. The claimant contended that the work he was doing in relation to the classes he shared with Mr Heyworth was directed at supporting Mr Heyworth's development as an ECT, and hence formed part of TLR. However, we did not accept this for the following reasons.
19. The claimant had no formal responsibility for Mr Heyworth's development; rather, that fell to Beverley Bury. The claimant did not arrange to conduct any observations of Mr Heyworth's teaching and there is little or no evidence of the claimant having any meetings or discussions with Mr Heyworth about his development. The emails at pages 557 and 572 which the claimant sent to the parents of his and Mr Heyworth's shared students were said to be examples of 'role model' behaviour for Mr Heyworth to learn from but the claimant did not copy Mr Heyworth into those emails and there is no evidence that he discussed them separately with Mr Heyworth.
20. We also find that attendance at parents' evening is not TLR (to the extent, if at all, that this was even in dispute). This is a duty which all classroom teachers have. We make this point because some of the evidence we heard went to the issue of whether the respondent could require the claimant to attend parents' evenings on his non-working days, which he did not always do in any event. We found this issue to be an irrelevant distraction.

21. We also found the claimant's complaints about room allocation and timetabling, particularly in relation to being timetabled to teach some Religious Studies classes, to be an irrelevant distraction. These were classroom teaching matters, not TLR issues, and were not complaints that were before the Tribunal in any event.

*The claimant as his own comparator*

22. Despite producing a lengthy witness statement, the claimant devoted only a single paragraph to his full-time role (paragraph 12). Even that sole paragraph was very general in nature and made no attempt to quantify how much time in a typical week the claimant would spend on TLR duties when he worked full-time.

23. We therefore had no evidence on which we could even estimate how much time he spent on such duties as a full-time teacher. Without that evidence, the claimant's case was hamstrung because, without knowing how much time was involved in performing full-time TLR duties, we had no frame of reference by which to judge whether he was spending more than 60% of that amount of time while he was working part-time.

24. The respondent accepted the following in respect of the claimant's full-time role:

- (i) He had one hour of timetabled TLR time per week.
- (ii) He undertook TLR work throughout the week and could be asked to do such work on any day.
- (iii) He had TLR responsibilities for Food Technology (in addition to D&T)
- (iv) He had line management responsibilities.
- (v) He had TLR responsibilities for all year groups
- (vi) He assisted with the development of the curriculum at various points for all year groups.
- (vii) His TLR duties varied.

25. In his paragraph 12, the claimant contended for various TLR duties but without providing any (or any specific) details of when the work was done, what it entailed and how much time he spent doing it. Even if we were to accept that all those duties constituted TLR, it does not take us any further with addressing the fundamental difficulty identified above, namely that we have no evidential basis on which to make findings as to how much time per week the claimant spent on TLR when he was full-time.

*The claimant's reduction to 60% of full-time hours*

26. Ms Margetts, on behalf of the claimant, sought to overcome this lack of evidence by pointing out the absence of any letter from the respondent to the claimant confirming that his TLR duties would reduce in line with the

reduction in his TLP payment (the implication being that the claimant was expected to continue with 100% of his TLR duties). Whilst this was a valid criticism of the respondent's record-keeping, we did not accept that the claimant's TLR duties had therefore remained the same, for the following reasons.

27. The principal reason for the claimant's flexible working request (page 162) was to achieve a greater work-life balance. He specifically raised the possibility of a proportion of his TLR duties and payment being reassigned during his non-working days.
28. He was aware from the outset that his TLR payment had been reduced to 60% (page 170).
29. If the claimant's TLR duties had remained at the same level, we would have expected to see evidence that the claimant was frequently carrying out TLR on his non-working days, given that his full-time TLR duties extended over all five days of the week. However, that evidence is totally lacking. The claimant referred us to only four emails that he had sent or received on non-working days over the course of two whole academic years. Of those emails, the claimant accepted in cross-examination that two (pages 357 and 578) were not TLR, as they related to parents' evening and a report of possible phishing, respectively. We find that the other two emails (pages 590 and 616) were not TLR either. The email at page 590 was an IT query about a student's unauthorised access to Microsoft Teams. The one at page 616 was the claimant's response to a contractor chasing payment of an invoice.
30. The claimant argued that this latter email was evidence of his health and safety TLR duties, as the invoice was for maintenance work carried out on a drill. We have already found that health and safety duties are not a TLR duty but, in any event, the claimant's response to the email indicates that he was unaware of the work being carried out which suggested that this was not maintenance work which the claimant had arranged to be carried out.
31. None of the four emails could conceivably amount to TLR but, even if they did, the amount of time that the claimant would have spent dealing with them was negligible over a two-year period.
32. If the claimant had spent any substantial amount of time on TLR during non-working days, he would surely have evidence of this; for example, metadata showing how long the claimant had spent on creating materials on non-working days. We infer from the absence of such evidence that the claimant spent no (or no significant) time working on TLR during non-working days.
33. We also find the following facts which evidence a reduction in the claimant's TLR workload following his reduction to part-time hours.
34. In Summer 2021, the respondent separated Food Technology from D&T. As a consequence of this restructure, another teacher took over TLR responsibilities for Food Technology (for which she received a TLR payment), which responsibilities had previously fallen to the claimant when

he worked full-time. He was therefore left with only D&T TLR responsibilities.

35. The claimant did not have line management responsibilities while he worked part-time (whereas he previously did).
36. The claimant did not have responsibility for the Year 9 curriculum while he worked part-time (whereas he previously did).
37. Even where there was evidence of TLR duties which the claimant undertook following his reduction to part-time, these do not appear to have been extensive. We were taken to evidence relating to various pieces of STEM work which the claimant created on a Teams channel (pages 516 to 522) but this work was done sporadically over the two-year period (every few months or so) and did not go to show that the claimant was spending a disproportionate amount of time doing this.

## **Conclusions**

38. The claimant has not discharged the burden of proof. He has not established less favourable treatment. There was a complete absence of cogent evidence about how much time per week he spent on TLR duties as a full-time employee. We therefore had no starting point from which we could assess whether the pro rata principle had been breached or adhered to.
39. Further, almost all the evidence we heard about the claimant's activities as a part-time teacher related to duties which we ultimately found were not TLR, particularly work relating to the classes he shared with Mr Heyworth; the four emails sent or received on non-working days, and anything related to health and safety. There were also 'red herrings' relating to parents' evening, timetabling of Religious Studies classes, and room allocations.
40. On the other hand, we made findings that were consistent with a reduction in TLR duties, namely the reallocation of Food Technology, the lack of line management responsibility and the absence of Year 9 curriculum support. These findings are also supported by the absence of evidence of the claimant carrying out TLR work on non-working days, which we would have expected to see if there had been no reduction in his TLR workload.
41. For these reasons, therefore, the claim fails.
42. We do, however, want to make some observations about how the respondent presented its case. We thought it was unfortunate that the respondent chose to raise in evidence criticisms of the claimant which appear not to have been raised with him during the ordinary course of employment. Mr Wright's statement, in particular, was frequently critical of the claimant's performance, which criticisms were not supported by any of the material in the bundle we were taken to. This case did not concern how well (or otherwise) the claimant carried out his TLR duties.



Employment Judge Rhodes

---

Date 3 February 2025

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

Date 11 February 2025

.....  
FOR EMPLOYMENT TRIBUNALS

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>