Case Numbers: 3200750/2016, 3200751/2016, 3200884/2016
3200885/2016, 3200886/2016, 3200887/2016
3200888/2016, 3200889/2016, 3200890/2016
3200891/2016, 3200892/2016

EMPLOYMENT TRIBUNALS

Claimants:	**(1) Mrs K Dallaway** **(2) Mrs S Strange** **(3) Mrs W Lewis** **(4) Mrs L Cock** **(5) Ms J Coverly** **(6) Ms C Hindle** **(7) Mrs J Lay** **(8) Mr G Pennyfather** **(9) Mrs B Thorn** **(10) Mrs F Watkins**
Respondents:	**(1) JPT Education Limited** **(2) Secretary of State for Business Innovation and Skills**
Heard at:	**East London Hearing Centre**
On:	**14 March 2017**
Before:	**Employment Judge Russell**
Representation	
Claimants:	**Miss G Roberts (Counsel)**
1st Respondent:	**Did not attend and not represented**
2nd Respondent:	**Not attended, written representations considered.**

JUDGMENT

It is the judgment of the Employment Tribunal that:-

1. The First Respondent failed to pay to the Claimants sums to which they were contractually entitled as pay for the period 1 April 2016 to 26 May 2016.

2. It was an implied term of the contract that each of the Claimants were contractually entitled to one full terms notice, to expire on 20 December 2016. The First Respondent wrongfully dismissed the Claimants by dismissing them without notice for the period 27 May 2016 to 20 December 2016.

3. The Claimants were dismissed by the First Respondent by reason of redundancy, they are each entitled to a statutory redundancy payment which they were not paid.

4. The First and Second Claimants were unfairly dismissed by the First Respondent. Each of the First and Second Claimants is award the sum of £500 in respect of loss of statutory rights. Neither is awarded a compensatory award by reason of Polkey.

5. The Claimants are entitled to payment by the First Respondent for annual leave entitlement accrued but untaken at the effective date of termination.

6. The Claimants were not provided with written particulars of employment by the First Respondent. Each Claimant is awarded four weeks' wages in respect of such failure, s.38 Employment Rights Act 2002.

7. As redundancy was the reason for dismissal, the ACAS Code of Practice on Discipline and Grievance does not apply and there is no uplift for unreasonable failure to comply with its provisions.

8. The calculations of the awards in respect of each Claimant is attached in a separate schedule hereto. The Recoupment Provisions apply only to Mrs Dalloway and Mrs Watkins and are set out in their respective schedules.

9. The First Respondent shall reimburse to the Claimants their Tribunal fees in the amounts shown in their respective schedules.

REASONS

1. By claim forms presented on 12 August 2016 and 3 October 2016, the Claimants bring claims of unfair dismissal (First and Second Claimants only), failure to pay redundancy payments, breach of contract in respect of notice pay, unauthorised deduction from wages, failure to pay holiday pay, failure to provide written particulars of employment and failure to provide notification of changes to employment. The Claimants also claim an uplift on any awards for unreasonable failure to follow the ACAS Code of Practice on Discipline and Grievance and reimbursement of their fees. Initially the claims were brought against eight Respondents however following clarification of the issues, the claims were withdrawn against all except the First and Second Respondents as named above. Ms Roberts confirmed that there was no claim for a protective award as fewer than 20 employees were made redundant by the First Respondent.

2. The First Respondent defended the claims brought by the First and Second Claimants, asserting that they were dismissed for gross misconduct for participating in

a wildcat strike which caused the closure of the school. The First Respondent did not present a Response in respect of the claims brought by the Third to Tenth Claimants.

3. The Second Respondent defended all claims brought by all Claimants on grounds that it was not satisfied that the First Respondent was insolvent.

4. Each of the Claimants provided a written, signed statement containing their evidence. The First to Third, Fifth and Seventh to Tenth Claimants each attended the hearing to confirm the accuracy of their evidence. The Fourth and Sixth Claimants were not able to attend due to work commitments and having been told at the Preliminary Hearing it would not be necessary for them to do so. Given the extent of the overlap in their evidence with the other Claimants and the availability of documentary evidence such as payslips to prove their loss, I admitted their statements as evidence of their claims. I was provided with a bundle of documents to which I was referred in evidence.

Findings of Fact and Conclusions

5. The Claimants were all employed as teachers (some with additional administrative duties) by the First Respondent, working at Crowstone Preparatory School in Westcliff on Sea, Essex. This was a small school, run by the headmaster, Mr JP Thayer and his wife, with some assistance from their son acting as bursar. Over the course of the Claimants' employment, the name of the employing entity changed on a number of occasions, most recently to the First Respondent, but always under the control of Mr and/or Mrs Thayer. I find that the dates of commencement of employment for each Claimant are as set out in their respective schedule as attached.

6. Only the Tenth Claimant was provided with written particulars of employment. In respect of termination of employment, these provided that she was entitled to one term's notice in writing. It further provided that at the end of the summer term, the Ms Watkins was entitled to payment of salary to 31 August. Such terms are consistent with the terms of the collective agreements applicable to teachers employed in state sector schools, colloquially referred to as the Burgundy Book. On balance, and applying the officious bystander test, I am satisfied that the parties intended that the other Claimants would also be entitled to such a period of notice such that it became an implied term of their contracts of employment.

7. I am satisfied that the First Respondent failed to provide the Claimants with the written particulars of employment required by section 1 of the Employment Rights Act 1996. I considered it appropriate to make an award of four weeks' pay under section 38 Employment Act 2002. Whilst the First Respondent was a small employer, it had provided a written statement of particulars of employment to the Tenth Claimant which was sufficient at the outset of her employment (although not by the termination due to the changes in employer identity). Rather than award separate compensation for failure to notify of the repeated employer name changes lest there be undue double recovery, I took such failure into account as an aggravating feature when deciding to award four weeks rather than two weeks' pay under section 38.

8. In 2016, the school encountered financial difficulties as a result of dwindling pupil numbers. The financial problems were so severe that the employees were not paid salary for April and May 2016 although they had worked as usual. In failing to pay the Claimants, the First Respondent made unauthorised deductions from their wages for the period 1 April 2016 until 26 May 2016.

9. On 16 May 2016, the staff met with Mr Thayer and expressed concern about failure to pay their wages. Mr Thayer discussed a possible closure that month due to the lack of money. No date for closure was set.

10. On 26 May 2016, Mr Thayer wrote to parents and staff to inform them that the school would close on 6 July 2016. There had been no further consultation with the teachers nor information about pay arrangements. The Claimants sought assurances from Mr Thayer that they would be paid for their work up to the date of closure. No such assurances were forthcoming.

11. From 7 June 2016 the Claimants did not attend work but informed Mr Thayer that there were ready and willing to do so as long as they would be paid. I find that the decision to close the school was taken before the Claimants stopped working. I further find that the Claimants had not gone on strike, as the First Respondent suggested, but had quite properly required the First Respondent to honour its side of the work/wage bargain. The First Respondent's failure to provide such assurance caused the cessation of work and the Claimants' response was not an act of gross misconduct. The closure of the school on 6 July 2016 was the reason for the Claimant's dismissal as thereafter the First Respondent no longer required employees to do work of that particular kind. I am satisfied that the reason for dismissal was redundancy, as defined in section 139 Employment Rights Act 1996 such that each Claimant is entitled to a redundancy payment. I find that the Claimants' length of service, age at termination and rate of pay at termination was as set out in their respective schedules attached.

12. Mr Thayer's letter of 26 May 2016 constituted the giving of notice such that each Claimant was entitled to be paid until that date and thereafter receive pay in respect of their notice period which would end on 20 December 2016, the end of the following academic term. The period of the breach of contract for each Claimant was 27 May 2016 until 20 December 2016.

13. On 29 June 2016, Mr Thayer wrote to each of the affected members of staff setting out their dates of employment, rate of pay at termination and salary unpaid at the date of termination. The letter did not set out their respective entitlement to accrued but untaken holiday pay. I accept the Claimant's evidence, as set out in their respective schedules attached hereto, that they were entitled to the holiday pay as described.

14. The Claimants each provided details of their loss and gave evidence as to their efforts to mitigate. I was satisfied that the dates of employment and rates of pay set out in their schedules was acted and that each had acted reasonably in their efforts to

mitigate. I find that credit for sums earned in mitigation has been given by each Claimant in their respective attached schedule.

15. As for unfair dismissal, the First Respondent failed to follow a procedure such that the dismissals of Mrs Dalloway and Mrs Strange were procedurally unfair and fell outside of s.98(4) Employment Rights Act 1996. There was no proper consultation with either Mrs Dalloway or Mrs Strange, for example regarding termination dates. Overall, and given the closure of the school due to extreme financial difficulties, I am satisfied that even if a fair procedure had been followed, a fair dismissal would and could have occurred such that there should be no compensatory award pursuant to s.123 Employment Rights Act 1996 beyond £500 each in respect of loss of statutory rights.

16. Having found that the reason for dismissal was redundancy, not conduct, the ACAS Code of Practice on Discipline and Grievance does not apply. As for the Claimants' grievances, I took into account the size of the employer, the lack of administrative resources and its severe financial circumstances, such that I concluded that there had been no unreasonable failure to comply.

17. The Claimants have been required to pay Tribunal fees to issue their claims and have a hearing. I am satisfied that the First and Second Claimants have each paid fees of £250 for issue and £950 for the hearing. The Third to Tenth Claimants, represented by a different trade union, issued as a multiple claim and have incurred total fees of £320 for issue and £460 for having a hearing. As the claims have succeeded and it was necessary to have this hearing to determine the reason for dismissal, I consider it appropriate that the First Respondent reimburse these fees in full.

Employment Judge Russell

14 March 2017