



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr S Jackson Lee and Others

**Respondent:** John Lewis Plc

**Heard at:** Nottingham (attended and by CVP)

**On:** Wednesday 7 April 2021

**Before:** Employment Judge Hutchinson (sitting alone)

## Appearances

**For the Claimant:** In person

**For the Respondent:** Mr S Tibbitts of Counsel

### *Covid-19 statement:*

*This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video. It was not practicable to hold a face-to-face hearing because of the Covid-19 pandemic.*

# JUDGMENT

The Employment Tribunal Judge gave judgment as follows: -

1. The claims of the thirteen Claimants set out on the schedule attached as annexe 1 are struck out on the grounds that they have no reasonable prospect of success.
2. The claim of Sam Watson under case number 2601114/2020 is dismissed on withdrawal by the Claimant.
3. The remaining claims will proceed to a hearing.

# REASONS

## **Background to the claims**

1. In these proceedings several Claimants have brought proceedings for breach of contract under a multiple claim number 4984.
2. Since the proceedings were instituted a number of the claims had been withdrawn and dismissed and by 27 October 2020 when the matter came before my colleague Employment Judge Ahmed, he identified twenty-five remaining claims which are set out in the schedule to his orders.

3. One of those Claimants, Sam Watson whose claim number is 2601114/2020 has withdrawn his case and I dealt with the dismissal of that claim in this hearing.

4. None of the Claimants have been able to obtain legal representation and so Mr Jackson Lee is acting on their behalf.

5. The Claimants were all employed by the Co-operative Group (the "Co-op") until the purchase of the branch where they were employed in Wollaton by the Respondent in February 2015. It is not in dispute that the transfer was pursuant to and subject to the Transfer of Undertakings Protection of Employment Regulations (2006) ("TUPE").

6. The Respondent decided to close the Wollaton branch and all the Claimants were made redundant between 6 October 2019 and 15 November 2019.

7. In December 2014 the Claimants say they were informed by the Respondents that their redundancy policy would apply to them. That to the redundancy policy of the Co-op.

8. It is the Respondent's contention that the Coop redundancy policy does not contain any indication that it was incorporated into the individual contracts of employment of the Claimants as it was never a contractual term. They say they are not bound by the Co-op policy.

9. The Claimants contention is that the terms of Co-op redundancy policy were more favourable and should apply to all those Claimants who were declared redundant who had previously been employed by the Co-op.

10. At the case management Preliminary Hearing held on 27 October 2020 the Respondents said that the majority of the Claimants did not suffer any loss as they received higher payments anyway than they would have done had they received the terms of the Co-op redundancy policy.

11. My colleague Employment Judge Ahmed listed for Preliminary Hearing the cases where the Respondents say that the Claimants have not suffered any loss. I am charged with considering whether to strike out their claims of breach of contract on the grounds that they have not suffered any loss as a result of being made redundant under the terms of the Respondent's redundancy policy.

12. The position of the Claimants in respect of this Preliminary Hearing is as follows namely:

"The Co-op redundancy policy terms had contractual force in that they were incorporated into each individual's terms of conditions of employment with the Co-op.

Upon the TUPE transfer of their employment to the Respondent the Respondent became party to and bound by those terms.

It is contended that the Respondent has acted in breach of contract as upon making the Claimants redundant the Respondents had not paid the Claimants the sums they were owed under those Co-op terms."

13. For clarity I am dealing with the thirteen Claimants who are set out in Annexe 1 to this judgment who the Respondents say have received a redundancy payment from the Respondent that is equal or greater than that which they were contractually entitled to under the Coop terms.

### **The hearing today**

14. I did not hear any evidence and there was an agreed bundle of documents before me and where I refer to page numbers it is from that bundle. I had written submissions from Mr Tibbitts for the Respondents and some brief written submissions from Mr Jackson Lee and I heard representation orally from both sides.

### **Relevant facts**

15. The Claimants who I am dealing with had all been employed by the Co-op at their Wollaton store. Some of those people had been employed for a long time.

16. The Co-op redundancy agreement is at pages 101-104. The agreement sets out the Co-op's desire to minimise any hardship created by redundancy and accordingly by negotiation had revised its security of employment agreement that had originally been drawn up in 1964. At page 102 it sets out the calculation of the severance payments. It provides several benefits which were over and above the statutory scheme. These comprise: -

- That no employee would receive less than 2 weeks' pay
- The amount of the entitlement would be the number of weeks pay determined by the prescribed scale increased by 75% and then rounded up to the nearest half week
- There would be no maximum limit on years of employment
- Previous service with another Co-operative retail society or Co-operatives UK Limited will be regarded as continuous service on certain provisions
- The maximum earnings limit would be disregarded

17. The agreement goes on to say under the heading "exclusions":

"(b) The terms of this agreement shall not apply in addition to the provisions of any legislation or agreements between employees and trade unions in those trades and industries in which society is engaged."

18. The Claimants all transferred to the Respondents under TUPE on 13 February 2015.

19. By 15 November 2019 all the Claimants were dismissed by the Respondent by reason of redundancy due to the closure of the Wollaton branch.

20. All the Claimants were paid enhanced redundancy payments under the Respondent's Redundancy Standard and Operating Procedure of 2019 which is at pages 105-119.

21. There were produced to me financial documents in respect of all the Claimants which are at pages 120 to 365.

22. There is some dispute about the calculations but it is agreed in respect of the thirteen Claimants who I am dealing with that none of them have been paid less under the Respondent's redundancy policy than they would have received under the Co-op redundancy policy.

### **The law**

#### Strike out

23. Rule 37 of the Employment Tribunals Rules of Procedure 2013 provides:

“(1) At any stage of the proceedings, either on its own initiative or on the application of a party, a Tribunal may strike out all or part of any claim or response on any of the following grounds: -

(a) That it is scandalous or vexatious or has no reasonable prospect of success.”

24. In this case the Respondents say that the Claimants subject to this Preliminary Hearing have no reasonable prospect of success with their claims for breach of contract and that I should strike those claims out.

#### Breach of contract

25. A Tribunal's jurisdiction to hear contract claims is governed by the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. Article 3 of that Order states:

“Proceedings may be brought before an Employment Tribunal in respect of a claim of an employee for the recovery of damages or any other sum (other than a claim for damages, or for a sum due, in respect of personal injuries) if:

...

(c) The claim arises or is outstanding on the termination of the employee's employment.”

26. As Mr Tibbitts rightly said the Employment Tribunal only has jurisdiction where the remedy is monetary.

27. In his submissions to me Mr Tibbitts referred me to various authorities concerning the interpreting of written terms of contract. He referred me to the “reasonable, informed observer” test as described in: -

- **Investors Compensation Scheme Limited v West Bromwich Building Society (number 1)** [1998] 1WLR896
- **Arnold v Britton and Others** [2015] AC 1619, SC

### **My conclusions**

28. In this case I have been able to consider the redundancy terms under the Co-op scheme and as I have described above they are modelled on the formula used for calculating a statutory redundancy payment.

29. These terms are significantly more favourable to the Claimants than that of a statutory redundancy payment. As I have described: -

- There is no qualifying period
- There is a minimum sum of two weeks' pay
- The maximum weekly pay does not apply
- There is an uplift of 75% on length of service

30. There is nothing in the policy which says that the Claimant would receive these sums in addition to statutory redundancy pay and in fact it specifically says that:

“The terms of this agreement shall not apply in addition to the provisions of any legislation...”

31. I am satisfied that even if as the Claimants successfully argue they were contractually entitled to the Co-operative terms, they are not entitled to the enhanced redundancy pay as well as statutory redundancy pay.

32. All the Claimants that are subject to this Preliminary Hearing and are referred to in the attached annexe have received sums which are greater than that which they would be entitled to under the Co-op redundancy scheme. They have, therefore, not suffered any financial loss

33. I am therefore satisfied that there has been no breach of contract in respect of these Claimants and the only appropriate course of action is to strike out their claims on the basis that they have no reasonable prospects of success.

#### **ANNEXE 1**

Hugo Alves	2601128/ 20
Neil Andrews	2601097/ 20
Jacky Brown	2601033/ 20
Sarah Clyde	2601105/ 20
Jason Dakin	2601082/ 20
Fiona Henson	2601084/ 20
Victoria Mantle	2601019/ 20
Wendy Pickering	2601090/ 20
Darral Price	2601125/ 20
Mary Roche	2601112/ 20
Sally Sadler	2601088/ 20
Emma Thompson	2601117/ 20
Shelley Thompson	2601123/ 20

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Employment Judge Hutchinson

Date 26 April 2021

JUDGMENT SENT TO THE PARTIES ON

29 April 2021

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FOR THE TRIBUNAL OFFICE

Notes

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