mf

EMPLOYMENT TRIBUNALS

Claimant: **Mrs J Gardner**

Respondent: **The Coopers' Company and Coborn School**

Heard at: **East London Hearing Centre**

On: **30-31 August & 26 November 2018 (deliberations)**

Before: **Employment Judge Speker OBE DL**
Members: **Ms J Houzer**
Mr M Rowe

Representation

Claimant: **In person**

Respondent: **Mr C Murray (Counsel)**

RESERVED JUDGMENT

The unanimous judgment of the Employment Tribunal is that:-

(1) The Claimant was unfairly dismissed.

(2) Under the *Polkey* principle, the Tribunal rules that there was a 90% prospect that if the procedural unfairness had not occurred, the result would have been the same and accordingly there is a 90% reduction to be applied.

(3) The claim for additional notice payment is dismissed.

(4) The Respondent shall pay to the Claimant compensation for unfair dismissal in the sum of £1,361.74.

REASONS

1 This claim was brought by Mrs Jane Gardner alleging unfair dismissal, age discrimination, a redundancy payment, a protected award and breach of contract. The case was against her former employers, The Coopers' Company and Coborn School. It had originally been listed for one day but this was extended to two days and in the event lasted three days. On the first day and at the invitation of the parties, the Tribunal read a number of listed documents, including the witness statements and then heard oral evidence from Susan Jane Hay, Deputy Headteacher.

2 On the second day, 31 August, evidence was heard from Dr David Parry, Headteacher of the School and from the Claimant herself. The case was then adjourned part-heard and resumed on Monday 26 November 2018 when detailed submissions were given by the Claimant and by Mr Murray on behalf of the school. The Tribunal adjourned to deliberate and informed the parties that the judgment would be reserved.

3 In addition to hearing evidence from the Claimant and from the Respondent's witnesses, the Tribunal was provided with a paginated bundle of documents amounting to 366 pages.

4 We find the facts as follows:-

4.1 The Claimant had worked as a part-time teacher for 17 years. From September 2014 until December 2017, she had been employed by the Respondent as a part-time teacher of ICT and computing. She had a university degree in maths but had not been a teacher of mathematics, apart from the short trial period with the Respondent, which is mentioned later.

4.2 The Respondent school has been an academy since 2011 and has 1,475 students between the ages of 11 and 18. It was formed from the amalgamation in 1971 of two schools in the East End of London, namely Cooper School for Boys and Coborn School for Girls. The school had then moved from the East End of London to Upminster.

4.3 The Claimant had continuity of employment dating back to 1 September 2001 but her employment with the Respondent school commenced on 1 September 2014.

4.4 Prior to spring 2017, there was no indication that the Claimant had been other than an effective and valued member of the school teaching staff.

4.5 Early in 2017, there was a review of the teaching hours and the timetable of the school, as was the normal practice each year. This took into account the number of students electing to take subjects at GCSE and 'A' level. Consideration was given to the fact that ICT was no longer a subject requiring staff to teach ICT and Computer Science. The school was only intending to offer Computer Science. This change in the curriculum was a national decision rather than one made by the school.
However, in view of these changes it was decided that fewer teaching hours were required in the claimant's department. In particular, the school was no longer to require 27 hours of IT teaching.

4.6 On 17 March 2017, an informal consultation meeting took place with the members of the department, including the Claimant and it was indicated that the Union would be informed of the redundancy and restructuring policy which had been prepared by the school. This was to be followed by a desk-top selection process during the week of 27 March with a decision communicated to the member of staff involved by Thursday 30 March. The Claimant, with others, was informed that there was a potential risk of redundancy.

4.7 On 24 March, the Claimant was provided with a pack explaining the reason for the potential redundancy and was given the administration pack. At the meeting on 24 March an overview of the selection criteria was given. The Claimant raised issues about certain aspects including whether her own experience, particularly at 'A' level and GCSE, would be taken into account and it was agreed that additional wording would be added when completing the self-audit summary.

4.8 The members of staff involved were scored by their line manager. In the Claimant's case, the audit was performed by Trish Foreman (Head of Computing) and her line manager Rob Bell (Deputy Headteacher).

4.9 On 31 March, the Claimant met with Sue Hay and Tracey Skingle (from HR) and was informed that she had scored lowest from the assessment and that she remained at risk of redundancy. The Claimant's Union representative, Keith Passingham, was notified of the position. The Claimant brought this consultation meeting to an end as she was upset at the news she received.

4.10 Following the Easter break, Tracey Skingle invited the Claimant to a further consultation meeting which was said to be aimed at trying to find a solution to the redundancy situation and it was indicated that redundancy may be confirmed. Opportunities were being looked for within the Respondent's school or other schools in the borough.

4.11 There were discussions as to a maths post within the school which had been advertised, although it was pointed out by Dr Parry to the Claimant that this was a full-time post and would involve some 'A' level teaching. The Claimant had indicated that she may be interested in this as well as

teaching food technology. The Claimant pointed out that she had a mathematics degree.

4.12 A formal meeting with the Claimant was held on 2 May 2017 by Dr Parry and Tracey Skingle. The Claimant attended with Keith Passingham, her Union representative. It was pointed out that there would be a two week consultation period to conclude on Wednesday 17 May but in order to take into account the availability of Mr Passingham, this was extended to Tuesday 22 May. During the meeting Mrs Gardner expressed her interest in the role as teacher of maths and she was told that she could apply for this but it was repeated that it was full-time and included 'A' level maths. The Claimant accepted this and said she would still be interested. Dr Parry indicated that there would be lesson observation for all the candidates for the maths post. There was discussion as to whether the post was a suitable alternative for the Claimant.

4.13 The Claimant duly applied for the maths position, along with external candidates. She was initially unsuccessful in her application and it was recorded that the observation of her lesson did not fall into the category of good or outstanding which would normally have been required.

4.14 On 8 May, Tracey Skingle wrote to the Claimant confirming the outcome of the meeting on 2 May and stating that if following consultation, the restructure went ahead and there was no suitable alternative role, that the Claimant would be served notice of dismissal by reason of redundancy with a leaving date of 31 August 2017. The Claimant was entitled to a formal meeting on Tuesday 23 May.

4.15 The Claimant was unsuccessful in her application for the role of teacher of maths. A main scale teacher had been recruited who could teach up to and including Key Stage 5. The Claimant was informed of this outcome and was also notified of the calculation of her statutory redundancy payment entitlement which took into account continuous service with Redden Court and Campion. An IT role at Horemead School had been discussed but had been filled by another applicant.

4.16 There was some delay in arranging the next meeting with the Claimant. On 29 June the Claimant was informed by Dr Parry in a detailed letter that it was necessary to rearrange her notice of redundancy meeting due to an OFSTED inspection and as it was not possible to hold a meeting until 5 June, her redundancy date had been extended until 31 December 2017. The letter explained that the school no longer required 27 hours of IT training and that the Claimant had been selected for redundancy. A vacancy had been identified in the school, namely a part-time teacher of maths to supply absence cover and intervention as well as a variety of maths lessons across Key Stages 3 and 4. This was offered to the Claimant as suitable alternative employment on a four week trial period with the Claimant working Tuesday, Wednesday and Thursday each week. The letter stated that if either Mrs Gardner or the school found that the job

was unsuitable, then she would be treated as having been dismissed by reason of redundancy on 31 December 2017 and would retain her right to a statutory redundancy payment unless she resigned during that period or obtained other related employment. The trial period for the part-time maths position was to start on 4 September 2017 ending on 29 September.

4.17 On 3 July 2017, the Claimant emailed Tracey Skingle, and acknowledged the letter setting out the offer of a trial period and stated:

"Just to be clear if I (or you) find the role is unsuitable for me during the 4 week trial then I will be made redundant as at 31st December."

4.18 It was agreed that Dr Parry, Mrs Josie Harris Assistant Head and Sue Hay Deputy Head, would observe the Claimant's lessons during the trial. Reference had been made of concern as to her performance with maths when she had been interviewed for the full-time maths post for which she had not been successful. All three persons were involved in carrying out observations of the Claimant's maths lessons. Josie Harris and Sue Hay undertook observations on 12 September and Dr Parry carried out an observation on 14 September. These were informal observations without any formalised documentation on any pro forma. No feedback was given to the Claimant following any of the observations. The observations produced a negative impression of the Claimant's performance. Dr Parry discussed with Sue Hay and Josie Harris their observations and their conclusion was very negative as to the standard, which they found unacceptable as far as the maths students were concerned. Dr Parry decided that the trial period should be brought to an end and he summoned the Claimant to a meeting attended by Tracey Skingle and Sue Hay. Dr Parry informed the Claimant that he was unhappy with the trial and would arrange a meeting with the Claimant and her Union representative to discuss the outcome. The Claimant was very upset at the information conveyed and the meeting ended abruptly. The Claimant was told that she should go home and a further meeting would be arranged.

4.19 Following this, the school liaised with Mr Passingham to try to arrange a further meeting to discuss the ending of the trial. It appeared that the Claimant was not able to offer a suitable time for that meeting. The school suggested a meeting on 9 October. It was known that the Claimant was due to depart on holiday to Thailand on 10 October. The Claimant informed her Union representative that she could not attend the meeting on 9 October or the following day because of her holiday commitments. Various attempts were made by the school to arrange the meeting.

4.20 On 11 October, Dr Parry wrote a detailed letter to the Claimant referring to the meeting on 19 September when it was communicated that the four week trial basis had been brought to an end and that it had been expected that there would be a further meeting with the Claimant and Keith Passingham. It was stated that Dr Parry was disappointed by the Claimant's attitude in not arranging a further meeting, describing her as

having been "unhelpful and unprofessional". The letter confirmed the previously reached decision that the Claimant's role as a teacher of IT was redundant as from 31 December 2017. The letter went into detail with regard to the reasons for the decision and the Claimant's entitlements and informed her that she had the right to appeal against this decision "within seven working days of the date of this letter", the letter being dated 11 October.

4.21 On 7 November, the Claimant emailed Keith Passingham stating that she had returned home and had not heard from the school and queried whether the school had blocked her emails. She suggested the school had not been in touch with her. Keith Passingham replied saying that he was surprised that she said there was no contact as he had been copied into the email with the letter of 11 October and that two copies of that letter had been sent in the post. He copied the Claimant in to the letter saying that even if she had not received the email he would have expected her to have seen the hard copy of the letter.

4.22 On 8 November, the Claimant emailed Tracey Skingle asking about her belongings and about the letter from Dr Parry.

4.23 On 16 November, the Claimant emailed Dr Parry lodging an appeal and stating that this was within seven days of her having received the letter of 11 October. Dr Parry referred to the fact that the notice had been sent on 11 October and copied to her representative and that he could not consider her appeal because it was outside the "seven day period". The Claimant asked Dr Parry to reconsider this position as to her appeal but Dr Parry responded that there had been attempts to meet with Mrs Gardner on a number of occasions but that her appeal was outside the seven day window. Dr Parry's position was that the appeal period had never been extended in the past for anyone. The Claimant raised a grievance with the Chair of Governors on 5 January but the response was that the school had followed its redundancy procedure and the matter was taken no further by the governors. The Claimant's employment came to an end on 31 December 2017.

Claimant's Submissions

5 Mrs Gardner, made detailed oral submissions. The main points were as follows:-

5.1 The selection criteria applied were unfair and unreasonable.

5.2 It was unfair that she had been scored by an Assistant Head who had never seen her teach.

5.3 No opportunity was given for the Claimant to challenge the scoring.

5.4 She was not informed about other possible roles within the school and she had to find out about these herself.

5.5 The redundancy procedure in the school was unfair.

5.6 The school did not inform her of the position regarding food technology.

5.7 She should have been preferred in relation to the available full-time role for maths.

5.8 The suggestion that her observed lessons were substandard was unfair.

5.9 The school failed to obtain a statement about her from the Head of Maths.

5.10 The observations during the trial period for the part-time position of maths were unfair and no evidence was produced to her regarding any deficiencies. She should have received feedback and the opportunity to comment.

5.11 It was unfair to halt the trial period so suddenly and there were no reasonable grounds for doing so.

5.12 At the meeting to discuss the ending of the trial period, she had not been told that this was to be a formal meeting and was not given the opportunity to be represented.

5.13 Dr Parry had not spoken to the Claimant with regard to any concerns as to his observation of her lesson.

5.14 The redundancy process was never finally completed and she did not receive the official notice of termination which should have been served upon her.

5.15 As there was no formal notice of redundancy, her employment should have continued until the end of the spring term rather than still ending on 31 December.

5.16 The letter on 29 June was not a formal letter of redundancy but was a job offer in relation to the trial period.

5.17 The Claimant had taken reasonable steps to mitigate her loss, including a temporary role from January to April 2018 in ICT.

5.18 On the basis of the case of *Norton Tool Co Ltd v Tewson* [1972] ICR501, she was entitled to full payment for the notice period from the beginning of January until April 2018 and that was in addition to any earnings she had had during that period.

5.19 She maintained that *Polkey* was not relevant in this case and that if a fair procedure had been applied then she would still be employed by the

Respondent's school as an ICT teacher. She had given up another job in order to take up the trial period in maths.

5.20 The evidence of Sue Hay should not be accepted as her evidence was vague and she was unsure about many aspects and the minutes taken of the final meeting were unreliable.

5.21 As to Tracey Skingle, there was no clarification as to why she had not been called as a witness for the Respondent and there were many unsatisfactory aspects in the school's documentation.

5.22 It was unfair that she was not granted an appeal. She referred to the case of *The Newcastle upon Tyne Hospitals NHS Foundation Trust v Haywood* [2018] EWCA Civ 153 as to the time issue.

6 Respondent's Submissions

6.1 Mr Murray stated that there was not a high amount of disagreement in relation to the evidence and he invited the Tribunal to prefer the evidence of Dr Parry and Mrs Hay over that given by the Claimant. It was pointed out that Dr Parry had many years' experience as a Headteacher and that his last act as Headteacher on his final day was to attend to give evidence in this hearing. He was retiring because of serious ill-health. The suggestions made by the Claimant that there had been some kind of conspiracy against her should be disregarded.

6.2 There was a genuine redundancy situation and the Tribunal should not interfere with that. It was not for the Tribunal to substitute its own conclusion as to what it should have done in the position of the school. Mr Murray submitted that there was a fair process, including consultation meetings on 17 and 24 March, and an agreed selection pack which had been discussed prior to its implementation. The employer had presented all affected employees with the criteria which were discussed and the Claimant had been able to feed into the process. Following the marking, the Claimant had scored the lowest mark. There were then discussions and as time passed the effect was that the Claimant's employment was extended by a further term until 31 December 2017. The Claimant's Trade Union representative was involved in the discussions. The Claimant was facilitated and allowed to apply for a full-time maths role but was unsuccessful. She also applied for a job as Head of Food Technology for which she had no teaching experience and she was not successful.

6.3 It was Dr Parry who then suggested a part-time maths role and it was agreed that there be a four week statutory trial period. The Claimant agreed this and was in no doubt that if it was unsuccessful she would remain on notice of redundancy as of 31 December.

6.4 The trial period was unsuccessful and this was based upon observations of the Claimant.

6.5 Mr Murray stated that the Claimant had been redundant formally as set out in the letter of 29 June 2017 and it was clear that if there was no change in the position that her employment would end on 31 December 2017 and this was crystal clear and was acknowledged by the Claimant in her email.

6.6 Dr Parry had had concerns about the trial role following his observations and those of others. He stressed that he had been at the school for 13 years and described Mrs Gardner's lesson as the weakest he had seen in his 13 years at the school. He was a teacher of considerable experience in observing lessons and Mrs Hay had also found deficiencies. The school was entitled to conclude that the trial period could not continue. Adverse comments were also made by pupils in the class which was unusual.

6.7 At the meeting when Mrs Gardner was informed that the trial period was coming to an end she became upset and the meeting had ended quickly. However, the school expected that there would be a further meeting with Mrs Gardner and Keith Passingham her Trade Union official, but despite all efforts made by the school, this did not take place. The school had been back and forth to try to arrange the meeting but the Claimant then went on holiday to Thailand. The Claimant was aware of the school's attempts to try to meet with her and Mr Passingham and effectively the school had done all that it could. The letter of 11 October was sent to Mrs Gardner by email and by hard copy and her trade union official was copied in and received these.

6.8 As to the *Haywood* point, Mrs Gardner was aware in any event that her employment was coming to an end on 31 December but the letter confirming the decision had been sent appropriately to her and to her Trade Union representative. The school was entitled to decline granting an appeal as the application was made long after the time when the letter had been sent and the *Haywood* point did not assist. Dr Parry had said in evidence that he could not recall any previous occasion when the time for appeal had been extended. It was acknowledged that there was some ambiguity with regard to what was the actual time within which to appeal, namely whether it was seven days from the letter, five days or five working days. The policy relating to the role of the Chair of Governors had referred to five working days, even though Dr Parry had said in his letter "seven days". However, on any basis Mr Murray argued that the appeal was out of time.

6.9 As the trial period had been unsuccessful, the redundancy was effective as from 31 December.

6.10 The criticisms with regard to the matrix criteria were unjustified. At the Claimant's request she was able to include details of 'A' level and GCSE experience.

6.11 Mr Murray referred to the case of *Williams v Compair Maxam Ltd* [1982] IRLR 83 and submitted that the school had complied with all of the relevant principles and that the decision to make the Claimant redundant was within the band of reasonable responses. The employer was entitled to look at its business needs and make an appropriate decision. Reference was also made to *Mental Health Care (UK) Ltd v Biluan and another* UKEAT/0248/12 where it was said that although some of the Tribunal subsidiary reasons for finding dismissals to be have been unfair were flawed, its primary reason was unimpeachable. In the present case the redundancy process had been lengthy and had been extended by the intervention of an OFSTED inspection. It could have been that the Claimant was trying to extend the process in order to get an extra term of employment. However, there was no doubt that the employment ended on 31 December 2017.

6.12 With regard to the Claimant's criticism of the scoring, there was plenty of evidence to justify the scoring. It would have been open for the Claimant to call other witnesses from the school had she wished to do so. However, it was not for the Tribunal to interfere with the scoring. The school had fairly offered a trial period in maths but it was unsuccessful. The only relevance of the criticism of the observations carried out was if the Claimant was correct in suggesting that this was a sham offer but there was no evidence of this.

6.13 In summary, Mr Murray submitted that a fair process was applied, there was a genuine redundancy, a trial offer was made but it was not successful. The Claimant's claim for notice set out in her original schedule of loss, namely for the spring period, was without any justification as her employment had come to an end on 31 December 2017.

6.14 In relation to the appeal point it was clear that the Claimant was aware that she had been made redundant. Every effort was made by the school to communicate the letter of 7 November by email, hard copy and by sending to the trade union representative. The Claimant had delayed putting in her appeal and there was no entitlement for the time to be extended.

6.15 With regard to *Polkey v AE Dayton Services Ltd* [1987] 1 All ER 984 and if the Tribunal found the process unfair, then Mr Murray suggested that at most a *Polkey* reduction should be of one-third.

7 Mrs Gardner responded repeating her criticism of the criteria and suggesting that she had no real input into these and that points on her side were not fully taken into account. She had not received a proper notice of redundancy. She was in Thailand when the letter was sent out to her and had no access to the school's email system. As to the calling of witnesses, she said that teachers generally do not rally round if they are still employed.

Evidence on Remedies

8 The Tribunal decided that it should hear evidence as to remedies prior to deliberations.

9 Mrs Gardner produced a schedule of loss which unfortunately was unsubstantiated by any documentation. It contained figures for alleged incorrect notice, loss of earnings for various periods, loss of pension contribution and loss of statutory rights producing a total figure of £24,485.37 for compensatory loss. The basic award figure was inserted but the Claimant had already received her full redundancy payment. The Claimant produced a few letters with regard to efforts to mitigate her loss and then produced some further computerised sheets which had not previously been shared with the Respondent in which she set out her various calculations. She provided to the Tribunal details of work which she had undertaken and her eventual obtaining of a permanent job. Mr Murray cross-examined with regard to the financial details provided. The Claimant stated that in her present job she is paid as a teaching assistant at the rate of a teacher and was in the teacher's pension scheme but was not clear about her current pension position.

10 Mr Murray submitted that the financial information provided by the Claimant was highly unsatisfactory with so little disclosure having been made and no actual documents to justify the calculations. He argued that there should be a minimum of 33% *Polkey* reduction and he challenged the claims made by the Claimant for her losses. He argued that £300 loss of statutory rights was reasonable rather than £500. Mrs Gardner submitted that she was entitled to be compensated for loss of pension rights and that following termination of her employment she had no right to sick pay or holiday pay. She said she would not have retired had her employment continued and may well have carried on in employment. She had done everything possible to mitigate her loss.

The Law

11 Employment Rights Act 1996 section 98:

> What was the reason or if more than one, the principal reason for the dismissal and was it a reason falling within subsection (2).

12 Section 98(4):

> The statutory test of unfair dismissal:
>
> "(4) Where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
>
> (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
>
> (b) shall be determined in accordance with equity and the substantial merits of the case."

13 *Williams and others v Compair Maxam Ltd* [1982] ICR 156, a case setting out that the Tribunal must have regard to current standards of fair industrial practice, including warning consultation, selection criteria, fair selection and offer of suitable alternative employment. *Polkey v AE Dayton Services Ltd* [1988] ICR 142, since April 2009 the statutory dispute resolution procedure along with section 98A of the Employment Rights Act 1996 were repealed by the Employment Act 2008. The issue of procedural fairness in unfair dismissal cases is governed by the *Polkey* principle. An employer cannot avoid a finding of unfair dismissal simply by arguing: "although our procedure was defective, we would have dismissed him/her anyway". A procedural failure renders a redundancy dismissal unfair under section 98(4). The question of whether the employee would have been dismissed even if a fair procedure had been followed would be relevant in relation to the amount of compensation payable.

Findings

14 In an unfair dismissal case the first question is, what was the reason or if more than one, the principal reason for termination of employment. The Tribunal is satisfied that there was a redundancy situation and that the reason for the termination of the employment of Mrs Gardner was redundancy. This is a potentially fair reason.

15 The Tribunal applied the principles set out in the well known case of *Williams and other v Compare Maxam Ltd* as follows:-

(i) The employer should give as much warning as possible of impending redundancies to enable the union and the employees to take early steps to inform themselves of the facts and consider positive possible alternative solutions and if necessary, find alternative employment in the undertaking or elsewhere.

(ii) The employer will consult with the union or with the employees in order to identify suitable selection criteria where there is to be a selection.

(iii) Whether or not there is agreement as to the criteria to be adopted. The employer will seek to establish these and ensure that they are not solely dependent upon the opinion of the person making the selection but can be objectively checked against things such as attendance records, efficiency in the job, experience or length of service.

(iv) The employer will seek to ensure that the selection is made fairly in accordance with these criteria and will consider representations the Union makes as to the selection.

(v) The employer will seek to see whether, instead of dismissing an employee, he could offer him alternative employment.

16 The Tribunal carefully reviewed all of the detailed evidence provided against these principles:-

Warning

16.1 The Tribunal finds that adequate warning was given to the Claimant and others as soon as the position became clear.

Consultation

16.2 There was a careful consultation process involving the Claimant and her Union representative at various stages. There is no indication that this was a sham. The Claimant was told as early as March 2017 that she was at risk of redundancy and various meetings took place to discuss the situation and discuss alternatives for her including the opportunity to apply for a full-time maths post and the opportunity to be considered for a position in food nutrition and eventually a trial period offered in teaching maths part-time. The Tribunal finds that there was appropriate consultation at all stages although it was unfortunate that the meeting at which the Claimant was informed that her trial period in maths was being discontinued, did not lead to an earlier further meeting to view other options. However, the Tribunal does not find that the school was at fault for this.

Selection criteria

16.3 The selection criteria which were applied appeared appropriate and capable of objective assessment. The Tribunal did not find that there was any evidence to suggest that these were criteria formed in bad faith or that they were other than objectively applied. Redundancy is an unfortunate situation for any employee and inevitably, those who are selected on the basis of the criteria may feel that they have been unfairly marked. However, it is well acknowledged that it is not for the Tribunal to embark upon a rescoring exercise or to try to pick fault with individual scores. The process itself in view of the Tribunal was fair and the Tribunal found no evidence to suggest that the Claimant was unfairly marked or that there was no opportunity for her to challenge the marking.

Alternative employment

16.4 There is evidence that the Respondent looked for other opportunities of employment for the Claimant both in and outside the school and as stated this included the possibility of a full-time position in maths, teaching nutrition and the part-time post in maths. There was no evidence that the school could reasonably have done more than it did with regard to identifying suitable alternative employment.

17 Taking all of these facts into account, the Tribunal found that the dismissal of the Claimant by reason of redundancy was within the range of conduct which a reasonable employer could have adopted. The way in which the redundancy process was conducted was in accordance with established practice and in the opinion of the Tribunal, was fair.

Notice of Appeal

18 The Tribunal considered in detail the issue with regard to the appeal which the Claimant wished to lodge on her return from holiday in Thailand. We find that on sending the letter to the Claimant on 11 October, the school took reasonable efforts to ensure that this reached her by sending it by email and by hard copies and copying in her Union official. However, it has to be acknowledged that the school were well aware that at the time Mrs Gardner had left the country on holiday in Thailand. This was a holiday which the Claimant herself described as a holiday to take into account the fact that she had been made redundant, another indication that she was well aware that her employment was coming to an end.

19 The Tribunal does find that when Dr Parry received the letter of appeal and taking into account that Mrs Gardner had been out of the country, a fair employer would have extended the time for the consideration of her appeal notwithstanding that he had referred to seven days in his letter and that the redundancy policy referred to a shorter period. It is implicit in good employment relations practice, that employees are given the opportunity to challenge decisions which are made, whether in relation to dismissal by way of misconduct or by reason of redundancy. The Tribunal finds that it was unfair not to afford to Mrs Gardner the right to have her appeal considered. This could have been remedied had the referral to the Chair of Governors and the governors generally dealt with the matter, but in the event, they declined to do so. We find therefore that the dismissal was rendered unfair by reason of the failure to grant an appeal.

Polkey Reduction

20 The Tribunal applied the *Polkey* principle to this situation bearing in mind that the only respect in which it was found that the dismissal was unfair, was the procedural failure in not affording to the Claimant an appeal. The unanimous view which the Tribunal took in relation to this was that there was only a 10% chance that the decision would have been different if the Claimant had had her appeal heard. In those circumstances any compensation awarded to the Claimant should be reduced by 90% and that is the reduction which the Tribunal makes.

Remedies

21 Regard was had to the evidence produced by the Claimant with regard to her compensation claim. The evidence was extremely poor bearing in mind that the Claimant should have prepared her calculations and served these upon the Respondent and that these should have been supported by original documentation rather than computer printouts with no original documentation whatsoever. It was necessary therefore, for the Tribunal to do the best that it could relying upon the oral evidence of the Claimant and the computerised sheets which she produced.

Basic award

22 The Claimant included a figure of £11,348.58 but as stated she had already received her statutory redundancy payment and accordingly no basic award is given.

Incorrect Notice Claim

23 The Claimant sought a figure of £5,470.20 on the basis that she had not received proper notice and she should be paid £5,417.20 for the period January to April 2018. However, the Tribunal has found that this claim is not made out and that the employment came to an end on 31 December 2017 without any right for any further notice.

Heads of Compensation

24 The Tribunal finds on the evidence that the Claimant's compensation should be awarded, before deductions, as follows:-

Partial loss of earnings, 1 January to 31 August 2018	£2,147.62	
Future loss 1 September to 30 November 2018	£2,847.66	
Further partial loss of earnings 1 December 2018 to 31 August 2019	£1,532.97	
Total loss of earnings		£6,528.25
Add loss of pension contributions (employer's)	£1,519.54	
Further loss of pension contributions	£ 569.70	
Total loss of pension contributions		£1,189.08
Sub total		£8,617.49
Deduct 90% *Polkey* reduction	£7,755.75	
Net loss award		£ 861.74
Add loss of statutory rights payment	£ 500.00	
Total award		**£1,361.74**

25 The above figures take into account a reasonable calculation with regard to partial past and future loss of earnings. The Claimant had inserted figures for loss of pension contributions which involved a double claim as it is only the employer's contributions which should be awarded and these are the figures included above. The Tribunal finds that it is appropriate to award £500.00 for loss of statutory rights. Accordingly, the net award payable by the Respondent to the Claimant is £1,361.74.

Employment Judge Speker OBE DL

Date: 5 February 2019