



EMPLOYMENT TRIBUNALS

Claimants: Ms M Johnstone
Mrs D Spurden

Respondent: Bradford College

Heard at: Leeds **On: 4 and 6 November 2019**
3 December 2019 (reserved decision in chambers)

Representation:

Claimants: In person
Respondent: Mr Scott, counsel

RESERVED JUDGMENT

1. These claims of unfair dismissal succeed.
2. Compensation will be decided at a Hearing on 12 March 2020.

REASONS

1. Ms Johnstone and Mrs Spurden presented claims to the Tribunal alleging that Bradford College (the College”) had unfairly dismissed from their jobs as Head of Planning and Performance and Head of Academic Regulations and Compliance respectively. During the Hearing the Claimants confirmed that they accepted that the reason they were dismissed was redundancy. The College had decided to restructure and no longer had a requirement for employees to do work of the particular kind that each of their jobs involved. To the extent that those duties were still needed, they were to be redistributed amongst other, newly created posts.

The issue

2. The sole issue for the Tribunal was therefore whether the College had acted reasonably or unreasonably in all the circumstances (including its size and administrative resources) in treating redundancy as a sufficient reason for dismissing the Claimants. That question had to be decided “in accordance with equity and the substantial merits of the case” (Section 98(4) of the Employment Rights Act 1996).
3. At the Hearing, the Tribunal heard oral evidence from both Claimants. For the College, it heard oral evidence from: Mr Christopher Malish, Director of Finance and Corporate Services; Mr Craig Tupling, Deputy Chief Executive Officer (CEO); Mrs Mandy Brown, Employee Relations Case Manager; and Ms Sarah Applewhite, Head of Academic Quality and Standard for Higher Education before the restructure and Head of Quality after it. The Tribunal was also referred to various documents. On the basis of the evidence, the Tribunal made the following findings of fact.

The facts

4. When Mr Malish was appointed Director of Finance in August 2017 he found that the finances of the College were in a parlous state and it was in danger of breaching its loan conditions with the bank. He forecast that the College would run out of money in the financial year 2017-18. This led to an intervention by the Further Education Commissioner who assessed the College and gave it a month to put together a three-year strategic recovery plan. The Chair of Governors resigned and there were other departures at executive level. The CEO left in January 2018 and was replaced by an interim CEO who had experience of supporting businesses in financial crisis.
5. In June 2018 the College applied for funding from the Education and Skills Funding Agency to carry out a restructuring. To demonstrate that the College was able and willing to manage its costs, some voluntary redundancies were implemented. The interim CEO stepped down in August 2018 and Mr Malish was appointed as interim CEO. In October 2018 it became apparent that student numbers for the part of the College delivering Further Education was lower than budgeted and would lead to a significant reduction in income for 2019/20.
6. On 31 October 2018 Mr Tupling joined the College as Deputy CEO. He and Mr Malish worked together to produce a plan to restructure the College to make it financial sustainable. At the time, the College operated more or less as two separate businesses, one for Higher Education and the other for Further

Education. This meant that various functions were divided between the two businesses and different staff members in different parts of the College were carrying out very similar roles. Mr Malish and Mr Tupling decided that the College should be run as one business with a single method of working across both Higher and Further Education. They believed that this would improve accountability and the availability of management information, avoid duplication of work, and increase flexibility to cope with fluctuations in student numbers between Higher and Further Education.

7. Neither Mr Malish nor Mr Tupling had been at the College for long enough to be familiar with how staff functioned below management level. They therefore decided that the restructure should be implemented in two phases. Phase 1 would involve restructuring the posts with whose duties they were familiar, that is, the posts that directly reported to them and the others in the Executive Team and the posts that reported to those direct reports. The Claimants' posts were covered by Phase 1. They were in the Directorate of Curriculum, Quality and Student Support, which was headed by Mr Tupling. Their direct line manager was Clare Hallows, Registrar, who reported directly to Mr Tupling. In identifying the posts to be covered in Phase 1, no account was taken of the salary grades of the posts, most of which were at grade 13 or above. Only the Claimants' posts and one other were at grade 11. The plan was that, as soon as the new senior management team was in place, they would immediately move on to implementing Phase 2, by reviewing the functions of their departments and deciding what resources and posts they would need to deliver them.
8. This approach was approved at a meeting in January 2019 of the Executive Team. The Executive Team was comprised of: Mr Malish; Mr Tupling; Mr Webb, who had been appointed as the new CEO and would formally begin work on 1 March; Ms Dawn Leak, Director of Employer Responsiveness; and two external Human Resources consultants whom the College had engaged to cover the post of Director of People Services, which was vacant at the time.
9. Over the course of the next few weeks, Mr Malish, Mr Tupling and Ms Leak wrote job descriptions for the roles that they believed were needed in their respective Directorates.
10. On 11 March 2019 Mr Malish made a presentation to all the staff at the College, including the Claimants, on the College's financial position and the need to reduce staff costs.
11. On 26 March 2019 Mr Webb met the staff covered by Phase 1, including the Claimants. Mr Webb announced that there would be two-phase transformation programme, with Phase 1 involving changes to what he referred to as "the senior leadership team". The Claimants were surprised that they were included in this initial phase as they did not consider themselves to be sufficiently senior to be part of the senior leadership team. In effect, Mr Webb was using the phrase as a

shorthand for the posts that were being reviewed in Phase 1, but the way in which these posts had been identified was not explained clearly at the meeting.

12. Later on 26 March Mr Tupling held a follow-up meeting with the affected staff in his Directorate and explained the proposed new structure. He proposed to reduce the number of roles at senior level in his Directorate from 20 to 16. Only two of the existing posts would not be affected in Phase 1 of the restructuring, namely the Safeguarding Manager and Curriculum Diversity and Prevent Lead. The Safeguarding Manager post had to be preserved to ensure that the College continued to meet its responsibilities under the safeguarding legislation until the post could be reviewed in Phase 2 as part of the formation of a wider student services department. The Prevent Lead role had no managerial responsibilities and was also to be reviewed as part of Phase 2 in the context of the new student services department. (There was also a post of Business Intelligence Officer which reported directly to the Registrar but Mr Tupling was unaware of the reporting line of this post and it was not included in Phase 1.)
13. All 18 remaining postholders were told that they were at risk of redundancy but were invited to apply for the new posts being created in Phase 1 of the restructure. Mr Tupling confirmed, in response to a question raised at the meeting, that it would not be possible for staff to apply for posts that would involve a promotion. He also explained the timescale. Those who wished to apply for posts in the new structure would need to complete an “aspirations form”, indicating the posts they were interested in being considered for, by 3 April. On 8 April, the outcome of the application process would be discussed with those who had applied. The aim was that the whole process would be completed by 12 April 2019, that is, within 14 working days. Any appeals would be dealt with from 15 April. The Claimants were left with the impression that only those who had secured jobs in the new structure would still be employed after 12 April and that any appeals would relate only to decisions to reject applications for posts in the new structure.
14. In his evidence to the Tribunal, Mr Malish confirmed that the Executive Team intended that employees who did not secure posts in the new structure in Phase 1 would have the option to work their full notice period and that they should have been informed of this by Human Resources staff. He accepted that he did not know whether this had in fact happened. He could not recall at which of their meeting the Executive Team’s discussion about this took place, but he was clear that they had discussed keeping people’s employment on foot to allow them to be considered for posts in Phase 2. The two Human Resources consultants attended these meetings and would have been aware of the Executive’s view. Mr Tupling also confirmed in his evidence that the Executive Team had agreed as a general principle that employees without a place in the new structure in Phase 1 could stay employed during their notice period to see what posts might become available in Stage 2. He expected discussions at individual consultation meetings to cover whether employees wanted to leave with a payment in lieu of notice or

work out their notice periods. The Tribunal finds, however, that this important information was never given to the Claimants. In her evidence, Mrs Brown accepted that, as far as she was aware, neither Claimant was told that they had the option of working their notice period and being considered for any roles that might emerge in Phase 2. That was the Claimants' evidence also.

15. Ms Johnstone was very concerned after the meeting with Mr Tupling. Her post was on salary grade 11, as was Mrs Spurden's. All but one of the other roles that had been reviewed in Phase 1 were at grade 13 or above. As all the new posts appeared to be more senior than her current role and Mr Tupling had said that staff could not apply for promotion, her redundancy appeared a foregone conclusion.
16. Later that afternoon, job descriptions for the new roles were available to view on the College's intranet. Ms Johnstone could not identify any of her current responsibilities in the new posts and did not know what grades and/or salaries were attached to them. A day or so later person specifications/selection criteria for the new posts and a scoring matrix were uploaded. Ms Johnstone struggled to understand some of these criteria, which appeared to be aimed at a very high level of management. She formed the view that there was no point in her "aspiring to" (that is, applying for) any of these posts.
17. Mrs Spurling also reviewed the job descriptions and person specifications for the new posts and discovered that she did not meet all the essential criteria of any of the new roles. She could not identify any of her current responsibilities in the new posts and therefore assumed that they would be part of the roles created at Phase 2, at a lower grade. Because of her personal circumstances, she could not afford to accept a pay cut. She therefore concluded that her only option was to opt for redundancy.
18. As Employee Relations Case Manager, Mrs Brown's role was to provide employee relations advice to line managers and employees across the College. She managed a team of five Human Resources advisors and administrators. She was part of the change management project team responsible for implementing the restructure. She was responsible for attending meetings to support senior managers during the consultation period if Human Resources Business Partners were not available to do so and was involved in coaching managers and designing their briefing pack and associated paperwork for the restructure. She was the point of contact for any questions arising during the consultation.
19. Ms Johnstone had a one-to-one consultation meeting with Ms Hallows on 29 March 2019. Mrs Brown was also present. Ms Johnstone said that she could identify none of the duties of her current role in the new posts and did not know which she should apply for. She asked what salary grades the new posts were at but Mrs Brown was unable to tell her. She asked what the process would be if she did not want to "aspire to" a new role but take voluntary redundancy. Mrs

Brown told her that this was not an option and she had to apply for at least one role. Mrs Brown later emailed Ms Johnstone with details of the salary ranges for the new posts.

20. Mrs Spurden also had a one-to-one consultation meeting with Ms Hallows on 29 March 2019 attended by Mrs Brown. Mrs Spurden queried the pool of posts that were subject to the proposed redundancies, since this had been presented as a restructuring of the “senior leadership team” and she had never considered herself part of that team. She asked where the duties of her role appeared in the roles in the new structure but was given no answer. She said that it was difficult for her to know which post she should apply for and that she assumed her duties would be considered during Phase 2, which would involve lower graded posts. She cannot remember whether it was Mrs Brown or Ms Hallows, but one of the managers at the meeting confirmed that the Phase 2 posts would indeed be at a lower grade. She also asked when her employment would end if she volunteered for redundancy.
21. In her evidence, Mrs Brown accepted that both Claimants raised at their meetings whether they could be considered for roles in Phase 2 of the restructure. She responded that it was not yet clear what roles would be available in Phase 2 as that would be decided by the new Heads of Department, yet to be appointed in Phase 1.
22. After these meetings, Mrs Brown met the project team of Human Resources staff and consultants. They discussed the queries that Mrs Spurden and Ms Johnstone had raised about their posts being included in Phase 1 of the restructuring but all agreed that it was appropriate to be considering their posts in this phase.
23. After 29 March 2019, there were some days on which Ms Hallows was not available to discuss the restructure with the Claimants as she had pre-booked annual leave and work commitments in London. Mrs Brown was an additional point of contact for the Claimants.
24. On 1 April Mrs Brown spoke to both Claimants again, separately. Mrs Spurden said that she was interested in taking redundancy and making a fresh start. She asked if she could leave before 12 April. Mrs Brown’s evidence was that she expressly asked Mrs Spurden whether she wanted her to look into the question of whether she was in the wrong pool and her request to stay to see if opportunities would be available in Phase 2. The Tribunal does not accept this evidence as reliable, given that elsewhere in her evidence Mrs Brown accepted that the Claimants had never been told that staying to see what opportunities might arise in Phase 2 was an option. The Tribunal prefers Mrs Spurden’s evidence that Mrs Brown did not raise this possibility with her.

25. Later the same day Mrs Brown met Ms Johnstone. By this stage, Ms Johnstone was completely demoralised and only wanted to discuss the process for opting to be made redundant. She wanted to know when she could leave if she accepted redundancy. Mrs Brown said this would be on 12 April 2019, after the outcomes of the aspirations forms was known. Ms Johnstone said she wanted to take redundancy.
26. On 8 April Ms Johnstone met Ms Hallows and they discussed her redundancy payment calculation. Ms Hallows also met Mrs Spurden on 8 April and told her that her application for redundancy had been accepted.
27. Ms Applewhite, who, like the Claimants, had reported to Ms Hallows under the old structure, was also informed that she was at risk of redundancy. She decided to apply for the role of Head of Quality in the new structure and was successful. On 11 April she attended a meeting with the Executive in her new role to discuss Phase 2 of the restructure.
28. The Claimants received letters confirming the termination of their employment on 12 April 2019.
29. In her new role and in liaison and consultation with her fellow new Heads of Department, Ms Applewhite wrote a business plan creating new roles in the various functions within her department. Three were at grade 11, the same grade as the Claimants. All appointees to these posts were promoted from a lower grade. One such role was Governance and Regulatory Frameworks Manager. One of the officers in the team that Ms Johnstone had managed was promoted to this post.
30. In his evidence to the Tribunal, Mr Tupling confirmed that the plan had been to begin planning Phase 2 as soon as Phase 1 was complete. Initial presentations of draft plans were to be made to the Executive Team on 2 May and finalised by 16 May. As more than 20 redundancies would be involved at Stage 2, there would then be a period of consultation with the College's recognised trade unions. The selection process for the jobs in Phase 2 would run from 6 to 21 June. The plan was that all remaining staff who were being made redundant would have their employment terminated by 31 July.
31. Both the Claimants had long service with the College. Had the Claimants been dismissed on notice rather than with a payment in lieu, they would both have still been in the College's employment well into June 2019. Ms Johnstone was entitled to 11 weeks' notice, which, if given on 12 April, would have expired on 28 June. Mrs Spurden was entitled to 9 weeks' notice which would have expired on 14 June. Had she had the opportunity to do so, Ms Johnstone would have applied for the role of Business Architect in the new structure. Mrs Spurden would have applied for the job of Governance and Regulatory Frameworks Manager.

Analysis and conclusions

32. In cases where a dismissal for redundancy is alleged to be unfair, the Tribunal will normally ask itself the following questions:
- a. Was the employee given a reasonable amount of warning that they might be made redundant?
 - b. Was the employee provided with a reasonable amount of information about why the redundancy was necessary and how it was to be implemented and were they consulted about the implications for them as an individual?
 - c. Did the employer adopt and apply a reasonable basis for selecting the employee for redundancy?
 - d. Did the employer take reasonable steps to identify whether the employee could be found alternative employment as an alternative to dismissal?
33. In the cases before this Tribunal, the Claimants had very little warning of their proposed redundancies. The whole redundancy process was very truncated, with less than three weeks between the initial announcement of the need for redundancies and their implementation. The consultation process was also adversely affected by the fact that the Claimants' line manager was unavailable to them for some of the consultation period and was herself likely to have been distracted by her need to address the future of her own employment at the College. Information about the salary and grades of the posts in the new structure was not initially made available and the Claimants' queries about where in the new structure their current responsibilities were to be located, so that they could consider which posts they might most appropriately apply for, effectively went unanswered. It was never explained to them accurately how the roles that were being reviewed in Phase 1 had been identified.
34. The Tribunal takes into account, however, that the College's finances were under acute pressure and it needed to take very speedy action to address this. In those circumstances, the Tribunal is prepared to accept that the amount of warning the Claimants were given of the redundancies, the information that was provided and consultation that occurred, although far from ideal, was reasonable. The Tribunal accepts the College's evidence that, had the restructuring not been implemented and the associated restructuring facility funds secured, the College would have become insolvent in March/April 2019.

35. The Tribunal does not accept, however, that the College acted reasonably in considering the possibility of alternative employment for the Claimants. The Claimants were effectively prevented from applying for any roles other than those created in Phase 1 of the restructuring process. Although the Executive Team had discussed and agreed during preparations for Phase 1 that employees who did not find a job in Phase 1 could be considered for jobs that were created in Phase 2, this information was never given to the Claimants. Neither Claimant felt it worth applying for the new jobs created in Phase 1, firstly because they did not meet the essential criteria for the roles and secondly because the new posts were all at salary grades above their current posts and they had been told they could not apply for promotion. Further, they were given no indication that they could appeal against the Executive Team's decision to include their posts in Phase 1. The Tribunal accepts that, in the light of the information that they had been given, it was understandable that the Claimants formed the view that there was no point in applying for any of the new posts created in Phase 1. In any event, Mrs Spurden was left with the impression, inaccurate as it turned out to be, that any jobs in Phase 2 would be at a lower salary grade than her current post, which she could not have afforded to accept. Given the apparent hopelessness of their situation, the Tribunal accepts that both Claimants acted reasonably in deciding to seek as early a leaving date as possible and a redundancy payment.
36. The Tribunal considers that the Claimants should reasonably have been informed of the option, which had been agreed at Executive Team level, of continuing in employment during their notice periods for the purpose of applying for any jobs in Phase 2 that had been identified by then. This would not have led to any, or any significant, extra salary costs for the College and might have saved the College the cost of the Claimants' redundancy payments, which totalled more than £18,000.
37. In summary, the College failed to give the Claimants a reasonable opportunity to secure alternative employment in the new structure. The Tribunal considers that that was a serious enough failure as to make the College's decision to dismiss the Claimant for redundancy unreasonable.

Remedy

38. The Claimants seek compensation rather than re-employment. The College is not arguing that the Claimants failed to meet their duty to mitigate their losses nor contesting the sums they are claiming for loss of statutory rights. The parties have also been able to agree figures for the Claimants' gross and net weekly pay and the redundancy payments and payments in lieu of notice they received. Neither Claimant is claiming a basic award. In the circumstances, and bearing in mind also that there is a statutory cap on the amount of the compensatory award,

the Tribunal hopes that the parties will be able to settle the compensation for these unfair dismissals without the need for a remedy Hearing.

39. If a Hearing is necessary, the Tribunal will need to assess pension loss. It will also need to consider the chances that the Claimants would have secured jobs in Phase 2 of the restructure had they been informed of the possibility of applying. Separate case management Orders have been made to prepare the claims for a remedy Hearing.

Employment Judge Cox
Date: 9 December 2019