



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs K Collins

**Respondent:** Compass Group UK & Ireland Ltd

**Heard at:** Bristol **On:** 15 January 2018

**Before:** Employment Judge J Livesey  
Ms Y Ramsaran  
Mrs P Ray

## **Representation**

**Claimant:** Mr N Pourghazi, Counsel

**Respondent:** Mr Bidnell-Edwards, Counsel

**JUDGMENT** having been sent to the parties on 29 January 2018 and written reasons having been requested in accordance with rule 62 (3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

# REASONS

## **1. The claim**

1.1 By a claim dated 23 May 2017, the Claimant brought a complaint of discrimination on the grounds of sex, more specifically a complaint of equal pay.

## **2. The evidence**

2.1 In support of her case, the Claimant gave evidence and called a former Head Chef, Mr Hale. On behalf of the Respondent, we heard the following witnesses in the following order:

- Mr Creek, former Head Chef;
- Mr Maciejczyk, former Head Chef;
- Mrs King, Supervisor;
- Ms Little, Catering Manager.

2.2 We received the following documents:

- C1; the Claimant's closing submissions;
- R1; a Hearing bundle;

- R2; the Respondent's closing submissions.

### **3. The hearing**

- 3.1 The hearing was not without its difficulties. The week before the hearing had been due to start, the Tribunal had anticipated that there may have been some difficulties with the time estimate and had written out to the parties with a proposed timetable. Neither party had commented upon it and, on the basis of the wording of the letter, it was therefore assumed that the timetable had been accepted.
- 3.2 At the start of the hearing, however, the Claimant's counsel recognised that timetable was unrealistic. Discussion took place and the position was eventually resolved by consent; the hearing was extended into a fourth day and a new timetable was agreed.
- 3.3 Even then, both Counsel struggled to stay within that timetable and the case needed careful management. If it had not been managed in that way, we considered that it would have been likely that the time estimates would have been grossly exceeded. We had not expected such a level of management to have to have been required when both parties had been represented by counsel.

### **4. The issues**

- 4.1 The issues had been identified and clarified by Employment Judge Kolanko at a telephone Case Management Preliminary Hearing which had taken place on 26 July 2017. In essence, the Claimant brought claims of like work or, alternatively, work of equal value. The latter claim was to have been considered if the former claim failed and that was the issue that we had to determine; whether the Claimant had been involved in like work to that of her comparators who had been identified as Mr Hale, Mr Maciejczyk, Mr Hale's successor, and Mr Creek.
- 4.2 There was no claim of direct discrimination. It had been withdrawn and dismissed on 26 July 2017. There was also no material factor defence which was being run by the Respondent.
- 4.3 The Claimant's employment had commenced in 2006 and had ended on 19 January 2017, but her claim was limited to a comparison period from 1 June 2013 until the effective date of termination.

### **5. The facts**

- 5.1 We reached the following factual findings on the balance of probabilities. We attempted to restrict our findings to matters which were relevant for a determination of the issues and any references to page numbers given within these Reasons are to pages within the bundle R1 unless otherwise stated and have been cited in square brackets.

#### **The Respondent and Weston College**

- 5.2 The Respondent is a global food service, catering and support organisation employing approximately 60,000 people nationwide. It holds a significant

number of contracts within the education sector, amongst which is one at Weston College, a further and higher educational college in Weston-Super-Mare where the Respondent trades under its 'Chartwells' brand.

- 5.3 Weston College has three sites with which we were concerned. The Knightsone Campus, the University Campus and the South West Skills Campus:
- 5.3.1 Knightstone; the Respondent maintained that the campus represented approximately 45% of its overall turnover at the College and was regarded as the flagship site. For catering purposes, it had a hot food counter, a salad bar, a sandwich and deli bar, a shop and coffee shops (a Costa concession and a Starbucks concession which had opened recently) [190-207]. A catering team of approximately ten were employed there; there were nine Catering Service Assistants ('CSA's) and Mr Hale, who was succeeded by Mr Maciejczyk, as shown on the organisation charts [188-9]. Mr Hale had initially worked as an agency chef at Knightstone from 2013 but had been given a permanent contract in August 2014. Approximately 85% of the Respondent's hospitality orders were also fulfilled in the Knightstone kitchen;
- 5.3.2 University; the Respondent's evidence was that the University campus represented approximately 35% of its overall turnover. It comprised a hot food counter, a salad bar, two vending machines and a Costa coffee concession [208 – 214]. There was a team of eight including the Head Chef, Mr Creek. He was initially an agency chef in early 2013 and then a permanent employee from June 2013 up until his departure in November 2016;
- 5.3.3 South West Skills; the Respondent stated that the campus represented approximately 20% of its overall site turnover. There was a hot food counter only [224 – 7]. A team of five people worked there including the Claimant, Mrs King, a Supervisor, who succeeded Karen Stockall, and three CSAs.

#### The Claimant

- 5.4 The Claimant was initially employed in 2006. She worked at the Respondent's Knightstone campus to start with. She was provided with a contract which specified her job title to have been that of 'Cook' [75]. She was also given a job description which described her role as 'Head Chef' [76A].
- 5.5 In 2011, she moved to the University campus for about six months under the same job description. In 2012, she then moved back to Knightstone for about eight weeks. Between September 2012 and March 2013, she then had a period of absence due to sickness and, in 2013, she moved to the South West Skills campus which was then a new catering unit. She had no new job description or contract beyond those to which we have already referred. As previously stated, her claim related to her time with the Respondent from 1 June 2013.
- 5.6 From the Claimant's start at the South West Skills site in 2013, the Respondent's case was that she had reported to the Supervisor, Mrs Stockall and then Mrs King, who themselves reported to Ms Little, who was described as the Food Service Manager or the Catering Manager.

- 5.7 The Claimant's case was that she never received any supervision from Mrs Stockall or Mrs King and that Ms Little had been her effective line manager. When Mrs King gave evidence, she quickly accepted the thrust of the Claimant's case; she said that she had never supervised her and that she had line managed the CSAs rather than the Claimant. They had both worked together with the CSAs as a team. Ms Little sought to reassert the Respondent's case when she gave evidence, but she was unable to identify any aspect of the Claimant's work which Mrs King had actually supervised.
- 5.8 We found that the Claimant's evidence on that issue to have been credible, that Mrs King's evidence supported it and that Miss Little's evidence lacked substance. Accordingly, the Claimant was effectively line managed by Ms Little.

The relevant chronology

- 5.9 In August 2015, the Claimant discovered that her male colleague, Mr Hale, the Head Chef at the Knightstone campus, was earning what she then thought to have been approximately £4,000 more than her. She went to speak to Ms Little and asked why she was paid less, to which she claimed Ms Little replied that she had no idea. That part of her evidence was not challenged in cross-examination.
- 5.10 On 25 September, the Claimant raised a grievance [80 - 1]. She complained that she had been better at the job and had more experience than Mr Hale, but she also alleged that she was not receiving equal pay under the Equality Act.
- 5.11 A stage one meeting took place on 3 November which was chaired by Mrs Stewart-Murray, the General Manager [82 - 3]. The issues were then investigated and, on 8 January 2016, the grievance was eventually rejected [85 - 6].
- 5.12 On 10 February, she appealed [88 - 90] and, on the 17<sup>th</sup> of that month, Mr Hale wrote a letter in support of her appeal [93]; he commented upon the Respondent's views of some of the alleged differences in their roles. His views were clearly favourable to the Claimant because he stated that he did not undertake some of the roles which had been assumed by the Respondent in determining and rejecting the Claimant's grievance.
- 5.13 On 8 March, Mr Ferrazza, a Regional Manager, conducted the Claimant's grievance appeal [99 - 111] and an outcome letter was sent on 26 April [112 - 114]; the Claimant's pay was increased from £8.47 per hour to £9.50 per hour and the increase was backdated to 1 April in order to "*align with similar establishments in the area*". It was said that the increase was not directly because of her grievance, although we noted that the Claimant's comparators' pay was not increased at that time as well.
- 5.14 In May 2016 Mr Hale resigned. He accepted the suggestion that was put to him that he may have jumped before he was pushed because he was then facing a performance improvement process. He was replaced by Mr Maciejczyk who was paid less than Mr Hale had received.

5.15 In January 2017, the Claimant's employment ended, although we were not told in what circumstances.

Mr Hale

5.16 We assessed the evidence in relation to the Claimant's comparators in more detail and, first, that of Mr Hale, on whom a large proportion of the evidence had been concentrated.

5.17 Many factors were brought to our attention in respect of their respective roles. Some were important, some less so and we tried to deal with those which appeared important to us and the parties, judging by the questions that were put in evidence and the submissions that were subsequently made.

5.18 The Respondent wished to caveat the evidence in respect of Mr Hale by arguing that some of his functions had not been undertaken by him properly or at all, either through incompetence (in respect of which there had been a performance improvement process in 2015-6 [145-151]) or due to ill health or other issues (dyslexia and/or the effects of heart attacks).

5.19 In respect of the latter, there were no formal adjustments that had ever been put in place to accommodate any disability, nor was there evidence which had suggested a less formal accommodation for any difficulties that he had faced. As to the performance issues, the Claimant was keen to point out that the performance improvement programme had only started some significant time into Mr Hale's employment and, only then, in respect of two issues concerning the keeping and/or labelling of food. There had been no suggestion of a wider problem of him having failed to adhere to his job description in other ways. Indeed, we noted that the Respondent had been talking about 'restructuring' Mr Hale's role into a more important and strategic one in May 2016 [163-5].

5.20 We considered that it was important that the performance issues which were raised with Mr Hale appeared to have arisen after the Claimant's grievance had been filed. She was suspicious that the Respondent had only moved to criticise him in order to justify their pay differential. Although there was no evidence to that effect, the fact that Mr Hale's alleged underperformance had gone on for so long and that he had not received a warning at the end of the process in 2016 [166] did little to assist the Respondent's case.

5.21 As to job titles and descriptions, the Claimant's contract had referred to her as a 'Cook' [75]. Mr Hale's offer letter had referred to his role as that of 'Chef' and his contract referred back to that letter [128-130]. The Claimant's Job Description referred to her as a 'Head Chef' [76A]. Mr Hale's also referred to him as a 'Head Chef' and was identical in all other respects to the Claimant's [136-9]. Although he maintained that he had never received it when he had started work, the signed sheet suggested otherwise [140].

5.22 Hierarchy/structure; we have already dealt with the reporting lines and structure within the South West Skills Campus. At the Knightstone Campus, there was a staff of 10. Mr Hale reported to Ms Little.

- 5.23 Hours; we heard no evidence on this issue and the parties urged us not to make any findings until the next stage of the case when other evidence in relation to pay was to have been considered.
- 5.24 Basic functions; both the Claimant and Mr Hale had the primary responsibility for preparing the food that was served on their respective hot counters. They organised and prepared food for breakfast and lunch and any morning snacks that might have been ordered. Their hot food was prepared from the same basic menu issued by the Respondent.
- 5.25 Mr Hale had primary responsibility for seven hot options that were served at the Knightstone counter, whereas there were less on the South West Skills counter (four). The explanation, according to Ms Little, was simple lack of space; the Claimant did not have enough room to have served all of the food on the menu.
- 5.26 In addition to the hot counter at Knightstone, there was a salad bar, a sandwich and deli bar, a retail shop, and a Costa concession, all of which were run by the CSAs. Mr Hale had had nothing to do with them, save that Ms Little said that he had prepared soup for Costa and had initially ordered the cakes, although she had subsequently taken on that job herself. More recently, a Starbucks concession had opened which was and is also being run by the CSAs.
- 5.27 The Respondent argued that Mr Hale prepared food which was more sophisticated and attractive (we were asked to compare the photographs at [233-9] and [232]), yet that detracted from the essential issue which was what they were actually required to do, not how well they did it. The Respondent's evidence on that point also seemed somewhat at odds with its other evidence about Mr Hale's alleged under-performance.
- 5.28 After lunch, both the Claimant and Mr Hale were responsible for helping to clear and clean up, with the rest of the team.
- 5.29 Responsibility for planning, ordering and costing; this was where the Respondent said that Mr Hale's role was fundamentally different from the Claimant's. It was said that he had had a strategic function in "*overseeing and developing the provision of food service*" (menu planning, costing and devising ways to increase sales; paragraph 18 of Ms Little's evidence). Having heard Mr Hale, however, we considered that the reality was rather different; it had been Ms Little who had taken on responsibility for the more strategic elements of the role and that, even by early 2016, the Respondent was still looking to develop that element in Mr Hale (see, in particular, paragraph 22 of his statement). Ms Little accepted that he had never really operated at that level (her paragraph 45).
- 5.30 The basic menu was provided to each campus by Ms Little from recipes/ingredients which were taken from the Respondent's software programme 'Source'. All sites operated the same menu on the same weeks which helped with ordering. Both the Claimant and Mr Hale occasionally made adjustments to the menus if, for example, ingredients were not available or if an item had not been selling well. Ultimate approval and the costing of any changes was undertaken on *Source* by Ms Little.

- 5.31 Mr Hale had access to the *Source* software but never used it. The Claimant did not have network access to it at her campus but it was noteworthy that, when he dealt with her grievance appeal, the Regional Manager had expected menu planning to have been part of her role [103].
- 5.32 The Respondent occasionally ran promotional events such as Italian days, fish Fridays, Mexican days and the like. Each campus then received menus and promotional material from Ms Little. We had the sense that there may have been scope for more creativity on such days for the chefs to have made suggestions for other dishes, but they all had to be costed and approved by Ms Little and, if she did, she then included them on the menus.
- 5.33 At the South West Skills campus, the Claimant stated that she had ordered the food that she had been responsible for cooking and she then checked it upon arrival. Ms Little claimed, however, that the vast proportion of food ordering at the campus had been done by Mrs King, which was what Mrs King also confirmed in her statement. The Claimant disagreed; she said that Mrs King had only ordered the ambient food (crisps, chocolate etc.) although Mrs King had also occasionally placed an order which the Claimant had put together. That part of her evidence appeared to accord with what Mrs King herself said (paragraph 10 of her statement). When Mrs King gave evidence, she stated that she had always placed the order but that the Claimant had completed the fresh and frozen parts and that she had completed the ambient part.
- 5.34 Having heard the evidence, we considered that there was little between them; whoever had physically *placed* the order onto the system, it was from a document that either the Claimant (in the case of the fresh and frozen sections) and Mrs King (in the case of the ambient section) had completed.
- 5.35 The Claimant kept an eye on her own stock. If stock had not been available for a dish, she had tried to source it from one of the other campuses, as had the other chefs.
- 5.36 At Knightstone, Mr Hale only ordered the food which he cooked. Ms Little stated that, at first, he had also ordered the food for the deli counter, but he had missed items off and she had taken over that responsibility, as well as for the food for every other part of the campus.
- 5.37 Responsibility for dealing with the 'client' College; we considered this to have been an important point in terms of responsibility. Mr Hale stated that this formed no part of his role. It was down to Ms Little to deal with the College. In her absence, he said, the Claimant had undertaken the liaison. The Claimant's evidence mirrored that.
- 5.38 Ms Little denied that the Claimant had ever deputised for her formally whilst she had been away, but she acknowledged that she had taken on some of the cash handling and other responsibilities, which was supported by some of the documentation ([94-8] and [120]).
- 5.39 Health and Safety and Hazard Analysis and Critical Control Points (HACCP); we heard a significant amount of evidence on this issue.

- 5.40 Every chef serving food had a responsibility for ensuring that their food was safe. We were told that there were legal requirements for the recording of cooked and stored food temperatures, labelling and the like (HACCP records).
- 5.41 The Claimant was the only qualified chef on her site and she considered that she had the responsibility for maintaining HACCP documentation on her campus. Whoever had recorded the daily temperatures for the food sold on the counters and from the machines (and it was accepted that a number of people may have done the initial recording), it was the Respondent's case that Mrs King, not the Claimant, had ultimate responsibility for the regular monthly HACCP check and sign off as the senior manager at the campus. The Claimant alleged that they had each done it from time to time, but that Mrs King had often had her help. We were not shown any of the monthly sign off sheets but Mrs King agreed with the proposition that they had both signed off the food for which they had been responsible (in other words, the Claimant for the hot served food and she for the ambient food). Ms Little did not disagree; she had not checked the HACCP sheets at that campus.
- 5.42 Further, when the campus was subjected to an audit by the Local Authority, the Environmental Health Officer obtained the Claimant's signature for the visit [87]. He would not have done so, she said, if he had not thought her to have been the appropriate signatory.
- 5.43 Mr Hale stated that he had been in the same position as the Claimant, which the Respondent broadly agreed because, as the senior chef on site, he too had responsibility for the food which was cooked and served. Nevertheless, the Respondent maintained that Mr Hale had simply not done his job well (paragraph 50 of Ms Little's statement). Indeed, it was clear that he was disciplined for having failed to maintain food hygiene standards in his kitchen in January 2016 [145-151]. Ms Little accepted that, if there had been out of date food in the fridge in the South West Skills site, the Claimant too would have faced similar sanction.
- 5.44 We accepted that he too had completed temperature checks on food and recorded them daily. He had been given the collated monthly sheets to sign off by Ms Little, which he did, but we had the distinct sense that his understanding of the broader HACCP requirements in respect of record keeping were scant. He had never been trained in that respect.
- 5.45 As to COSHH and other Health and Safety issues, the Claimant believed that she was responsible for all such matters in respect of the kitchen, whereas Mrs King had oversight for the CSAs and the counter area. Not a great deal of other evidence was heard on that discreet issue.
- 5.46 Responsibility for managing and/or training staff; the Claimant accepted that she had had no responsibility for line managing or training the CSAs at her campus. That had been up to Mrs King, although she had been unaware of any training which had actually been delivered. Mrs King said that she had fed down information from Ms Little on health and safety issues but, otherwise, the CSAs had received their training on line. She actually



thought that she had delivered that information to the CSAs together with the Claimant.

- 5.47 Although the Claimant did not line manage the CSAs, she obviously helped to organise their work during the day so as to ensure that they had worked together effectively as a team in providing the food and then clearing up.
- 5.48 The Claimant also had responsibility for an apprentice for 10 months from January 2016. The apprenticeship had not been a formal placement through the Respondent but, rather, someone who had been in education at the College, having been previously employed by the Respondent before that.
- 5.49 Mr Hale had also had an apprentice for a period, although he denied any responsibility for his/her paperwork or certifications.
- 5.50 In respect of those CSAs nominally under him on the structure chart [188], he denied any responsibility for their management in the traditional sense; he did not appraise them, train them, organise their holidays and/or discipline them. Ms Little agreed. They had received their training online and he had no knowledge of how the other aspects were performed but suspected that Ms Little had handled those matters. He was right. Staff rotas had been devised by Ms Little at all sites.
- 5.51 Additional and/or hospitality work; a fair amount of additional work was available by way of overtime, particularly through hospitality and events work in the evenings. The Claimant sometimes helped with the preparation of hospitality orders during term time at her own campus during her normal working hours (for example, by pre-preparing food which could have been heated immediately prior to an event), but she undertook that work more often during the holidays when she had been at the Knightstone site as the South West Skills site had been shut [118-120]. The vast majority of such work was undertaken at the Knightstone site in any event during the term and there was a member of staff was dedicated to it (Jean Seagrove).
- 5.52 The Claimant had undertaken more of that type of work before her 50<sup>th</sup> birthday in November 2010 but, for reasons related to her desired work life balance, she decided to do very little of it subsequently. It was voluntary overtime in any event.
- 5.53 Mr Hale avoided hospitality work in the evenings as well. He organised and oversaw the preparation of food for a number of events (paragraph 33 of Ms Little's evidence) but stated that he had been medically advised not to work beyond his normal contractual hours after he had suffered two heart attacks in November 2014. The contents of paragraph 22 (e) of his statement was not specifically challenged concerning his lack of involvement in any planning for such events. This was work which the Claimant could also have done, but had chosen not to.
- 5.54 As to other events, like Christmas and graduation, Mr Hale cooked what he was given. He denied any input into the menus or organisation of the events in any strategic way.

5.55 Ms Little was keen to point out that some of the functions had not been during overtime but, rather, during normal working hours. Since most of them had been at the Knightstone campus, Mr Hale had been involved. As we have said, there were also numerous events which had taken place during the holiday periods in which the Claimant had been involved.

5.56 Finally, we considered the manner of Mr Hale's appointment to have been relevant. While he had been filling in working successfully as an agency chef, he was visited by Mr Smith, the Respondent's then Regional Manager, and was offered the job permanently. He was not interviewed and, as he put it, they then '*just talked money*'. It appeared to have been an unstructured and unscientific approach.

Mr Maciejczyk

5.57 Mr Maciejczyk had taken over from Mr Hale at the Knightstone campus in June 2016, but had left just before the hearing, on 12 January 2018.

5.58 It was interesting and potentially important to note that he was paid less than Mr Hale (£9.58 per hour) and therefore within 10 pence of the Claimant's hourly rate following her grievance appeal. In annual terms, he believed that it equated to a salary of £20,000.

5.59 The Claimant honestly accepted that she had not worked with Mr Maciejczyk for any length of time and had no real sense of what he had done but, having heard the evidence, we had no sense that the essence of his role had departed markedly from that which had been undertaken by Mr Hale, albeit that the role grew during his time and he had certainly assumed greater responsibility following Ms Little's extended illness absence in the autumn of 2017.

5.60 In summary, we accepted the following evidence applied in his case;

- Title and Job Description; Mr Maciejczyk could not remember having seen a job description but he recognised the more sophisticated 'Role Profile' which was shown to him [27-8] which included essentials such as the demonstration of '*innovation and strategic direction*'. The document nevertheless referred to him as a 'Head Chef', which accorded with his offer letter [178] and his contract [182];
- Basic role; he too was responsible for the cooking of food that was served on the hot counter at the campus. We had the sense, however, that he had a more active role in the other catering on site, which developed as time went on;
- Health and Safety and HACCP; Mr Maciejczyk signed off the monthly HACCP reports for the campus, not just for the hot counter, although he continued to believe that Ms Little shouldered ultimate responsibility for any issues which arose in that respect;
- Menus and food ordering; as with the other campuses, the menus were sorted out centrally and adjusted as necessary. He did all of his own ordering. We concluded that both he and Ms Little shared the task of ordering the ambient food and whatever was required for the Costa and

Starbucks concessions, although it was Ms Little who did it most often. There were occasions when he was able to be innovative (paragraph 20 of his statement), but he accepted that they were rare. Also, on themed days, he was able to suggest alternative dishes to Ms Little, but she still had to cost them and add them to the menu if they were approved;

- Client liaison; this was generally handled by Ms Little although he covered for her on rare occasions from approximately June 2016;
- Line management and training of others; the CSAs continued to run the coffee shop, salad bar and shop. He did not manage or train them, other than to correct on-the-job mistakes. He had a more active role during special or ad hoc events because different staff were present and needed more guidance, but he still regarded Ms Little as their effective line manager on such occasions;
- Additional events; he had considered it good practice to attend to work overtime to cover special and/or hospitality events.

5.61 By and large, as with Mr Hale, the overall responsibilities for the catering function at the Knightstone site were split between him and Ms Little, although with some more of them gradually being shed by her to him over time. Further, he was gradually given responsibility for overseeing the other campuses, but this only really started after the period of comparison covered by the case had ended and, even then, the extent to which he was actually able to visit and oversee them was rare because of the time pressures upon him at the Knightstone site.

5.62 It was interesting to note that one of the stated reasons for his resignation was his feeling that he had lacked autonomy or independence. He felt straightjacketed by the Respondent which was, of course, precisely what it was attempting to argue *against*.

Mr Creek

5.63 Mr Creek was employed by the Respondent from 2013 as an agency chef and then permanently from June 2013 at the University Campus, having left of the Knightstone campus when he was replaced by Mr Hale.

5.64 He was employed as a 'Head Chef' according to his offer letter [169], although other documentation referred to him as a 'Chef/Cook'. Ms Little referred to him as a 'Chef Manager', which was what he wore on his badge.

5.65 Again, the Claimant argued that she performed like work to that of Mr Creek but, whereas her evidence contained a great deal of detail about Mr Hale's functions, there was comparatively little analysis of Mr Creek's role and she accepted in cross-examination that she knew little about what he had done because of the limited overlap between them.

5.66 In summary, we gleaned the following about Mr Creek's role;

- Basis function; he handled his own kitchen, as with the other chefs, but frequently attended to problems which arose elsewhere. He gave the

example of having responsibility for repairing the panini machine in Costa if it broke;

- Ordering and menu planning; he ordered all of the food for the University campus site, whether hot, cold, ambient or for the vending machines and the Costa concession. The task took him approximately 2 hours each week;
- Although menus were provided to him and changes were only rarely needed, if they were required, he would have had a discussion with Ms Little *and the client*, he said, and an alternative would have been approved. He did not have access to *Source* so could not cost or order any new food;
- Staff; although most of the training was done online, he had to audit the CSAs' training records to ensure their compliance with the programme. He also oversaw 2 apprentices. Although no formal disciplinary action was required, he shouldered responsibility for addressing such matters if or when they arose, having first taken advice from Ms Little as to the appropriate approach;
- Health and Safety and HACCP; he signed off the HACCP records for all food areas on his campus, including for Costa and the machines;
- Special and/or additional events; Mr Creek referred to his involvement in ad hoc events and, even though it may have been during overtime, he felt that his attendance had been "*compulsory*". He described the extra work that was involved, for example, in the preparation and catering for the annual arts show at the campus (paragraph 8 of his statement).

## **6. Legal Principles**

6.1 Section 65 of the Equality Act states that the work of a woman (A) is equal to that of a man (B) if it is like B's work or rated as equivalent to B's work or of equal value to B's work.

6.2 In order to qualify as like work, the tests within s. 65 (2) and (3) had to be considered. Section 65 (2);

*"A's work is like B's work if –*

*(a) A's work and B's work are the same or broadly similar, and*

*(b) such differences as there are between their work and not of practical importance in relation to the terms of their work."*

Section 65 (3);

*"So on a comparison of one person's work with another's for the purposes of subsection (2), it is necessary to have regard to -*

*(a) the frequency with which differences between their work occur in practice, and*

*(b) the nature and extent of those differences."*

6.3 A Tribunal was required to adopt a two stage test which had been established as far back as cases such as *Capper Pass Ltd-v-Lawton* [1976]

IRLR 366 and *Waddington-v-Leicester Council for Voluntary Services* [1977] IRLR 32;

- (i) It had to consider, first, whether the nature of the work had been the same or broadly similar, a question which required a broad general consideration and not a pedantic or pernickety approach;
- (ii) Then it had to analyse the details of the work more closely and determine the differences, if any, in the tasks actually performed, the frequency with which such differences occurred in practice and the nature and extent of any differences; in short, whether there were differences of practical importance.

A Tribunal was required to carefully scrutinise the entire contents of the jobs under analysis. It had to avoid simply enumerating the differences or similarities as they appeared in job descriptions but had to concentrate instead upon what tasks that were actually undertaken and consider whether they had really made different demands upon them. The amount of time involved in each task could have been relevant as could the respective levels of responsibility.

6.4 A Tribunal then had to enquire whether any differences that had been identified were of practical importance in relation to the terms of their work such that a difference in pay ought to have been expected. One approach might have been to have asked whether the differences would have been expected to have caused the jobs to have been differently graded if a job evaluation study had been conducted. Another might have been to have looked at the breadth in the differences in demand which were made on the employees when compared with others in different pay bands. Such questions were, of course, notoriously fact sensitive.

6.5 We approached the case by applying the test in *Igen-v-Wong* [2005] EWCA Civ 142 to the Equality Act's provisions concerning the burden of proof (s. 136). The primary burden of proof was on the Claimant to demonstrate that she did the same work or work of a broadly similar nature. If so, the evidential burden then shifted to the Respondent to demonstrate differences of practical importance. It was as stated in paragraph 5 of the Claimant's closing submissions, C1, and those legal propositions contained were not disputed by the Respondent.

6.6 We also bore in mind the EHRC Code of Practice on Equal Pay (2011) and, in particular, paragraphs 35 – 37.

6.7 Finally, as to comparators, s. 79 was relevant, but there was no dispute that the named comparators had been employed by the Respondent at the same establishment.

## **7. Conclusions**

7.1 First, was the work undertaken by the comparators broadly similar to that of the Claimant?

7.2 Having considered the facts referred to above, we concluded that the work undertaken by Mr Hale, Mr Maciejczyk and Mr Creek was of a broadly similar nature to that undertaken by the Claimant.

- 7.3 In Mr Hale's case, were there differences of practical importance between their work? Ultimately, we concluded that there were not.
- 7.4 The Respondent had pointed to a number of issues which we had to address. First, the size and status of Knightstone which, according to Ms Little when she gave evidence, was the key to the differences between the work of the Claimant and that of Mr Hale. Yes, Knightstone was bigger than the South West Skills campus and had a greater turnover, but we had no sense from the evidence called by the Respondent that its size effected the demands upon the Claimant when compared with those upon Mr Hale and their actual responsibilities and activities during the working day. There were obviously more people who worked with and supported Mr Hale at the Knightstone site to deal with the greater workload, but it did not affect the essence of what they both did.
- 7.5 It was the strategic nature of Mr Hale's role which had been the most important issue on the face of Respondent's case; that was what Ms Little had referred to as having been the "*essential difference*" between them within her witness statement. In our view, however, it was never fulfilled, nor was Mr Hale disciplined or performance managed for not having fulfilled it. Instead, the Respondent talked about redesigning his role as late as 2016. It was accepted that Mr Hale could have done more but did not for various reasons. There was not enough time to deal with menu plans nor did he access or understand the *Source* programme, he volunteered out of entertainments and overtime and he failed to complete and/or understand the HACCP paperwork properly. We were mindful of the fact that Mr Hale had worked for approximately eighteen months before the Respondent had really started to tell him that it expected him to improve in certain respects but, only then, in respect of one specific part of his work (concerning the storage of food), which had also come after the Claimant had issued her grievance.
- 7.6 In our judgment, in all other respects, the work of Mr Hale and that of the Claimant contained differences of no practical importance. Their respective responsibilities for liaising with the College, for health and safety and HACCP issues, for ordering and checking food, menu planning, the management and training of staff and working on special events which, as overtime, which was technically not part of either of their contractual roles, were all substantially the same. In fact, we considered the Claimant had appeared to shoulder greater responsibility than Mr Hale in some respects; for example, the extent to which she picked up some of Ms Little's work in her absence.
- 7.7 Finally, we considered whether the differences, if any, had been sufficient to have justified a difference in pay between her and Mr Hale and, for the reasons given above, we concluded not.
- 7.8 In respect of Mr Maciejczyk, we also had to consider whether there were differences in their work which were of practical importance. His role was, of course, Mr Hale's in name and location. The essence of it was the same, although he was able to grow it such that he assumed greater responsibility for certain other aspects; he accessed *Source* himself, he appeared to take

more initiative on themed days, he seemed to assume greater responsibility for other parts of his site and he was subsequently given oversight of other campuses, although that proved to be of little practical importance and none in fact whatsoever during the Claimant's time.

- 7.9 Were these differences of practical importance during the comparison period, his first six months in the job? We concluded that the Respondent had not satisfied us that his role departed sufficiently from Mr Hale's in that period so as to have enabled us to reach the conclusion that there had been practical differences which had been sufficient to have justified a pay differential.
- 7.10 Finally, Mr Creek. He was also involved in broadly similar work, but were the differences between his work and that of the Claimant of practical importance? We considered that they were.
- 7.11 The key to an understanding of his position was the fact that, at his campus, there was no equivalent to Mrs King or Ms Little. Mrs King had been on site with the Claimant and Ms Little had been at Knightstone with Mr Hale and Mr Maciejczyk. They had shared the responsibilities for the work at each site. Mr Creek's responsibilities, however, had not been not shared with anybody; he therefore managed the CSAs as their manager, he did all of the ordering to his campus, he held menu discussions with Ms Little and the client and he managed other aspects of his site. Practical, hands on solutions to problems which arose in the Costa concession, for example, were his to find. He was clearly and more obviously present at out of hours events, sensing that they had been compulsory. In our view these differences were sufficient to have justified a difference in pay since his work was not truly like work to that undertaken by the others.

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Employment Judge Livesey

Date 22 February 2018

REASONS SENT TO THE PARTIES ON

15<sup>th</sup> March 2018

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FOR THE TRIBUNAL OFFICE