EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		Respondent
MRS N THOMAS	**AND**	**THE GOVERNING BODY OF ST. BRIGIDS SCHOOL (R1)** **DENBIGHSHIRE COUNTY COUNCIL (R2)**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD : CARDIFF **ON: 30TH OCTOBER 2018**

EMPLOYMENT JUDGE MR P CADNEY (SITTING ALONE) **MEMBERS:**

APPEARANCES:-

FOR THE CLAIMANT:- **WRITTEN SUBMISSIONS**

FOR THE RESPONDENT:-

RECONSIDERATION JUDGMENT

The judgment of the tribunal is that:-

1. The claimant's application to vary or revoke the Judgment is dismissed.

Reasons

1. By an earlier judgment I dismissed the claimant's claim of unfair dismissal for the reasons set out in the judgment. The claimant has sought a reconsideration of that decision.

2. The reconsideration application sets out arguments in relation to a number of the paragraphs of the reasons which I shall deal with in turn. However before dealing with the individual submissions it is perhaps worth bearing in mind my overall conclusions. The respondent wished to continue to be able to each French and Spanish but with a reduction from 1.6 FTE to 1.0 FTE teaching staff. After an, in my judgement, fair redundancy selection process they chose to retain the services of the teacher they concluded was best able to teach both, a view they were in my judgment entitled to reach. Thus in my view the process was fair and the conclusion was one rationally and reasonably open to them on the information before them.

3. Paragraph 5 – The claimant contends that I should have found that the scoring matrix and the decision to allow Ms Brennan to teach French in 2017/18 were both deliberate acts to ensure that Ms Brennan was selected above the claimant. In my judgment there is no evidence that there was any pre-conceived plan or deliberate manipulation of the scoring system and I did not find that either had taken place in my earlier judgment. I can see nothing in the reconsideration submissions to cause me to alter that view.

4. Paragraph 6 – The claimant contends that I should have concluded that the Spanish teaching was in fact redundant. The basis for this is that the reduction of the teaching complement from 1.6 FTE to 1.0 FTE automatically limited the amount of language teaching that could be provided. This is necessarily correct but does not in my judgment lead to the conclusion that Spanish teaching was redundant. As I set out in the judgment I accepted the respondent's evidence that they did intend to continue providing Spanish teaching.

5. Paragraph 11 – The claimant submits that if it is correct that the respondent intended to carry on providing French and Spanish that it was obliged to "mitigate the redundancy" by offering each of the teachers a pro rata reduction to reflect the existing breakdown of French and Spanish in 2017/18. I am not aware of an authority to this effect but in my judgment it is an obviously misconceived argument. Even if it was possible to provide a breakdown for one years' teaching it could not do so thereafter. This appears to me to exemplify the claimant's misunderstanding of the respondent's case. It wished to be able to provide French and Spanish teaching in the future and clearly could not predict with any certainty what the breakdown between the two would be for any given year. To continue to retain two teachers both on reduced pro rata contracts would reduce flexibility not increase it and set in stone the division in the first year. Self-evidently the better option was to continue to employ a teacher who could teach both and adapt on a yearly/termly basis to fluctuations in the provision of each.

6. The claimant further submits that I ignored evidence that Consortia schools did not offer Spanish. This is irrelevant. I accepted the respondent's evidence that it had decided to retain the ability to teach Spanish in future. It does not matter whether it was obliged to or simply chose to. It is not the function of the tribunal to determine whether an organisation could have made different decisions as to it future requirements but to assess the fairness of any redundancy selection process necessitated by those decisions.

7. Paragraphs 12/13 – The claimant re-iterates her argument that if the pool for selection was identified as Modern Foreign languages that it should be treated as single subject. The conclusion that they invited and invite me to draw (as is set out in paragraph 13) is that all teachers within the department should simply be assumed to be equally qualified to teach all modern languages if modern language teaching is one subject; and that actual differences in competence must be ignored in a redundancy selection exercise. This is in my judgement a baffling proposition. If the claimant is correct it defeats the whole purpose of holding such an exercise as the respondent is obliged to assume that all teachers are equally skilled in every language when this is obviously not true. As will be apparent I am no more convinced by this argument than I was when I first made my decision.

8. It follows that there is nothing in the reconsideration request which causes me to revoke or vary the original decision.

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EMPLOYMENT JUDGE Cadney

Dated: 9 November 18

Judgment entered into Register
And copies sent to the parties on

.....15 November 2018.....

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for Secretary of the Tribunals