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# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Shaw

**Respondent:** London Borough of Barking & Dagenham

**Heard at:** East London Hearing Centre      **On:** 16-17 November 2017

**Before:** Employment Judge Brown (sitting alone)

## **Representation**

**Claimant:** In person

**Respondent:** Mr R Alford (Counsel)

## **JUDGMENT**

The judgment of the Employment Tribunal is that the Respondent dismissed the Claimant fairly by reason of redundancy.

## **REASONS**

### ***Preliminary***

1 The Claimant brings a complaint of unfair dismissal against the Respondent, her former employer.

2 The Respondent contended that the Claimant had been dismissed by reason of redundancy. The issues in the claim appeared to be:-

- 2.1 Had the Respondent shown the reason for dismissal and that it was a potentially fair reason (redundancy, in this case)?
- 2.2 Was the redundancy genuine?
- 2.3 Was the Claimant's dismissal contrived due to her having raised concerns about the conduct of the Chair of Governors in a meeting?

- 2.4 If the dismissal was for a redundancy, was the dismissal fair in all the circumstances of the case:-
- 2.4.1 Was the redundancy procedurally fair?
- 2.4.2 Was there reasonable consultation?
- 2.4.3 Was there reasonable consideration of and assistance to find alternative employment?
- 2.5 If the Tribunal considered that the dismissal was unfair for procedural reasons, would the Claimant have been dismissed in any event and was it appropriate to make an adjustment to any compensatory award and if so what?

3 I heard evidence from the Claimant. I also heard evidence, for the Respondent, from Martin Nicholson, Head Teacher; Chidi Okwesilieze, HR Consultant; Don Lan-George, School's HR Business Partner Manager; Syed Ghani, Governor and Chair of the redundancy dismissal hearing; and Chika Anyanwu, Chair of Governors.

4 There was a bundle of documents. The parties made submissions. It was agreed that I would make a decision on liability, first, and then hold a remedy hearing if the Claimant succeeded in her claim.

### ***Findings of Fact***

5 The Respondent is a local authority.

6 The Respondent employed the Claimant at Grafton Primary School ("the School") as a Senior Finance Manager from September 2014 and, subsequently, as a School Business Manager from 6 October 2014.

7 The Respondent has an Organisational Change Policy for Schools (pgs.312-315).

8 The School has a Governing Body. The Governing Body has a subcommittee to which it delegates some functions. Originally that subcommittee was called the Pay Committee. However, I accepted the evidence of the Respondent's witnesses that the Pay Committee has metamorphosed into the Finance Committee and the Finance Committee's remit has been extended by the Governing Body to cover school finances, more generally. Certainly, there was no evidence that any decision made by the School's Finance Committee has ever been questioned, or repudiated, by the Governing Body. It seemed clear to me that the Governing Body accepts that the Finance Committee makes decisions and takes action, on the Governing Body's behalf, legitimately.

9 At a meeting of the Finance Committee on 15 May 2015, Mr Nicholson, the School's Head Teacher, discussed the need for the School to make savings. He said that members of the Senior Leadership Team were going to teach in school more regularly, to help make savings in staff costs. He also reported that the Claimant had

recommended that teaching staff be restructured, that there should be a reduction in curriculum staff, reduced caretaker hours, ill-health retirement for staff who were on ill-health sickness leave and a reduction in mid-day staff and agency staff. The Head Teacher explained, however, that he considered that the Claimant's proposals were not feasible. For example, he said that health and safety guidance required there to be a certain ratio of staff to pupils at mid-day and that ill-health procedures needed to be followed before any employee could be dismissed on the grounds of ill-health.

10 In evidence to the Tribunal, the Head Teacher told me that the School was part of a network of local authority schools called "PACE". At the Finance Committee meeting on 15 May 2015, the Head Teacher said that he would look at the models adopted in other PACE schools and that he would look at the Senior Leadership Team and administrative staff structures, to see how further savings could be made.

11 I found, accepting the Head Teacher's evidence to me, that, from at least 2015, the School was aware that Central Government was planning to make cuts to certain schools' budgets, via the Dedicated Schools' Grant. The School also knew that, while it had taken an extra reception class some years before, that class was going to finish school in about 2017, and that the School would lose funds as a result. The School also had to find funds to address health and safety concerns regarding its playground and windows. Furthermore, it was aware that it had a number of children with educational challenges, including having English as a second language, who needed dedicated educational support.

12 On 10 December 2015, at a further Finance Committee meeting, Mr Nicholson, the Head Teacher, addressed the School's projected budget deficit that year. The Committee again agreed that the Head Teacher should make proposals for restructuring the administrative staff (p.180).

13 At a full Governing Body meeting on 26 May 2016, a projected deficit for 2017-2018 was discussed. The Claimant proposed, and the Governing Body agreed, a budget recovery plan to ensure a 3 year balanced budget (p.187).

14 The Governing Body was told, in that meeting, that the Senior Leadership Team would be taking on additional teaching commitments and that, for example, one Assistant Head Teacher would be working in another local authority school for 2 ½ - 3 days a week. The Head Teacher also told the meeting that the School was considering further staff changes, in collaboration with other schools in the local authority network of which it was part.

15 The Claimant presented her budget report to that meeting. She considered that the Chair of Governors had cut her off, when the Claimant had not finished, and had been rude to her.

16 The Claimant mentioned to Mr Nicholson, at some point after the meeting, probably in about June 2016, that she was unsure about how she felt about the way that the Chair of Governors had behaved towards her in the meeting. The Head Teacher told her that he had not noticed anything untoward, but said would ask another Governor, who had been present, if they had noticed anything amiss in the way the Chair of Governors had addressed the Claimant. The Head Teacher did ask

another Governor, who told him that she had not observed anything untoward. The Claimant did not raise any formal complaint about the Chair of Governor's behaviour. I accepted the Chair of Governor's evidence that she was unaware of the complaint until a couple of months before this Employment Tribunal hearing.

17 On 8 June 2016, after discussion with other schools in the Pace network about their administrative structures, the Head Teacher provided the Finance Committee with proposals for restructuring the administrative team (p.192). He proposed to delete the post of School Business Manager and replace it with a Bursar working one day a week. The Head Teacher's proposal said that this would ensure that all the School's strategic financial responsibilities and reporting would continue to be professionally carried out. The Head Teacher said that the £55,000 savings would be reinvested to support low attaining children. He also proposed to delete the post of Finance Officer and replace it with an Assistant Office Manager post and to retain the Office Manager post, but to rewrite its job description, to include line management responsibilities for administrative staff. The Head Teacher proposed that the job descriptions of three administrative posts would be revised and that the School would not cover the part-time days currently available from administrative staff. The Head Teacher said that one of the other primary schools in the same Pace network, the biggest primary school in England, had a similar model for its administrative staff; it had an office manager and was functioning well with a "bought-in" Bursar (pgs.192-193).

18 The Finance Committee minutes record that it was agreed that the Head Teacher would produce his business case and send it to the Committee for consideration as, according to the minutes, the Committee did have dedicated authority to make a decision on it (p.193).

19 On 1 September 2016 the Head Teacher produced a restructuring report for the Governing Body (p.199). It contained two proposed phases of restructuring. The first dealt with Assistant and Deputy Head Teachers. It proposed increasing their teaching time and that one Assistant Head Teacher would work 3 days a week supporting another primary school from 1 September that year.

20 The second phase of restructuring related to office staff, as the Head Teacher had explained to the Finance Committee on 8 June 2016. The proposals included deleting the School Business Manager post and replacing it with a Bursar working one day a week.

21 On 8 September 2016 the Head Teacher wrote to all staff affected by the proposed restructure and invited them to a formal consultation meeting, along with trade union representatives, to be held on 21 September 2016, to inform them of the proposed reorganisation of the School. The letter said that a copy of the business case for reorganisation and a time line for consideration of it would be given to staff at the consultation meeting. The Head Teacher also wrote to the recognised trade unions on the same day, informing them of this consultation meeting. That meeting did take place on 21 September 2016 and staff were given the business case and a timeline for consultation. The Claimant attended the meeting. The Claimant was, therefore, told of the proposal to make her role redundant and the rationale for it, on 21 September 2016.

22 On 28 September the Head Teacher wrote to the Claimant, asking whether she wished to be added to the local authority redeployment register (p.210). The Claimant replied, saying that she would take advice. Mr Nicholson, the Head Teacher, responded further, saying that, while they were in a consultation stage, part of the strategy was to ensure that the Claimant had facilities to seek alternative work in the Council and other schools, which would only be available through the Council's redeployment register.

23 The Respondent's Organisational Change Policy provides, at paragraph 5.2.11 that, during the consultation stage, steps taken to avoid redundancies and ensure continued employment should include redeployment of staff (p.318).

24 On 5 October 2016, the Claimant's UNISON union representative, Dave Clarke, wrote to Mr Nicholson. Mr Clarke said that the proposal to put some financial responsibility onto an office manager and to engage a Bursar one day each week would not make provision for external income streams. He said that the School budget of £3.9m required oversight on a daily basis, needing a full-time qualified officer. Mr Clarke referred to previous financial failings at the School. He included the Claimant's alternative proposals for cost saving at the School and comments on the Head Teacher's business case (p.212 and pgs.48-91).

25 In the Claimant's proposals, the Claimant included a summary of the money she said she had raised for the School (pgs.55-58) and proposals for other staff cost savings, including a 5% reduction in spending on curriculum staff, reducing the hours of caretakers, along with ill-health retirement of staff (p.59).

26 Mr Nicholson invited the Claimant and her union representative, Mr Clarke, to an individual consultation meeting on 11 October 2016. The Claimant and Mr Clarke attended and the Claimant's response to the Head Teacher's business case and the Claimant's alternative proposals were discussed for about 1 ½ hours. After the meeting, Mr Nicholson wrote to the Claimant, on 13 October, setting out possible alternatives to redundancy, including voluntary severance and redeployment. He invited the Claimant, again, to engage with the council's redeployment process. He said that the Claimant's post had been made redundant (p.215); however, he also said that no final decision had been taken on the continuation of the Claimant's employment at the School (p.216).

27 The Claimant asked for the consultation period to be extended, but this request was declined by the Head Teacher on 21 October 2016 (p.225).

28 On 20 October 2016, the Head Teacher wrote to the relevant unions, saying that, having considered the representations made during the consultation period, the School was unable to make changes to the proposals because of uncertainties surrounding the School's funding arrangements and its need to plan for future uncertainties, if it was to continue to meet the needs of children.

29 Nevertheless, on 8 November 2016, the Claimant's union representative wrote to the Head Teacher, again, saying there remained unanswered questions on the documents which the Claimant and the union had sent on 5 October 2016 and also arising from the meeting on 11 October. Mr Clarke said that the School had a

predicted surplus for 2016/17 of £144,000 and asked why it was therefore necessary to make the School Business Manager role redundant before April 2018, at the earliest. He asked whether the School Business Manager had been targeted specifically and, if this was the case, why this was the case, when there were potential alternative savings. Mr Clarke asked how the School would maintain financial rigour when there were no staff in the Governing Body with the skill set to do this. He asked, amongst other things, if the School was replacing the School Business Manager with a School Business Manager “in all but name” and enquired who it was proposed would take on the School Business Manager’s financial and staff management. Mr Clarke asked why the Claimant’s soft options, saving the School £61,000, had not been considered.

30 The Claimant also wrote to Mr Nicholson on 20 October 2016, asking questions about the restructure.

31 On 9 November 2016, the Head Teacher replied to the Claimant’s letter, addressing each of her questions (p.234-235). He said that the School felt that it did have the capacity to manage its finances and that it needed to plan proactively due to uncertainty in school funding.

32 Also on 9 November, the Head Teacher wrote to Mr Clarke, answering each of his questions. He said that the Claimant had not been targeted and that the School was about to lose income because an additional class was about to finish. He attached the job description and skill set required for the post of Bursar. He said that the position was available and that, if the Claimant felt she had the qualifications for it, the Head Teacher would be happy to consider the Claimant’s expression of interest. Nevertheless, he noted that, at the consultation meeting on 11 October, it had been agreed that the Bursar post did not represent an equal and equitable post for the Claimant. The Head Teacher said that the School not having a Business Manager was not unusual and that other schools in Barking and Dagenham were working successfully without one. He said all the options for saving had been considered, including taking steps to attract funding from other schools, redeploying SLT members to vacant teaching posts and, now, reorganising administrative support staff (pgs.239-241).

33 The Head Teacher agreed to hold a further meeting, to clarify points regarding the restructure, with the Claimant and Mr Clarke. This happened on 10 November 2016. At that meeting, the Claimant explained her assertion that she had raised a grievance about the Chair of Governors and said that it has not been satisfactorily dealt with. This was discussed in some depth and the Claimant agreed that she had not raised a formal grievance (p.242).

34 On 11 November 2016, the Head Teacher wrote once more to the Claimant, informing her that, after considering the points raised in consultation, the School Business Manager post could not be reinstated in the new administrative structure, for the reasons already advised. He said that he would be informing the Governing Body that he had formed the preliminary view that, in order to meet the operational and educational needs of the School going forward, the Claimant’s post would be made redundant. The Head Teacher said that a meeting of the Governing Body Subcommittee would be arranged and that the Claimant would be invited to attend the meeting, to raise matters concerning her proposed redundancy (p.247).

35 The Head Teacher prepared a report for the Subcommittee (p.259).

36 The Claimant attended a Staff Reduction Panel hearing on 8 December 2016. The Panel was chaired by Syed Ghani, Governor. The other Panel members were Sufique Khan, Governor, and Barbara Turner, Head Teacher of another school in the PACE network. Chidi Okwesilieze attended as Consultant HR Business Manager and Don Lan-George attended as HR School Business Partner Manager. Mr Lan-George and Mr Okwesilieze attended as HR Advisers.

37 There was a dispute of fact between the parties at the Employment Tribunal about whether the Panel was given the Claimant's documents setting out alternative proposals for cost reduction and her comments on the Head Teacher's original business proposal. All the Respondent's witnesses who gave evidence; Mr Syed, Mr Okwesilieze and Lan-George, said that the Panel did have those documents and that they formed part of the pack of documents given to them. They said the Claimant and her union officer raised the fact that a 14 page appeal document, which the Claimant had sent to the clerk of the Panel, was not in the Panel documents; but that, on inspection, the appeal documents were comprised of the Claimant's original alternative proposals and comments and, so, the Panel did have those documents already, save for a 2 page appeal document. All those witnesses said that the Claimant had agreed to proceed in those circumstances.

38 The Claimant told the Tribunal that the Panel did not have her documents and only had the Head Teacher's business case. She said that Mr Lan-George had insisted on the meeting proceeding anyway.

39 All the Respondent's witnesses corroborated each other and each gave a quite thorough account of what happened regarding the Claimant's documents. Further, the minutes of the meeting record that Mr Lan-George said that he would advise the Panel to adjourn if documents were missing, which would be consistent with Mr Lan-George's position as an adviser and not a decision-maker on the Panel. I preferred the Respondent's evidence and I found that the Claimant's alternative proposals on cost saving and her comments on the Head Teacher's proposal, as well as documents that she had submitted during the consultation process, were part of the documents seen by the Panel.

40 The Panel meeting lasted for two hours. The Claimant and Mr Clarke explained, in depth, the Claimant's criticisms of the decision to remove the Business Manager post and also explained her alternative soft savings options (p.270). The Panel asked a number of questions of the Head Teacher, of the Claimant, and of Mr Lan-George and Mr Okwesilieze. Mr Lan-George, Okwesilieze and the Head Teacher commented on the Claimant's proposals.

41 On 9 December 2016, Mr Don Lan-George wrote to the Claimant saying that, having considered all the Claimant's comments, the Panel had upheld the Head Teacher's recommendation that the Claimant's post be deleted. He gave the Claimant three month notice of termination of her contract.

42 The Claimant submitted a comprehensive appeal document and attended an

appeal hearing on 18 January 2017, during her notice period. There was no dispute that the appeal had all the relevant documents before it. The Claimant and her union representative carefully explained all the Claimant's arguments, and the Head Teacher also addressed the appeal Panel.

43 On 23 January 2017, Ms Sarah Murphy, Chair of the Appeal Committee, wrote to the Claimant, dismissing her appeal, in a 3 page letter addressing each of the Claimant's points (p.296).

44 I concluded that the appeal appeared to have been by way of a rehearing; it was a comprehensive review of all the Claimant's submissions on the decision to make her redundant.

### **Relevant Law**

#### **Unfair Dismissal**

45 By *s94 Employment Rights Act 1996*, an employee has the right not to be unfairly dismissed by his employer.

46 *s98 Employment Rights Act 1996* provides it is for the employer to show the reason for a dismissal and that such a reason is a potentially fair reason under *s 98(2) ERA*. Redundancy is a potentially fair reason for dismissal.

47 It is generally not open to an employee to claim that his dismissal is unfair because the employer acted unreasonably in choosing to make workers redundant. Courts can question the genuineness of the decision, and they should be satisfied that it is made on the basis of proper information.

#### **Redundancy**

48 Redundancy is defined in *s139 Employment Rights Act 1996*. It provides so far as relevant, " ..an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

...

(b) the fact that the requirements of that business—

(i) for employees to carry out work of a particular kind...

have ceased or diminished or are expected to cease or diminish."

49 *Safeway Stores plc v Burrell* [1997] IRLR 200/ and *Murray v Foyle Meats* [1999] IRLR 562. There is a three stage process in determining whether an employee has been dismissed for redundancy. The Employment Tribunal should ask, was the employee dismissed? If so, had the requirements for the employer's business for employees to carry out work of a particular kind ceased or diminished or were expected to do so? If so, was the dismissal of the employee caused wholly or mainly by that state of affairs?

50 If the employer satisfies the Employment Tribunal that the reason for dismissal was a potentially fair reason, then the Employment Tribunal goes on to consider whether the dismissal was in fact fair under *s98(4) Employment Rights Act 1996*. In



doing so, the Employment Tribunal applies a neutral burden of proof.

51 *Williams v Compair Maxam Ltd* [1982] IRLR 83, sets out the standards which guide tribunals in determining the fairness of a redundancy dismissal. The basic requirements of a fair redundancy dismissal are fair selection of pool, fair selection criteria, fair application of criteria and seeking alternative employment, and consultation, including consultation on these matters.

52 In *Langston v Cranfield University* [1998] IRLR 172, the EAT (Judge Peter Clark presiding) held that so fundamental are the requirements of selection, consultation and seeking alternative employment in a redundancy case, they will be treated as being in issue in every redundancy unfair dismissal case.

#### Consultation

53 “Fair consultation” means consultation when the proposals are still at the formative stage, adequate information, adequate time in which to respond, and conscientious consideration of the response, *R v British Coal Corporation ex parte Price* [1994] IRLR 72, Div Ct per Glidewell LJ, applied by the EAT in *Rowell v Hubbard Group Services Limited* [1995] IRLR 195, EAT; *Pinewood Repro Ltd t/a County Print v Page* [2011] ICR 508.

#### Alternative Employment

54 In order to act fairly in a redundancy dismissal case, the employer should take reasonable steps to find the employee alternative employment, *Quinton Hazell Ltd v Earl* [1976] ICR 296; *British United Shoe Machinery Co Ltd v Clarke* [1978] ICR 70.

#### Discussion and Decision

55 I found that the Respondent had shown that the reason for dismissal in this case was the potentially fair reason of redundancy. I considered that there was ample evidence that the School had, in at least the year leading up to the Head Teacher’s proposal to make the Claimant’s post redundant, been seeking to reduce costs. Since 2015, the School’s Head Teacher and Finance Committee had been intending to review and reorganise the administrative structure at the School, of which the Claimant was part. I accepted the Head Teacher’s evidence that he had sought advice from other schools in the PACE network and had established that other schools, including the largest primary school in England, operated successfully without a Business Manager, but with a Bursar working one day a week. I accepted that this was why the model of a one day a week Bursar was proposed.

56 I decided, therefore, that the requirements of the Respondent’s business for employees to carry out work of a particular kind, that is the work of a School Business Manager, had ceased; in that a full-time Business Manager was no longer required, but, instead, a one day a week Bursar was required. I considered that that, ultimately, led to the dismissal of the Claimant. I considered that there was a genuine redundancy situation; the proposal to delete the post was because the School’s budget was coming under pressure because of threatened reductions in central Government and further funding losses due to one class being lost, as well as additional costs of health and safety measures and of children with educational support needs, including children who had English as a second language.

57 I accepted that the Respondent genuinely wished to save and reduce costs and proposed to do so, partly, by reducing the administrative staff establishment and partly by redeploying SLT member differently, to teaching duties and to other schools. This was a genuine redundancy situation, I found.

58 I rejected the argument that the decision to make the Claimant's role redundant was in any way connected to a concern that the Claimant had raised with the Head Teacher, after a Governing Body meeting on 26 May, about the behaviour of the Chair of Governors. It was clear to me that the restructure of the administrative team had been contemplated long before that meeting. I accepted the Head Teacher's evidence that he had not even understood that the Claimant was raising a complaint about the Chair of the Governing Body. It is quite clear that the Claimant did not raise any formal complaint.

59 I went on to consider whether the Respondent had acted reasonably in dismissing the Claimant for the reason of redundancy. With regard to the pool and selection of the Claimant's post to be deleted, I found that the Respondent acted reasonably in selecting the Claimant's post to be made redundant, rather than other posts. The Respondent did undertake other restructuring measures at the time with regard to the Senior Leadership Team, which saved money. I concluded that it was reasonable for the Respondent to seek to reduce administrative costs and to protect resources directly related to the education of children, which was the School's primary function. I also decided that it was reasonable for the Head Teacher to conclude that it was not practicable to reduce mid-day staff, who were required to look after children at break times and lunch times, and that it was not practicable to reduce the numbers of people on long-term sick leave by exploring ill-health retirement, without going through ill-health retirement processes. I therefore found the Respondent acted reasonably in deciding it was the Business Manager post which should be reduced.

60 With regard to consultation, I found that this was reasonable. The Claimant was informed about the proposals, and the rationale for them, at a consultation meeting on 21 September 2016. She was given an opportunity to respond to the proposals and did so by letter of 5 October 2016. The Claimant and her union representative had time to consider the proposals before responding.

61 On 11 October 2016, the Claimant attended an individual consultation meeting lasting for 1 ½ hours, when both the Head Teacher's business rationale and the Claimant's critique of it, and alternative proposals, were discussed.

62 On 9 November 2016, the Head Teacher provided written answers to the Claimant's and the union's additional questions (p.234-239). I found that, in his response, the Head Teacher gave conscientious consideration to the questions and thorough answers to them.

63 Before the decision to dismiss was made, there was a further Panel hearing, which did have the Claimant's written analysis and alternative proposals before it, but which, in any event, explored the Claimant's criticisms of the Head Teacher's proposals and the Claimant's soft alternative saving options. That meeting lasted for 2 hours and the Panel members, I found, asked relevant and searching questions of the

Head Teacher and of the Claimant. I therefore concluded that the process of consultation before the final decision was unusually lengthy and well within the band of reasonable responses of a reasonable employer.

64 With regard to finding alternative work, the Claimant was offered the opportunity to be placed on the Council's redeployment register at an early stage of the consultation process, on 28 September 2016 (p.210). She was invited to do this on other occasions, for example in the Head Teacher's letter on 13 October 2016 (p.215).

65 I found that the Claimant did not wish to be considered for the one day a week Bursar job. This was asserted in the Head Teacher's letter to the union on 9 November 2016. His account of the relevant meeting was not challenged thereafter by the Claimant, or by her union representative.

66 The Claimant has not contended, before the Employment Tribunal, that there were, in fact, other posts into which the Claimant should have been automatically redeployed. I concluded that the Respondent made reasonable efforts to find alternative work for her.

67 In sum, I found that the Respondent acted within the broad band of reasonable responses in the procedure it adopted and the decisions it made. I found that the Respondent acted fairly in dismissing the Claimant for redundancy.

Employment Judge Brown

12 December 2017