



EMPLOYMENT TRIBUNALS

Claimant

Respondent

v

Mr P Roddis

Sheffield Hallam University

PRELIMINARY HEARING

Heard at: Sheffield

On:17 and 18 April 2019

Before: EJ O'Neill

Appearances

For the Claimant: Mr T Coughlin QC of Counsel

For the Respondent: Ms K Barry of Counsel

RESERVED JUDGMENT

1. *The Claimant was engaged in broadly similar work to his Comparator Mr Leader.*

REASONS

Introduction

1. The Claimant lodged a number of claims against the respondent on or about December 2012. The only remaining claim to be determined is the complaint that he has been less favourably treated under the Part-time Workers (less favourable treatment) Regulations 2000 (PTW Regulations) the other claims having been withdrawn by the Claimant.
2. The claims had been originally heard by a judge sitting alone in or about 2013. That decision was set aside. A full tribunal sitting in Sheffield on 2 May 2014 determined that the claim failed because the Claimant had failed to show that he and his comparator were employed under 'the same type of contract'.
3. The Claimant appealed that decision by the EAT substituted a finding that the Claimant and his comparator were employed under the same type of contract for the purposes of regulations 2(1),2(2) and 2(4) of the PTW Regulations.

4. The EAT referred the matter back to the tribunal for a fresh consideration. On the application of the parties Regional Employment Judge Robertson set the matter down for a preliminary hearing on the second aspect of regulation 2 (4) (a) namely whether the Claimant was 'engaged in the same or broadly similar work, having regard, where relevant, to whether they have a similar level of qualification skills and experience.'
5. The matter came before Judge Rostant turns in November 2018 but the hearing was abandoned, Judge Rostant having recused himself.
6. The matter was relisted before me to determine the above question and to make such orders as may be necessary. Although I have noted the history of the previous hearings in this matter I have not read or taken into account any earlier decision other than that of the EAT.

Claim in Brief

7. The relevant period of the claim is December 2006 to December 2012. Throughout this period the Claimant was employed as an Associate Lecturer (AL) at Sheffield Hallam University (the Respondent) on a zero hours contract which has been held by the EAT do be the same type of contract as that of his comparator Mr Leader.
8. His comparator is Mr Mark Leader who, during the relevant period, was employed as a Lecturer at the same establishment and in the same department.
9. The respondent accepts that in terms of qualification skills and experience the Claimant and Mr Leader are equally well-qualified and thus comparable.
10. The issue is whether the Claimant and Mr Leader are employed in the same or broadly similar work.

Evidence

11. There was an agreed bundle of documents paginated and indexed. In addition, I have before me a list of abbreviations and the chronology.
12. The Claimant and Mr Leader gave oral testimony and were cross-examined. The following witnesses for the respondent also gave oral testimony and were cross-examined namely Mr Patrick Wichert and Ms Marie Helen Williamson. Each witness had produced a written statement which was taken as read. Mr Wichert produced a second statement.
13. Counsel for the Claimant produced a helpful opening note and Counsel for the respondent produced a helpful skeleton. Counsel for the parties made submissions and I reserved my decision.
14. I am bound to be selective in my references to the evidence when explaining the reasons for my decision. I nevertheless wish to emphasise that I considered all the evidence in the round in arriving at my conclusions.

The Law

The Regulations

15. Under regulation 5 PTW regulations a part-time worker has the right....
- (1) Not to be treated by his employer less favourably than the employer treats a comparable full-time worker
 - (a) as regards the terms of his contract
 - (b) by being subjected to any other detriment by any act or deliberate failure to act of his employer
 - (2) the right conferred by paragraph 1 applies only if –
 - (a) the treatment is on the ground that the working as a part-time worker and
 - (b) the treatment is not justified on objective grounds
16. Regulation 2(4) provides that
'a full-time worker is a comparable full-time worker in relation to a part-time worker if, at the time when the treatment that is alleged to be less favourable to the part-time worker takes place-
- (a) both workers are, -
 - (i) employed by the same employer under the same type of contract and
 - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience.

The Authorities

17. I have had regard to the following authorities referred to me by the parties
Matthews v Kent and Medway towns Fire Authority (2006) IRLR 367
Moultrie v Ministry of Justice (2015) IRLR 264
Carl v University of Sheffield (2009) ICR 1286
Roddis v Sheffield Hallam University (2018) IRLR 706

Witnesses and Credibility

18. I evidence from the Claimant I find to be a credible and fair witness.
19. I heard evidence from Mr Leader who I also found to be a credible witness. During the course of his employment he had been a trade union official at the University and it was clear from his testimony that he had said entrenched views regarding self-managed working time in respect of which the University had adopted a more directive approach through the introduction of its Work Planning Policy. I considered whether this amounted to 'having an axe to grind' such as to cast doubt on the credibility of his evidence. Mr Leader was completely open about his attitude to the Work Planning Policy and what might be regarded by the University as a modernisation of management and the competitive approach to recruiting students. In the circumstances I did not draw an adverse inference and I do not find that he gave his evidence because he had an axe to grind but did so honestly and reliably.
I also found that Mr Leader, because of his role as a trade union officer, had a very good insight and knowledge of what was going on within the Department and the University, what his colleagues were doing and what issues were arising.

20. I heard evidence from Mrs Williamson who had produced a statement focusing on the University's conversion system. The conversion system is a process by which an associate lecturer can apply to a panel for promotion to the position of lecturer. I have no reason to doubt the evidence of Mrs Williamson relating to that system but she was unable to help me in terms of the specific comparison between the Claimant and Mr Leader. She explained that in her experience that in general terms associate lecturers tended to be weak in the areas of pastoral care and administrative duties.
21. The main witness for the respondent was Mr Wichert. I found him to be a less reliable witness than the Claimant and Mr Leader although I stress not a dishonest witness.
I accept the criticisms made by Counsel for the Claimant that the written statement of Mr Wichert tended to focus on contemporary practice rather than the period 2006 - 2012 and thus contained a number of anachronisms. His testimony tended not to be about the actual work of the Claimant and his comparator but were generalisations of what Mr Wichert expected to be done in the respective roles, looking backwards from current managerial expectations rather than at what was happening on the ground in the relevant period.
More importantly Mr Wichert never managed the Claimant during the period of his claim or at all (save for a very short period at the end of 2014).
Mr Wichert only managed Mr Leader from December 2012 when he (Mr Wichert) was promoted to the role of principal lecturer and became Mr Leader's line manager, less than a month in the relevant period.
He accepted under cross examination that he was not in a position to contradict the evidence of the Claimant and Mr Leader as to the specific content of their respective work and was taken by Counsel for the Claimant through the job descriptions and contracts and made numerous concessions to that effect.
22. The Claimant and Mr Leader were very firm under cross examination and consistent as to the work each of them undertook and I prefer the evidence of the Claimant and Mr Leader to that of Mr Wichert.

Findings

23. The Claimant had had a long career in academia beginning in 1986 and had previously worked as a lecturer with the respondent. In 2006 he returned to Sheffield Hallam University and an associate lecturer remaining in that position until his retirement in 2014. The period to which this claim relates is December 2006 to December 2012.
24. Mr Leader joined the respondent's staff in 1996 as an associate lecturer in the same department and subject group as the Claimant, in the communications and media department. In September 2008 he was promoted to a Lecturer under the respondent's conversion system and to Senior Lecturer in 2010.
25. During his employment as an Associate Lecturer the Claimant had, among other things, lead modules, attended moderation meetings and award boards, attended departmental meetings and planning meetings conducted

assessments and supervised dissertations in addition to teaching and teaching related duties which accounted for the overwhelming majority of his time.

26. During his employment as an Associate Lecturer the Claimant conducted research and scholarly activity to the extent that he kept himself abreast with his subject area in a general sense to enable him to update his course materials and contribute to course planning and design.
27. The Claimant's CV makes reference to two published papers and in or about 2010 the Claimant delivered a paper at a conference in Nottingham. The paper related to the pedagogy of teaching communication skills to technical students among others. Mr Wichert accepts that such a paper would contribute to the overarching approach in course development and planning.
28. Mr Leader's evidence was to the effect that the most important aspect of the job and the overwhelming majority of his time was spent in teaching and teaching related duties. His research and scholarly activity was confined to keeping abreast of the subject as described by the Claimant.
29. Mr Leader asserted and Mr Wichert agreed that he had never undertaken any other research or scholarly activity in all the years he was a lecturer (from 2008 to 2018) and had no published papers. Notwithstanding the complete absence of research and scholarly activity Mr Leader was promoted to the position of senior lecturer in 2010. In the 10 years that Mr Leader was a lecturer he confirmed that he had never been criticised let alone disciplined for want of research and scholarly activity. Mr Leader told us that he was typical of most lecturers who predominantly taught although he agreed that some others focussed predominantly on research.
30. Mr Wichert confirmed that although during the relevant period he was undertaking a number of activities to better position himself for promotion including course development, he himself had undertaken no specific research or scholarly work and had produced no publications.
31. Mr Leader also told us that he undertook no more of what has been called general administrative duties (GAD) than the Claimant undertook and that he did little by way of management and administration work and in that respect, he was typical of most lecturers and no different from Mr Roddis. Mr Leader said that in all the relevant period he had not been called upon to sit on any faculty or university wide committee.
32. There was one clear area where Mr Leader had greater and different responsibilities in that he was a Student Tutor and had assigned to him a number of student Tutees.
Mr Roddis had no assigned tutees and although he indicated that he supported and guided the students on his courses and addressed their questions and concerns, both academic and personal, he had no student tutees assigned specifically to him.

33. Mr Wichert joined the department as a lecturer in 2004, was promoted to senior lecturer in 2007 the principal lecturer in 2012 and became subject group Leader in 2014.
34. Mr Wichert told that the role of lecturer comprises three core areas namely
- teaching and teaching related duties which he estimated took about 66% of a lecturer's time
 - self-managed time the scholarly research which he put at about 11%
 - management and administration (mainly GAD) which he put at about 10%
35. Initially Mr Wichert asserted that each of the above subject areas were of equal importance and he was not prepared to accept that the primary purpose of a lecturer was to teach. Under cross-examination he moderated that view as follows 'I am not saying that administration is as important as teaching What goes before is vital to the function (of a teacher) The University cannot function without research Teaching depends on it'.
36. I infer from Mr Wichert evidence as a whole that the focus of the University has been changing and whereas, when it was a polytechnic it was almost exclusively a teaching institution, over the years to date various financial drivers have made research more important. However, I do not find that research is as important as teaching in a lecturer's role and that it was not unusual for a lecturer in the relevant period 2006 to 2012 do no research at all and to focus on teaching.
- I reach that conclusion on the basis that
- a) Mr Leader did no research at all yet was promoted and not sanctioned
 - b) Mr Wichert had no published research in the period
 - c) Mr Leader says that was typical of lecturers
 - d) the statistics contained in the financial review for 2011 the 2012 and the REF Results show only a minority of the respondents' lecturers to have submitted research
37. I find that Management and Administration are not as important as Teaching as Mr Wichert conceded. The GAD headings are listed in the work planning document. That expressly provides that the list contains an extensive range of duties and that the volume and range of activity undertaken by a particular member of staff will vary. The policy document says in terms that all lecturers are likely to do some of the duties listed but not all, but no lecturer will do all of the duties listed. Mr Leader and the Claimant both gave evidence to the effect that in respect of the GAD duties they did some but no more than each other and Mr Wichert under cross-examination conceded that he was unable to gainsay them. I accept the Claimant's evidence about this.
38. The job description of a lecturer states 'the post holder performs a range of duties from those listed below'. The document goes on to set out headings namely learning teaching and assessment; research and scholarly activity; teamwork and communications; personal effectiveness; business effectiveness;

quality management. This further underlines the fact that not all Lecturers do everything listed in the Job description.

There is considerable overlap in the Job descriptions as between the role of lecturer and associate lecturer. The most significant difference between the two documents is that there is no reference to research and scholarly activity in the job description of an associate lecturer.

There is also a considerable amount of overlap between the lecturer's contract and that of the associate lecturer in terms of job content and duties.

Conclusions

39. I summarise my findings of fact
- a) the most important activity undertaken by a lecturer and an associate lecturer is that of teaching and teaching related duties and that accounts for at least 66% of the time of each post holder.
 - b) Research cannot have been an essential requirement for a lecturer in the period 2006 to 2012. Mr Leader did none without any criticism or sanction and was in fact promoted. The Claimant accepts he has done little research but in the relevant period did more and published more than both Mr Leader and Mr Wichert. I find that Research is not a material difference between the work of the Claimant and his comparator.
 - c) Management and administration is a subsidiary element to teaching and research and necessary to support those activities and the smooth running of the department. Both Mr Leader and the Claimant have undertaken a similar range of such activities in the relevant period. Administration and management is not a material difference between the work of the Claimant and his comparator.
 - d) Mr Leader is assigned student tutees and that is a significant difference between the two roles. Given the importance of attracting student numbers and in that respect the importance of student feedback in maintaining and improving the University's reputation I find that this difference is important.
40. The Supreme Court in the Matthews case directed that 'the work which they do must be looked at as a whole, taking into account both similarities and differences... Particular weight should be given to the extent to which their work is in fact the same and to the importance of that work to the enterprise as a whole. Otherwise one runs the risk of giving too much weight to differences'.
41. Focusing on the similarities given my above findings of fact, I find the Claimant and his comparator did broadly similar work, the most significant difference between the two roles is the responsibility that Mr Leader has as a student tutor. But for this element I find that Mr Leader and the Claimant undertook broadly similar work in the relevant period 2006 to 2012.
42. Following the guidance of the EAT in **Moultrie** to examine the differences considering both volume and importance. I find Mr Leader was assigned a number of students for whom he acted as Student Tutor and in the work plan he was afforded a small percentage of time to look after them. Mr Leader said that

this aspect of his duties accounted for about 4% of his time. Mr Wichert did not put a figure on it and the percentage given by Mr Leader was not challenged.

43. The Claimant came across as a person likely to be empathetic and supportive to the students he was teaching. The Claimant told the tribunal that he was well placed to counsel and support students because he had previously been a student tutor. He also said in terms that because of his empathetic approach and rapport with his students he was sought out by them both after lectures and in the associate lecturer's room. His job description and contract set out a requirement to support students and include a Pastoral aspect in the associate lecturer's role.

The pastoral duties undertaken by the Claimant are important but probably less important than the specific tutoring responsibility of Mr Leader.

The Claimant did not put a figure on the percentage of time he spent supporting students. Not having assigned Tutees, it would be reasonable to expect that the percentage of time he gave to Pastoral activities would be less than the time Mr Leader was expected to give.

However, if the percentage of time spent were to be put at only 1% the comparison between 1% and 4% is negligible. Even given the greater importance of Mr Leader's tutoring duties I find that such a small element of the Comparator's role to be insufficient to render the work not broadly similar.

44. In all the circumstances on the evidence before me at the hearing I find that the Claimant and his actual full time Comparator Mr Leader are employed in broadly similar work.

Employment Judge **O'Neill**

Date: 23 April 2019

JUDGMENT SENT to the PARTIES ON: 26th April 2019
FOR THE TRIBUNAL OFFICE: E Mahon

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