



EMPLOYMENT TRIBUNALS

Claimant: Mrs J K Carlisle

Respondents: (R1) Mr Paul Darren Haynes t/a The Black Swan
(R2) Mr Andy Ford & Miss Claire Chapman
t/a The Black Swan
(R3) Yews Estates Limited

Heard at: Leicester

On: 17 January 2019

Before: Employment Judge Ahmed (sitting alone)

Representation

Claimant: Mr S Crawford of Counsel
All Respondents: No appearance or representation

JUDGMENT

The Judgment of the Tribunal is that the First, Second and Third Respondents are jointly and severally liable in these proceedings and are ordered to pay to the Claimant damages and compensation as follows:

1. Compensation for unfair dismissal of £7,450.00 net as set out in the schedule below.
2. Damages for breach of contract of £900.00 net.
3. A sum for an unlawful deduction of wages in respect of unpaid salary between 28 July 2017 and 26 September 2017 totalling £1,012.50 net.
4. A sum for an unlawful deduction of wages for holiday pay of £225.00 net.
5. Compensation for failure to inform and consult under Regulations 13 of the Transfer of Undertaking (Protection of Employment) Regulations 2016 totalling £1,462.50 net.
6. Compensation for failure to provide particulars of employment contrary to section 1 of The Employment Rights Act 1996 and pursuant to section 38 of The Employment Act 2002 of £450.00 net.
7. An uplift of the compensatory award to failure to comply with the ACAS Code of Practice of 25% of £1,525.00 net.

Schedule referred to in paragraph 1 above

Basic award	£1,350.00
Compensatory award	£6,100.00
TOTAL	<u>£7,450.00</u>

REASONS

1. These reasons are prepared and sent in response to an application dated 6 May 2019 from Ms Atwood and Mr Andrew Ford. The judgment given orally on 17 January 2019, at which none of the Respondents were present or represented, was sent to the parties on 23 February 2019. The aforementioned e-mail of 6 May also made a request for reconsideration of the judgment of 17 January. The application for reconsideration was dealt with and was refused on 8 May 2019.

2. This case has a fairly lengthy history with two telephone Preliminary Hearings, a strike out judgment on paper by my colleague Employment Judge Moore on 29 October 2018 and what was effectively a remedy hearing before myself on 17 January. The 29 October judgment struck out the ET3 of Yews Estates Ltd who have been the only party, apart from the original First Respondent, Red Star Pub Company (WRlll) Ltd (“Red Star”) – and against whom the claims were withdrawn – to have ever entered a defence. The judgment of 29 October included written reasons and therefore I propose to say nothing more about that.

3. The proceedings were originally issued against Red Star, Mr Paul Haynes, Ms Claire Chapman and “The Black Swan” as a separate entity. The rest have been added subsequently by way of amendments. The Claim against ‘The Black Swan’ as a named Respondent was withdrawn when it was accepted that it was not a distinct legal entity and as such could not be sued.

4. The Claimant has until very recently been legally represented. The reason for issuing her claim against so many different Respondents was because she did not know for certain who her correct employer was. She has never been issued with any written particulars under section 1 of the Employment Rights Act 1996.

5. Mrs Carlisle was employed as a Bar Assistant at the Black Swan Pub. She took her work instructions variously from Mr Paul Haynes, Mr Andy Ford and Ms Claire Chapman. She believed they were either her employers or that they were employing her on behalf of Red Star. When Red Star lodged a detailed Response and explained they had nothing to do with the Claimant the proceedings against them were dismissed upon withdrawal.

6. At the first Preliminary Hearing before Regional Employment Judge Swann on 15 March 2018 none of the Respondents (with the exception of Red Star Pub) took part. None of them by that stage had entered an ET3 (Response). In fact Mr Haynes, Mr Ford and Ms Chapman have never at any stage presented a Response. They have chosen instead to write to the Tribunal

from time to time complaining that they do not understand why they are being dragged into these proceedings or that they are not liable. However the documentation sent to them makes it clear that if they wish to defend these proceedings they should complete and return the ET3 form, which they have never done.

7. Mrs Carlisle began working at the Black Swan Pub on 1 March 2009. In July 2017 she was told that the Pub would be closing temporarily for refurbishment and that it would re-open in September. When she attempted to resume her employment she was told she was not required and was dismissed.

8. I am satisfied that the Claimant was unfairly dismissed and she was not informed or consulted about any transfer of her employment.

9. In relation to compensation I have taken into account the Claimant's efforts to find alternative employment. I am satisfied that she has suffered the losses claimed and she has proved her losses as set out in the schedule of loss.

10. I am also satisfied that the Claimant was entitled to notice under her contract which has not been paid.

11. The Claimant has suffered an unlawful deduction of wages during the period of the refurbishment, that is between 28 July and 26 September 2017.

12. The Respondents have failed to pay outstanding holiday pay of £225.00.

13. The Claimant was never provided with written particulars of employment at any stage and thus she is entitled to an award for that failure.

14. The Claimant's dismissal was in breach of the provisions of the ACAS Code of Practice. It is appropriate to apply the maximum uplift.

Employment Judge Ahmed

Date: 23 May 2019

JUDGMENT SENT TO THE PARTIES ON

.....
.....
FOR THE TRIBUNAL OFFICE