



EMPLOYMENT TRIBUNALS

Claimant: Mr C Charlton

Respondent 1: Farm Bakery Ltd

Respondent 2: Alireza Mohammadi

Respondent 3: Farm Bistro Harrogate Ltd

HELD AT: Leeds

ON: 19 June 2018

BEFORE: Employment Judge Shulman

REPRESENTATION:

Claimant: In person

Respondent 1: Did not appear and was not represented

Respondent 2&3: Subject to Rule 21 of the Employment Tribunal Rules the Second Respondent

JUDGMENT

1. The Tribunal finds that the Claimant was unfairly dismissed by the second Respondent. And is entitled to compensation of £2304.88.
2. The Tribunal finds that the Claimant is entitled to notice pay in the sum of £527.20.
3. The Tribunal finds that the Claimant is entitled to holiday pay in the sum of £1159.84

REASONS

Preliminary matter

1. The First Respondent went into creditors voluntary liquidation on 30 April 2018.
2. The Second and Third Respondents were represented by Mr Alireza Mohammadi the Second Respondent. Neither the Second Respondent nor the

Third Respondent filed a response so that the Tribunal had to have regard to Rule 21 the Employment Tribunal Rules. The Tribunal considered whether an extension of time should be granted to the Second and Third Respondents to file a response.

3. The Second Respondent told the Tribunal that he took over as a sole trader on 21 November 2017 and that the Third Respondent was a limited company formed on 1 January 2018. The Second Respondent said however that there was no reason why he could persuade the Tribunal to grant an extension and therefore the Tribunal decided that whilst he could remain present during the full hearing he could not participate in it. The Second Respondent did remain in the hearing for the balance.

Claims

4. The Claimant who gave evidence before the Tribunal claimed:-
 - 4.1. That he was unfairly dismissed;
 - 4.2. That he had not received his notice pay;
 - 4.3. That he had not received his holiday pay

Issues

1. There was an issue to whether the Transfer of Undertakings (Protection) Employment Regulations (TUPE) applied because the taking was originally owned and operated by the First Respondent and then transferred to the Second Respondent and then transferred to the Third Respondent.
2. As far as the unfair dismissal was concerned the ??? of TUPE was relevant in that it transfers rights and liabilities from the transferor of the business to the transferee. There were in any event non TUPE reasons relating to the unfair dismissal. The first reason was for the dismissal where the burden is on the Respondent and the other is whether in simple terms the dismissal was fair.
3. The question of notice will be dependant upon whether or not there is a finding of unfair dismissal and compensation ????? or not.
4. The question of whether or not there is holiday pay depends on the amount claimed.

Facts

The Tribunal having carefully reviewed all the evidence (both oral and documentary) before it finds the following facts (proved on the balance of probabilities).

1. The Claimant was first employed on 5 November 2015 by the First Respondent which traded as Farm Whole Foods and Bistro but also appears to have traded as Farm Bistro. He was employed as a front of house barista and then he became a supervisor in April 2017. From 31 October 2017 the Claimant reverted to his old job which he accepted. The taking was a health restaurant. It traded from 1a Oxford Street, Harrogate.
2. It appears that Mr Andrew Pearson was the owner of the First Respondent and at the end of October/beginning of November 2017 he came to the Claimant and handed him a piece of paper which constituted notice to terminate the employment of the Claimant. In due course the Claimant also received a new contract of employment but this was with trading name Farm Bistro and dated 31 October 2017. The notice which Mr Pearson handed to the Claimant expired

in early December 2017. The Claimant was asked to work his notice. Mr Pearson said he was giving the Claimant notice because the Second Respondent was taking over. The Claimant had known about this for some time. Mr Pearson told the Claimant that Mr Mohammadi wanted new staff. The Claimant was not happy about this and he went to the citizens advice bureau for advice and that eventually resulted in this claim.

3. Mr Mohammadi started appearing in the restaurant but the Claimant personally did not know when the takeover happened. It was definitely before 27 November 2017. The Claimant felt that the takeover was a week or two weeks before that date. The Claimant did not know if Mr Mohammadi took over as a sole trader or through a limited company. He did not know the name of any limited company taking the business over. The Third Respondent Farm Bistro Harrogate Limited was joined as a party to these proceedings on 1 June 2017 and the Respondent went into creditors voluntary liquidation on 30 April 2018. After Mr Mohammadi took over he told the Claimant that his job would be safe so the Claimant believed that he still had a job.
4. However on 27 November 2017 Mr Mohammadi spoke to the Claimant and three or four other employees. He told the Claimant that he was closing that day because he could not trust the staff because people had been tampering with the equipment. Mr Mohammadi said that he was sending the Claimant and others home. The Claimant was of the view that that was the end of his job. The Claimant produced various texts to the Tribunal which tended to indicate that this was the case.
5. The Claimant received his wages. He never received his notice pay or holiday pay.
6. The Claimant produced an extract from a letter or email dated 13 December 2017. It appears to have been between solicitors acting on behalf of the First Respondent and on the other hand the Second Respondent. The letter alleges that an email from the First Respondent gave the Claimant one month's notice to terminate his contract that day. The Claimant knows nothing about this email and stands by the version that he was given about the notice.
7. The Claimant says there was no break in employment between the Claimant by the First Respondent and the employment by the Second Respondent although he acknowledges he was still under notice at that time. He says that when he was given notice by Mr Pearson he thought that was it but that when Mr Mohammadi told him his job was safe he believed that he had a job and he in fact to use his own words "binned" the notice.

Determination of the issues

After listening to the factual and legal submissions made by and on behalf of the Claimant the Tribunal finds the following:-

1. The restaurant did not change in character between the ownership of the First Respondent and the ownership of the Second Respondent took place sequentially and therefore the Tribunal finds that there was a transfer of an undertaking within the meaning of TUPE between the First Respondent and the Second Respondent and then between the Second Respondent and Third Respondent.

2. So far as unfair dismissal is concerned, no reason for dismissal was given. The onus is on the Respondent and the Respondent was unable to take part in the proceedings.
3. In the circumstances the question of fairness does not arise but it goes without saying that the Claimant was dismissed without notice without any procedure by the Second Respondent.
4. The Tribunal finds that the Claimant did not contribute to his own dismissal.
5. The Tribunal finds that in so far as it is relevant the Claimant is entitled to notice under his latest contract every two weeks.
6. The Tribunal finds that the Claimant is entitled to 22 days holiday pay.

REMEDY

1. The Claimant elected for compensation.
2. The Recoupment Regulations apply.
3. The Tribunal has awarded compensation as follows for unfair dismissal. Basic award £298.08. Compensatory award net average pay of £263.60 or three months £1,426.80 but the Claimant worked and earned £30 in December and £1,890 from 6 January 2018 at the end of the three month period amounts to £1,890 so that his immediate loss is £1,506.80.
4. Loss of statutory industrial rights £500. Grand total £1,304.88. The required element £2,304.88. Period of prescribed element 7 November 2017 to 18 June 2018. Excess total over the prescribed element nil.
5. Notice pay. The Tribunal awards the Claimant two weeks notice in the sum of £527.20.
6. Holiday pay. The Tribunal awards the Claimant 22 days holiday £52.72 a day. Total £1,159.84.

Employment Judge Shulman
Date: 03/07/2018

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