Case Number:2501606 /2018
26501608/2018

EMPLOYMENT TRIBUNALS

First Claimant: Ms T Booth
Second Claimant: Ms H Fraser

First Respondent: Pondview Tearooms Ltd
Second Respondent: Kings Corner Ltd

Heard at: Teesside **On: 9 and 10 April 2019**

Before: Employment Judge Shepherd
Members: Mr Wykes
Mr Ratcliffe

Appearances
For the claimants: Mr Owen
For the respondents: Ms Alderton (Daughter of Director)

Judgment having been given to the parties on 10 April 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following written reasons are provided:

REASONS

1. The claimants were represented by Mr Owen and the respondents were represented by Ms Alderton.

2. The Tribunal heard evidence from:

Tracy Booth, first claimant;
Heidi Fraser, second claimant;
Dianne Alderton, Director.

The Tribunal also had sight of written statements from:

Julie Dolan (Formerly Housam), Former owner and Director of the second respondent and Jordan Boston, employee of Pondview Convenience Store Ltd. these statements were accorded substantially less weight than that accorded to statements of witnesses

who provided oral evidence to the Tribunal as those witnesses who had provided written statements only were not available for their evidence to be challenged or for their credibility to be assessed.

3. The Tribunal had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 236.The Tribunal considered those documents to which it was referred by the parties

4. The claimants brought complaints of unfair dismissal, disability discrimination, unauthorised deduction from wages, redundancy payments and breach of contract – notice pay.

5. The claim of unauthorised deduction from wages was withdrawn.

6. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

6.1. The first claimant commenced employment at a coffee shop which was owned by Julie Housam trading as Kings Coffee in March 2015.

6.2. The second claimant commenced work for Julie Housam in September 2014. However, there had been a break in the second claimant's employment from 26 October 2015 until she returned to work on 9 May 2016.

6.3. It was accepted that the second claimant's continuous employment commenced on 9 May 2016.

6.4.Julie Housam set up Kings Corner Ltd (the second respondent) on 27 May 2016. The directors of that company were Julie Housam, Dianne Alderton and Lisa Rudd. Lisa Rudd resigned as a director on 9 August 2016.

6.5. In August 2017 the second claimant, who suffers from anxiety and has panic attacks, had some personal difficulty with a work colleague called Sophie and asked Dianne Alderton if she could be moved to a different shift. Dianne Alderton agreed to this in order that the second claimant would then be working on different shifts to Sophie.

6.6. The second claimant made up her differences with Sophie and was able to continue working with the overlap of shifts between the two.

6.7. Sophie left the employment at the coffee shop in December 2017. The second claimant said that Sophie would still come in to the coffee shop on occasions after she had left and that when Dianne Alderton saw them together she would make "snide remarks." Dianne Alderton said that she did not recall seeing Sophie after she left the employment.

6.8. On 19 November 2017 Julie Housam told all staff that the company would be closing down. The first and second claimants, together with other staff,

asked Dianne Alderton to keep the shop open. Julie Housam resigned as a director and Dianne Alderton became the sole director and all the shares in Kings Corner Ltd were transferred to Dianne Alderton.

6.9. The first claimant was diagnosed with cancer and was off sick from 20 January 2018

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6.10. The second claimant was off sick from 13 March 2018 with anxiety.
Towards the end of March 2018 Dianne Alderton decided to cease operating as Kings Corner Ltd and to restructure the business by opening two new companies Pondview Tearooms Ltd (the first respondent) and Pondview Convenience Store Ltd.

6.11. A meeting was held on 29 March 2018 with all staff (the second claimant did not attend due to illness). At that meeting Dianne Alderton informed the employees that Kings Corner Ltd would be ceasing trading and that she was to open the two new companies.

6.12. A letter dated 29 March 2018 was provided to all staff in which it was stated that a decision had been made to cease to carry on the business of Kings Corner Ltd and it was Stated:

> "Unfortunately, this means that your position will be made redundant.
> In the circumstances I confirm that your employment with the organisation will terminate by reason of redundancy on Thursday, 5 April 2018.We do require you to work out your full notice period."

6.13. Dianne Alderton asked all staff to meet with her individually on 5 April 2018 in order to explain to each of them what the plan would be for the business and their roles in the new company. She had considered the new business structure and determined that she could only offer each of the employees 12 hours a week employment.

6.14. Both claimants attended individual meetings with Dianne Alderton. The first claimant indicated that she was not prepared to reduce her hours from 30 to 12 and the second claimant was then on 16 hours a week and was not prepared to reduce her hours to 12.

6.15. The claimants were provided with application forms to apply for the 12 hour per week jobs.

6.16. On 1 May 2018 Dianne Alderton wrote to the first claimant indicating that her contract of employment ended on 5 April 2018 by way of redundancy and:

> "An offer of employment was made to you by Pondview Tea Room Ltd on initial 12 hours per week. All employees were offered employment on the same terms. If you would like to accept the offer of 12 hours per week please confirm in writing by Friday, 11 May 2018."

6.17. On 3 May 2018 the first claimant wrote to Dianne Alderton stating that she was still off sick and that her hours could not be cut down from 30 to 12.

6.18. The second claimant said that, on or around 26 April 2018 she received a telephone call from Dianne Alderton in which she asked the second claimant what she had done about the job offer. The second claimant replied that she had done nothing because she was still off sick. Dianne Alderton said that it was now time for her to advertise the second claimant's job and the second claimant said that she took this to mean she was dismissed.

6.19. The position with regard to the ending of the second claimant's employment was confused. Although she had indicated that she considered that she was dismissed on 26 April 2018, it was not clear whether there was an actual dismissal or a constructive dismissal. The position of the claimant and the respondent changed throughout the hearing.

6.20. The second claimant, although indicating in her claim that she assumed that the telephone call of 26 April 2018 was a dismissal, in her oral evidence before the Tribunal said that she did not know whether that was the date of dismissal and she just put the phone down.

6.21. When asked when the first respondent was sure how and when both of the claimants' employment ended Dianne Alderton said that she had not wanted to push them into a decision. It was reasonable to allow them until the end of May 2018 and she thought that the position was not clear until the end of May 2018.

6.22. The Tribunal is satisfied from the evidence of Dianne Alderton that the employment of both of the claimants was terminated at the end of May 2018.

6.23. With regard to whether there was a transfer of undertaking pursuant to the Transfer of Undertaking (Protection of Employment regulations 2006, it was accepted on behalf of the first respondent that there had been a transfer to the first respondent from Julie Housam in June 2016.

The law

The claims

7. The claims brought in respect of discrimination arising from disability pursuant to section 15 of the Equality Act 2010 in respect of both claimants and harassment pursuant to section 26 of the Equality Act 2010 in respect of the second claimant.

8. It is accepted by the respondent that both claimants are disabled within the meaning of section 6 of the Equality Act 2010.

. **Discrimination arising from Disability**

9. Section 15 of the Equality Act 2010 states:

Section 15

"(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Sub-Section (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

. Under section 15 there is no requirement for a claimant to identify a comparator. The question is whether there has been unfavourable treatment: the placing of a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person; see Langstaff J in **Trustees of Swansea University Pension & Assurance Scheme & Anor v Williams UKEAT/0415/14** at paragraph 28. As the EAT continued in that case (see paragraph 29 of the Judgment), the determination of what is unfavourable will generally be a matter for the Employment Tribunal.

10. The starting point for a Tribunal in a section 15 claim has been said to require it to first identify the individuals said to be responsible and ask whether the matter complained of was motivated by a consequence of the Claimant's disability; see **IPC Media Ltd v Millar [2013] IRLR 707**: was it because of such a consequence?

11. The statute provides that there will be no discrimination where a respondent shows the treatment in question is a proportionate means of achieving a legitimate aim or that it did not know or could not reasonably have known the Claimant had that disability.

12. **Harassment**

Section 26 of the Equality Act provides

(1) A person (A) harasses another (B) if--

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of--

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

13. The Tribunal has also considered the case of **Grant v HM Land Registry [2011] IRLR 748** in which the Court of Appeal said that

> "Tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive environment". They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

14. **Transfer of Undertaking**

The Transfer of Undertakings (Protection of Employment) Regulations 2006 provide:

A relevant transfer

3(1) These Regulations apply to—

(a) a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;

(b) a service provision change, that is a situation in which—

(i) activities cease to be carried out by a person ("a client") on his own behalf and are carried out instead by another person on the client's behalf ("a contractor");

(ii) activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person ("a subsequent contractor") on the client's behalf; or

(iii) activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf,

and in which the conditions set out in paragraph (3) are satisfied.

(2) In this regulation "economic entity" means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

(3) The conditions referred to in paragraph (1)(b) are that—

(a)immediately before the service provision change—

(i)there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client;

(ii)the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and

(b)the activities concerned do not consist wholly or mainly of the supply of goods for the client's use.

In determining whether there has been a transfer of undertaking the Tribunal has to consider whether there is an economic entity and whether that entity has transferred. The case of **Cheesman v R Brewer Contracts [2001] IRLR 144** is relevant. The EAT said that:

a. There needs to be an economic entity, which is stable and discreet and whose activity is not limited to performing one specific works contract, and organised grouping of wage earners and assets enabling the exercise of an economic activity.

b. The entity must be sufficiently structured and autonomous but will not necessarily have significant assets;

c. In certain sectors the entity can essentially be based on manpower;

d. The identity of the entity emerges from factors such as its workforce, management staff, the way work is organised and operating methods.

15. With regard to determining whether the entity has transferred then the seven factors identified in the well-known case **of Spijkers v Gebroeders Benedik Abbatoir CV [1986] ECR 1119 , ECJ** are relevant. They are as follows:

1. The type of undertaking or business;

2. The transfer or otherwise of tangible assets such as building, equipment and stocks;

3. The value of intangible assets at the date of the transfer (e.g. goodwill);

4. Whether the majority of the staff (in terms of numbers or skills) are being taken over by the new employer;

5. The transfer or otherwise of the circle of customers;

6. The degree of similarity between activities before and after the transfer;

7. The duration of any interruption in those activities.

The ECJ said that the above factors are merely factors in the overall assessment and cannot be considered in isolation. This suggests that no single factor is decisive and that not all the criteria need to be satisfied in order for the regulations to apply and for entity to transfer pursuant to Regulation 3 (1).

16. **"Effect of relevant transfer on contracts of employment**

4(1).....a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.

(9) .....where a relevant transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred under paragraph (1), such an employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the employer.

(10) No damages shall be payable by an employer as a result of a dismissal falling within paragraph (9) in respect of any failure by the employer to pay wages to an employee in respect of a notice period which the employee has failed to work.

(11) Paragraphs (1), (7), (8) and (9) are without prejudice to any right of an employee arising apart from these Regulations to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer.

17. **Dismissal of employee because of relevant transfer**

7.(1) Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated for the purposes of Part 10 of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for his dismissal is the transfer.

(2) This paragraph applies where the sole or principal reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer.

(3) Where paragraph (2) applies—

(a) paragraph (1) does not apply;

(b) without prejudice to the application of section 98(4)(b) of the 1996 Act (test of fair dismissal), for the purposes of sections 98(1) and 135 of that Act (reason for dismissal)—

(i) the dismissal is regarded as having been for redundancy where section 98(2)(c) of that Act applies; or

(ii) in any other case, the dismissal is regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(3A) In paragraph (2), the expression "changes in the workforce" includes a change to the place where employees are employed by the employer to carry on the business of the employer or to carry out work of a particular kind for the employer (and the reference to such a place has the same meaning as in section 139 of the 1996 Act).".

Dismissal

18. **Actual dismissal**

In the case of **Hogg v Dover College 1990 ICR 39** the EAT held that the college's letter to a teacher removing him as Head of history and offering him new terms amounted to an actual or express dismissal. The new terms were so different from the old terms that the situation could only be described as the termination of one contract and the formation of a new one.

19. **Constructive dismissal**

Section 95 Employment Rights Act 1996 states:

(1) For the purposes of this Part an employee is dismissed by his employer if …

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

This is known as constructive dismissal. It is well established that the test to be applied is a contractual test. The case of **Western Excavating – v – Sharp [1978] IRLR 27** provides guidance. The Court of Appeal stated

> "There must be a repudiatory breach of contract, that is, a significant breach of contract going to the root of the contract which shows the employer no longer intends to be bound by one or more essential terms of the contract. The employer's breach must cause the employee to resign as a result".

20. In the case of **Woods – v – W M Car Services (Peterborough) Ltd**, the Court of Appeal quoted from the EAT Judgment of Sir Nicholas Brown-Wilkinson, the then President of the EAT.

> "It is clearly established that there is implied in a contract of employment a term that employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. To constitute a breach of this implied term it is not necessary to show the employer intended any repudiation of the contract. The Employment Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect judged reasonably and sensibly is such that the employee cannot be expected to put up with it.

21. In the case of **Wright v North Ayrshire Council UKEATS/0017/13/BI** The EAT found that the Tribunal had been wrong to rely on the principle that, where there was more than one cause, it was only the main (i.e. effective) cause of the resignation which should be considered to decide whether there had been a constructive dismissal. The EAT said that the search was not for one cause which predominated over others, or which would on its own be sufficient, but to ask whether the repudiatory breach had 'played a part in the dismissal'. It was enough that the repudiatory breach was an effective cause and not the effective cause of the resignation.

> Where an employee brings an unfair dismissal claim before an Employment Tribunal and the dismissal is established or conceded it is for the employer to demonstrate that its reason for dismissing the employee was one of the potentially fair reasons set out in Section 98(1) and (2) of the Employment Rights Act 1996. If the employer establishes such a reason, the Employment Tribunal must then determine the fairness or otherwise of the dismissal by deciding in accordance with Section 98(4) of the Employment Rights Act 1996 whether the employer acted reasonably in dismissing the employee. Redundancy is a potentially fair reason for dismissal under Section 98(2).

22. The definition of redundancy is contained in Section 139(1) of the Employment Rights Act 1996. This states:

> "For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:-
>
> (a) the fact that the employer has ceased or intends to cease –

(i) to carry on the business for the purposes of which the employee was employed by him or

(ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business –

(i) for employees to carry out work of a particular kind, or

(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer

have ceased or diminished or are expected to cease or diminish"

23. If it is accepted that the reason for dismissal was redundancy then it is necessary to decide if that dismissal was reasonable under Section 98(4) of the Employment Rights Act 1996. In judging the reasonableness of an employer's conduct, a Tribunal must not substitute its decision as to what was the right course to adopt for that of the employer. In many cases there is a band of reasonable responses within which one employer might reasonably take one view and a different employer might reasonably take another view and the function of the Tribunal is to determine whether, in the particular circumstances of the case, the decision to dismiss fell within the band of reasonable responses which an employer might have adopted.

24. The factors which a reasonable employer might be expected to consider are whether the selection criteria including the pool for selection were objectively chosen and fairly applied, whether the employee was warned and consulted about the redundancy, whether any alternative work was available.

25. In **Williams & Others v Compare Maxam Limited [1982] ICR 156**, the Employment Appeals Tribunal laid down guidelines which a reasonable employer might be expected to follow in making redundancy dismissals. The factors suggested which a reasonable employer might be expected to consider were whether the selection criteria were objectively chosen and fairly applied, whether employees were warned and consulted about the redundancy, whether, if there was a union, the union's view was sought and whether any alternative work was available.

26. In carrying out a redundancy exercise, an employer should begin by identifying the pool of employees from whom those who are to be made redundant will be drawn. The Tribunal will consider whether an employer acted reasonably in identifying the pool for selection and may consider whether other groups of employees are doing similar work to the group from which the selections were made, whether employees' jobs are interchangeable and whether the employees' inclusion in this unit is consistent with his or her previous positions. A fair pool of selection is not necessarily limited to those employees doing the same or similar work. Employers may be expected to include in the pool those employees whose work is interchangeable.

27. In **Polkey v AE Dayton** Lord Bridge of Harwich said :

> "Employers contesting a claim of unfair dismissal will commonly advance as their reason for dismissal the reasons specifically recognised as valid by (Section 98(2)). These, put shortly, are:
>
> *(c) that he was redundant.*
>
> But an employer having prima facie grounds to dismiss will in the great majority of cases not act reasonably in treating the reason as a sufficient reason for dismissal unless and until he has taken the steps, conveniently classified in most of the authorities as "procedural", which are necessary in the circumstances of the case to justify that course of action. Thus … in the case of redundancy, the employer will normally not act reasonably unless he warns and consults any employees affected or their representative, adopts a fair basis on which to select redundancy and take such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organisation. If an employer has failed to take the appropriate procedural steps in any particular case, the one question the Industrial Tribunal is not permitted to ask in applying the test of reasonableness proposed by section 98(4) is the hypothetical question whether it would have made any difference …. "

28. One of the factors that a Tribunal has to consider when assessing compensation in a case where there is a substantively fair reason for the dismissal but where there had been procedural failings in the dismissal process, is whether the employee would still have been dismissed if a proper procedure had been followed. If the Tribunal concludes that even if a fair procedure had been followed, dismissal would still have occurred then that can sound in the compensation that is awarded. In *Polkey v. AE Dayton Services Limited [1988] ICR 142* the House of Lords approved the remarks of Browne-Wilkinson J in *Siliphant's case [1983] IRLR 91*:

> "There is no need for an 'all or nothing' decision; if the Tribunal thinks there is a doubt whether or not the employee would have been dismissed, this element can be reflected by reducing the nominal amount of compensation by a percentage representing the chance that the employee would still have lost his employment."

29. The Tribunal is satisfied that there was a transfer of undertaking on 5 April 2018 to the first respondent and that the claimants' contracts of employment transferred to the first respondent. The Tribunal has considered the factors set out in such cases as **Spijkers v Gebroeders**.

30. The type of business was that of the coffee shop or tearoom which continued serving the same customer base, Dianne Alderton took on the lease on behalf of the first respondent.

31. She also agreed to rent the physical assets on the premises for £50 a week from Julie Housam's husband.

32. Dianne Alderton said that on 23 June 2018 Julie Housam and her husband, Paul Dolan came into the shop whilst she was working and serving customers and took all of the assets that Paul Dolan claimed belonged to him personally. She said they ripped everything they could out of the shop as she had told Paul Dolan that she could not pay £6,500 that he wanted for the assets.

33. The business restructure was carried out in order to retain work for all the employees. However, as a result of that reorganisation there was a redundancy situation in accordance with section 139 of the Employment Rights Act 1996 in that the requirements of the business for employees to carry out work in the coffee shop had ceased or diminished or were expected to cease or diminish.

34. The first respondent's requirement for those employees to carry out that work had diminished. There had been a business restructure which the Tribunal accepts was reasonable and meant that the position for employees was such that there was only 12 hours a week available to each of the employees.

35. The Tribunal has considered whether there was a dismissal in this case. The circumstances were unusual and the evidence was that the claimants and that of Mrs Alderton, the sole director and shareholder of the first respondent were not entirely clear as to when the relationship came to an end. Both the claimants were off sick at the time. The Tribunal is satisfied that Mrs Alderton was attempting to maintain the claimants' employment. This was by way of a business reorganisation and they were offered substantially lower hours than those which they were prepared to accept.

36. The Tribunal considered whether this was an actual dismissal on the basis that the contract changed so fundamentally pursuant to **Hogg v Dover College.** The jobs that were offered were essentially the same jobs. However, the hours were so different that the claimants would not accept them. The Tribunal finds, on balance, that there was no actual dismissal.

37. The evidence in respect of the termination of the claimants' employment was vague and unsatisfactory. However, the Tribunal finds, on the balance of probabilities, that there was a constructive dismissal of each of the claimants. The claimants were not prepared to accept the reduced hours and, on balance, the Tribunal accepts that the claimants resigned as they would not accept the reduced hours that were offered. The proposed imposition of the reduction of the hours of work to such an extent was a repudiatory breach of contract and both the claimants resigned in response to that breach.

38. The Tribunal is not satisfied that the reason for the dismissals was because of something arising in consequence of the first or second claimant's disabilities. Dianne Alderton was very clear that the claimants' sickness absence was not any part of the decision. The Tribunal is satisfied that the first respondent wished to retain the employment of both claimants and that the reason for the dismissal is was that of redundancy. There was no credible evidence that the claimants were selected for any reason related to their disability.

39. There was no evidence that any treatment of the second claimant was related to her disability. The second claimant had had personal difficulties with another employee. She requested a change in her shift pattern which was accommodated. The other employee left the employment at the end of 2017 and the Tribunal does not accept that it was established that Dianne Alderton made snide remarks when the ex-employee visited the premises. In any event, the allegation was vague. The second claimant said that there were remarks made with regard to why she was talking to Sophie as it was said that the second claimant didn't like her. The Tribunal does not accept that any such remarks were made and, if they had, it was not established that it could be conduct that would amount to harassment pursuant to section 26. If the alleged remarks had been made, they were relatively innocuous remarks and were not established to be related to the second claimant disability or to have the purpose or effect of violating the second claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The claim of harassment pursuant to section 26 of the Equality Act 2010 is dismissed.

40. The Tribunal is satisfied, on balance, that both claimants were dismissed at the end of May 2018 by reason of redundancy.

41.The Tribunal is not satisfied that the dismissal was automatically unfair because of the transfer. It is accepted that there was an economic, technical or organisational reason entailing changes in the workforce in accordance with regulation 7(3) of the TUPE regulations.

42. The dismissals were unfair pursuant to section 98 of the Employment Rights Act 1996.There was a failure to reasonably warn or consult with the claimants and to consider suitable alternative employment. The Tribunal has taken into account the size and administrative resources of the first respondent in this regard.

43. The Tribunal is satisfied that, had the first respondent followed a fair procedure, then taking into account the principles set out by the House of Lords decision in **Polkey v AE Dayton services**, the first respondent would have still only offered the 12 hours per week to the claimants. It was clear that this would not have been accepted and the claimants would have been made redundant at the same time.

44. In the circumstances, the Tribunal is satisfied that the claimants are entitled to redundancy payments. In the case of the first claimant the amount is 3 x 1.5 x weekly pay of £234.90 = £1,057.05.

45. Also, the Tribunal is satisfied that the first respondent failed to pay notice pay and the first respondent is ordered to pay the sum of three weeks net pay £704.70 to the first claimant. Making a total payment to the first claimant of £1761.75.

46. With regard to the second claimant, the redundancy payment is in the sum of 2 x £125.28 - £250.56 together with two weeks' notice pay £250.56.Making a total payment to the second claimant of £501.12.

47. In respect of the award for unfair dismissal, the basic award is the same as that made for redundancy pay and no further award is made. In respect of the compensatory award, the Tribunal has found that, the claimants would have been made redundant at the same time and the Tribunal finds that it is just and equitable to make no further compensatory award.

48. In the circumstances, the claims for redundancy payment, unfair dismissal notice pay succeed and the claims of disability discrimination are not well-founded and are dismissed.

Employment Judge Shepherd

3 May 2019