



EMPLOYMENT TRIBUNALS

Claimant: Mr A Williams

Respondents: Conwy County Borough Council (1) and The Governing Body of Ysgol Nant y Groes (2)

Heard at: CVP **On:** 30 March 2023 and 12 May 2023

Before: Employment Judge P Davies

Representation:
Claimant: Miss Lameesa Iqbal (Counsel)
Respondent: Mr Russell Moffat (Counsel)

RESERVED JUDGMENT

The Judgment of the Tribunal is that

- (1) The claim for unfair dismissal is dismissed
- (2) The claim for wrongful dismissal is dismissed

REASONS

1. By a claim received on 12 September 2022 the Claimant Mr Alex Williams claimed unfair dismissal and notice pay. The claim had two Respondents Conwy County Borough Council being the First Respondent and The Governing Body of Ysgol Nant Y Groes being the Second Respondent. The Response of the First and Second Respondents were prepared by the First Respondents legal representative. The Responses say that the Claimant was employed under either short term cover or supply teachers' conditions throughout. The claims are denied by the First and Second

Respondents and amongst other things say that the Claimant was employed as a supply teacher and in any event his employment would have ended on 8 April 2022 as a new post holder was recruited and to start after the Easter holidays.

2. The Tribunal heard evidence from 3 witnesses. The Claimant; Mr Huw Jones, Headteacher of Ysgol Nant Y Groes the Second Respondent; and Miss Eleri Wyn Williams, Education HR Manager for the First Respondent.
3. The Claimant started working at the Second Respondents, Ysgol Nant Y Groes in April 2017. He was employed as a teacher initially on a fixed term contract to cover maternity leave. On page 51 of the bundle is the letter sent to the Claimant by the Respondents confirming his appointment to the post of Temporary Teacher and saying that his contract will come to an end on the return of the postholder to her duties. The contract was due to end on 15 December 2017 but as a result of further absence of the postholder the Claimant's contract was extended from 16 December 2017 until 8 April 2018 (page 56 of the bundle letter of extension). Thereafter is a series of contracts commencing on 14 May 2018 when the Claimant began covering the maternity leave of another colleague. That terminated on 31 December 2018 and there was a gap in employment until 1 February 2019 when the Claimant again covered maternity leave for another teacher until the teacher returned to work on 3 February 2020. The Claimant was then offered a teaching position for 2 days a week fixed term temporary contract with a start date being 6 February 2020 that contract was for 12 months as can be seen in the changed contract form set out on page 63 of the bundle. Following the return to work of the teacher the Claimant continued to work alongside in the year 6 class 2 days a week the other 3 days was spent covering for planning, preparation and assessment time for other teachers at the school.
4. On 1 September 2021 the Claimant began teaching in the Autism Spectrum Disorder (ASD) Unit within the school and worked there on a full time basis. The Claimant says that in a meeting with the Headteacher, Mr Jones he was offered the ASD job but knew that it was a temporary position and that the school would be seeking to advertise the role on a permanent basis in the future. The Claimant says he was not given a timescale for this. In short the Claimant knew that his position as an ASD teacher would be his until the job was advertised but he did not know when that be. In evidence the Claimant said that the longer it went on he thought it would go on and on. The Claimant knew he had to apply for the job when advertised or move to another temporary contract. The Claimant believed that because the role in the class was very detailed that there would be a handover period or notice given in relation to handover because the class was not a mainstream class.

5. There is a dispute of fact between Mr Williams and Mr Jones regarding what was said in relation to the ASD teacher role. Mr Jones says that it was clear that the temporary arrangement was on a day to day supply basis and that the temporary arrangement would end once a permanent replacement was found. Mr Williams says there was never any discussion about him being employed on a day to day supply basis as far as he understood it the basis of his employment had not changed. This was because he was employed previously on fixed term contracts. He did not receive any contract in relation to the ASD teacher role. Miss Eleri Williams said that a role which is a temporary one and being engaged on a day to day supply basis is arranged for schools themselves and that the usual practice within the Local Authority is that they do not issue formal contractual documentation for such temporary day to day supply arrangements. It is the school that submits details in relation to payment and the Local Authority would not be informed of supply arrangements. The pay slips would indicate whether a payment is made on a supply or not supply basis. The pay slips for the relevant period indicates that payment was made on a supply teacher basis.
6. I accept the evidence of Miss Williams as to the arrangements regarding the engagement of and payment in relation to supply teachers. It is unfortunate that there was no direct written communications between the school and the Claimant regarding the basis upon which he was engaged as an ASD teacher. However in January 2022 the Claimant says that he was alerted by Mr Jones the school had been paying him both a full time contracted teaching wage and a day to day supply wage over a certain period which was an error and was the fault of the school and the Claimant was asked to contact payroll to solve it which he did and a payment plan was agreed to cover the overpayment.
7. The lack of documentation together with the indication on the pay slips and the conversation that took place regarding payment on a day to day supply basis are supportive of the Claimant being engaged on a supply basis and not on a fixed term contract. Indeed there was uncertainty as to how long the contract would last because it was unknown when the advert would be made for the permanent position and when that person would be in post. This is to be contrasted with the position regarding documentation and understanding about how long the previous roles of covering maternity leave was set about. The Claimant emphasises that he undertook what he says were duties which a supply teacher would not ordinarily undertake for example in relation to planning, preparation and assessment and responsible for feedback to parents, attending many parents evenings, teacher training days, after school clubs, overnight residential trips and out of schools sports events as examples of matters which the Claimant says was not the role of a supply teacher. In short supply teachers are not generally integrated into the school according to

the Claimant. Mr Huw Jones agreed that the Claimant attended weekly staff meetings and inset days and took on activities such as football club at lunchtime and out of time events. Mr Jones says this is not unusual circumstance. I accept the evidence of Mr Huw Jones that the undertaking of these additional tasks by the Claimant would not and did not alter the basis upon which he was engaged and that supply teachers commonly undertake such activities. It was stressed on behalf of the Respondents that the Claimant was inexperienced as a teacher since his first role was within the school Ysgol Nant Y Groes and therefore did not have the depth and knowledge to properly be able to comment on whether temporary supply teachers would be expected to carry out certain duties.

8. In January 2022 the ASD teacher role was advertised externally. On page 69 of the bundle is the advertisement which indicates that the role of ASD resource based teacher was required for as soon as possible. The Claimant applied for the role and was informed on 27 January 2022 by email from the school that he had been invited to an interview on 2 February 2022. He was asked to present by way of a short presentation outlining his vision for the ASD resource base. The Claimant responded to Mr Huw Jones with a power point presentation and accompanying universal provision check list ahead of the interview on 1 February 2022.
9. Interviews were carried out and undertaken by Mr Huw Jones on 2 February 2022. There were 5 applicants including the Claimant. Unfortunately the Claimant was unsuccessful and received a telephone call on 2 February 2022 to be told of the position. The telephone call was from Mr Huw Jones. At the reconvened hearing there was put before the Tribunal a note in Welsh with a translation in English regarding a note that Mr Huw Jones said he made before speaking to the Claimant on 2 February 2022. The note read as follows,

*“not enough depth/nervous/obvious (you want it)
Stick to it/end of term
Discuss it properly tomorrow/never know what’s round the corner”.*

Issue was taken on behalf of the Claimant with the accuracy of that note. Having heard the evidence of Mr Huw Jones I accept that was a note that he made prior to the telephone conversation that he had with the Claimant. The reason for the note is that Mr Huw Jones realised it would be a difficult conversation and a disappointing conversation from the viewpoint of Mr Williams. The Claimant says that he was surprised that a teacher from a mainstream class at a nearby school in Abergele had been successful in securing the role despite having no ASD experience. There is a dispute whether the Claimant was told when his role would end since he says that he asked about this and was told to keep doing what he was doing for now and the Headteacher would get back to him. The reference

in the note to “stick to it/end of term” is partly consistent with what the Claimant says he was told to do and it is unlikely that the Claimant was not told that it would be the end of term when his role would end. I accept the evidence of Mr Huw Jones that as a result of a conversation with the successful applicant on 2 February that he understood that the successful applicant wanted to start as soon as possible and that having to give notice to her existing school would mean that the successful applicant would be starting after the Easter break. The term ended on 8 April 2022 and with the Easter break that the summer term would begin on 24 April 2022. There would be no reason why Mr Huw Jones would not have informed the Claimant that his role would be ending at the end of that term on 8 April 2022. At the reconvened hearing Mr Huw Jones referred to emails with the successful candidate and which had not previously been shown to the Tribunal. These emails were an email from Mr Huw Jones to the successful candidate on 9 February 2022 which said,

“thank you for your time at interview last week. I would like to confirm the offer of employment as a resource based teacher made to you on 2 February in writing. Unfortunately my admin is currently away from school with COVID so we are running a little behind schedule with reference requests etc. These shall be sent out this afternoon. The start of the summer term will be an ideal time to start as agreed during our call on 4 February.”

The Claimant says that therefore there was not a discussion on 2 February because the discussion that Mr Huw Jones had regarding the starting of the summer term was on 4 February. Mr Huw Jones said that the successful candidate wanted to double check with her Headteacher regarding the starting of employment hence the conversation on 4 February 2022. However Mr Huw Jones was convinced from what was discussed with the successful candidate on 2 February that she would be starting at the beginning of the summer term and was absolutely in no doubt because of the keenness of the successful candidate to get started. There is nothing in the reply to Mr Huw Jones’s email from the successful candidate on 10 February 2022 which contradicts the conversations and understanding that Mr Huw Jones said he had on 2 February 2022. I accept that there was a need to formalise arrangements but that knowing the way these things work that Mr Huw Jones was confident that the successful candidate would be starting at the beginning of the summer term and he would have no reason not to give that information to the Claimant. I therefore accept the evidence of Mr Huw Jones in relation to the sequence of events.

10. The Claimant says he did not know until March and was told at a hasty ad hoc meeting that the new member of staff would be starting after Easter and that his employment would terminate. The fact that there was a lack of

communication directly between the Claimant and Mr Huw Jones after the Claimant was informed that he was unsuccessful appears to be common ground between the parties. Mr Huw Jones says the Claimant took the news very badly about not being appointed and would not engage with him in conversations for many weeks. Mr Huw Jones said that he had to remind the Claimant on numerous occasions to meet with him for interview feedback ahead of an interview at another school for a similar role. There is little doubt that the Claimant felt aggrieved regarding the appointment of the successful candidate for the reason already mentioned regarding the background of that successful candidate compared to the work that he had been undertaking in that role and had previously undertaken in the roles that he had engaged in in the school. Indeed when the Claimant became aware of some vacancies in the Second Respondents school he did not apply for any because he saw no long term future in the school because of the relationship that he had and felt that it was "my time to go". The Claimant felt that Mr Huw Jones was avoiding him rather than he avoiding Mr Huw Jones.

11. An incident is alleged to have occurred on 5 April 2022 involving the Claimant and behaviour in the classroom which led to the decision to suspend the Claimant with immediate effect on 6 April 2022. A letter dated 7 April 2022 on page 85 of the bundle sets out details in relation to that matter but also includes the following,

"this decision was conveyed to you, via telephone, by myself as the Headteacher. As agreed, previously, your temporary arrangement as a supply teacher at the school will come to an end on Friday 8 April, and therefore you will be paid until this date".

It is not necessary to go into further details regarding the suspension or the outcome of the suspension.

Submissions

12. As directed by the Tribunal both parties sent in written submissions which were then supplemented by oral submissions. It is not the intention to repeat fully the written submissions submitted.
13. On behalf of the Claimant it was submitted that the Tribunal should prefer the Claimant's evidence in contrast with that of the Respondents witnesses particularly Mr Jones. Reference was made to the handwritten note which it was said should have been a handwritten note regarding the successful candidate. There was set out in detail the applicable legal principals which was the legal basis for the claim for unfair dismissal and for breach of contract claim. Regarding the claim for unfair dismissal based on a limited term contract it was submitted that termination of a

limited term contract without renewal is deemed to be a dismissal by virtue of Section 95(1)(b) of the Employment Rights Act 1996. There was reference to the definition of limiting event. In particular it was submitted that reliance is made on the case of ***Tansell -v- Henley College Coventry* [2013] IRLR page 174** where the Employment Appeal Tribunal said that the expiry of the Claimant's contract was the dismissal itself not the reason for it. It was submitted that the Respondents wholly failed to discharge their burden of proof as set out in Section 98 of the Employment Rights Act regarding a potentially fair reason for dismissal and the actual reason for dismissal. Reference was made to the two other vacancies which the Claimant could have applied for.

14. In relation to the breach of contract claim there was reference to the definition of a teacher as defined in the Burgundy Book. To qualify as a teacher the Claimant would have had to work in a school, which is conceded by the Respondents, and receive remuneration on either a full time basis or a part time basis. The Claimant submits that the Claimant was entitled to a minimum of two months' notice and in the summer term 3 months' terminating at the end of the school term and that would be 31 August 2022. It was submitted that the evidence of Mr Williams that it would be very unusual for the Local Authority to take 5 months to action information and tell that a pay slip was wrong because that sort of action was done promptly. Moreover in the Grounds of Resistance in the Response it was set out that the Claimant was informed in March 2022 that his supply work was terminated. There was further reference to the provisions of Section 38 of the Employment Act 2002 regarding the lack of contractual provision.
15. The Respondents at the beginning of the case conceded that the Claimant had the requisite continuous period of employment to bring a claim for unfair dismissal. However this was a temporary contract and being a day to day contract was not dependent on the happening of any form of limiting event and could be terminated by the Respondent at any point. The fact that the Claimant believed that he was undertaking work as a teacher rather than a teacher on a supply basis does not prove what the position actually was. It is not accepted that the Claimant had a limited term contract or that in relation to the wrongful dismissal claim that he was within the definition of the Burgundy Book since his status was simply that of supply teacher on a day to day basis.

Conclusions

16. Dealing firstly with the issue of unfair dismissal. I find that the Claimant had the benefit of the provisions regarding unfair dismissal within the Employment Rights Act 1996 because of his continuous service with the Respondents. As set out above the Claimant was informed on 2 February

2022 that his employment would terminate at the end of the term which would have been 8 April 2022. If I am wrong about this and the Claimant was only told at a meeting which is said to be in or about mid-March 2022 about the termination of his employment there is no doubt that there was a termination of the employment of the Claimant. The provisions of Section 98 of the Employment Rights Act 1996 need to be considered and in particular,

*“(i) in determining for the purposes of this part for the dismissal of an employee is fair or unfair, it is for the employer to show – (a) the reason (or if more than one, the principal reason) for the dismissal and (b) that it is either a reason falling within sub section (2) or some other substantial reason of a kind such as to justify dismissal of an employee holding the position which the employee held.
(ii) a reason falls within the sub section if – (a) it relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do
(b) relates to the conduct of the employee
(c) is that the employee was redundant or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or that of his employer) of a duty or restriction imposed by or under any enactment
(iv) 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 reasons shown by the employer) –
(a) depends on whether in the circumstances (including the size and administrative resources of the employers 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”.*

17. As was said in the case of **Mr P Tansell -v- Henley College Coventry** on the facts in that case the Employment Tribunal simply elided the mode of dismissal, that is to say that termination was fixed term contract by expiry and without renewal, with the reason for that dismissal. It has not, in terms, stated what it found to be the reason, if any, for the dismissal. It was said that it was extraordinary that the Tribunal did not say that it was excepting that reason (redundancy) in expressed terms. It was further said in the Judgment that in an Employment Tribunal Judgment rejecting a claim for unfair dismissal the finding by the Employment Tribunal as to the “reason for dismissal should virtually leap from the page, such is its significance”.

18. In this case whilst it is correct that the Response itself does not set out the information regarding the potential reason for dismissal the Response does set out the reason for the dismissal which was that his employment would have ended on 8 April 2022 as the new post holder was recruited and to start after the Easter holidays. There had been reference in the Response to the fact that the Claimant role was that of a supply role until the permanent role was recruited. The fact that there is not an express reference to Section 98 it does not mean that the matters were not canvassed in broad terms. The evidence in this case from Mr Huw Jones clearly showed the reason for the termination of the employment of the Claimant namely that the post that he was temporarily occupying had now been filled by a recruitment exercise and as a result the new permanent teacher would be commencing employment at the beginning of the summer term. That was the reason for dismissal and that reason was a potentially fair reason under the heading of some other substantial reason. The Tribunal rejects the contentions of the Claimant that there had been a failure in this case for the Respondents to prove the reason for dismissal and/or the fact that it was a potentially fair reason and/or the fact that it was a fair reason.
19. Applying the statutory test in Section 98(4) having regard to the reason shown by the Respondents the Tribunal finds that the dismissal itself was fair and was something which the Claimant knew that if he was unsuccessful in the application process that his employment would end. It is very difficult to see how the dismissal was unfair. The only element of possible unfairness in the process could be said arguably to be the fact that there were vacancies in the school which were not expressly drawn by the school to his attention for him to occupy such posts. However the Claimant's own evidence is that he was not interested in applying for those posts for the reasons set out above. Therefore there was no unfairness to the Claimant in not drawing to his attention these particular vacancies. In truth the Claimant did not see his future as a teacher in this school at all. Taking into account those circumstances the statutory test in Section 98(4) leads to the conclusion that this was a fair dismissal. Therefore the claim for unfair dismissal will be dismissed.
20. As to the claim for wrongful dismissal the finding of the Tribunal is that at all times from September 2021 the Claimant was employed as a supply teacher on a day to day basis. There was no definite date that could and was given when the employment as a supply teacher would end because it would depend upon when the recruitment process was undertaken and the post filled. Therefore the status of the Claimant as a supply teacher does not come within the terms expressly of the Burgundy Book which would require the notice periods to be given in the circumstances set out in the relevant provisions. Therefore the claim of wrongful dismissal is also dismissed.

21. In the circumstances there is no requirement for any remedy hearing or any future hearing in this case. An indication was given on behalf of the Claimant that there would be an application for costs. If this is to be pursued at all then notice should be given promptly to the Tribunal and appropriate directions will be given by the Tribunal.

Employment Judge P Davies
Dated: 30th May 2023

JUDGMENT SENT TO THE PARTIES ON 31 May 2023

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche