

Cases: 1800395/2019,
1800396/2019, 1800423/2019 &
1800424/2019



EMPLOYMENT TRIBUNALS

Claimants: (1) Mrs S Whitehouse
(2) Miss D Dawson
Respondents: (1) *Stephen Clark*
(2) Serkan Lise

AT A HEARING

Heard at: Hull **On:** 29th May 2019
Before: Employment Judge Lancaster

Representation

Claimants: In person
Respondent: No appearances entered and did not attend

Upon hearing evidence on oath and submissions on behalf of the Claimants:

JUDGMENT

1. The claims numbers 1800396 and 1800424 are dismissed upon withdrawal as they are duplicates of cases 1800423 and 1800395 respectively.
2. The claims against the Second Respondent are dismissed upon withdrawal.
3. The Claimants were personally employed by the First Respondent from 6th November 2018 until their summary dismissal by him on 27th November 2018.
4. The reason for the dismissals was the transfer of undertaking on 6th November 2018 of the Rioco Café (now known as Leos Café and Bar) from the Second to the First Respondent.
5. The dismissals were therefore automatically unfair under regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006. The claims of unfair dismissal are well founded.
6. The First Respondent is therefore ordered to pay to the Claimants compensation for unfair dismissal as follows:

(A) Mrs Whitehouse

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Basic award 17 weeks pay @ £125.28 per week, £2129.76

Compensatory award (Total £1803.36)

(1) Loss of earnings during the 12 week notice period (from which no deduction is made following *Norton Tool Co. Ltd v Tewson [1972] ICR 501*), £1503.36 gross

(2) Loss of statutory rights, £300.00

(B) Miss Dawson

Basic award 14 weeks pay @ £234.90, £3288.60

Compensatory award (Total £5395.78)

(1) Loss of earnings during the 10 week notice period (from which no deduction is made following *Norton Tool Co. Ltd v Tewson [1972] ICR 501*), £2349.00 gross

(2) Loss of earnings 8 weeks to 1st April 2019 @ a shortfall of £39.15 gross per week, net (95 per cent) £300.20

(3) Loss of earnings 8 weeks 1st April 2019 to date of hearing @ a shortfall of £41.05 gross per week, net (95 per cent) £311.98

(4) Future loss of earnings 52 weeks @ a shortfall of £41.05 gross per week, net (95 per cent) £2027.87

(5) Loss of statutory rights, £300.00

7. On my own initiative I hereby revoke the decision announced orally at the hearing to also award an uplift of 25 percent on the compensatory awards by reason of a failure to comply with the ACAS code of practice. Although no dismissal procedure whatsoever was followed I cannot, on reflection in fact justify a finding that this was an unreasonable failure to comply with any specific provision of the code which is primarily concerned with disciplinary proceedings, and not in fact therefore directly applicable to this situation.. The additional awards of £450.84 (Mrs Whitehouse) and £1348.95 (Miss Dawson) are therefore no longer applicable, and I apologise for the error.
8. In the alternative had the principal reason for dismissal been held to be redundancy the Claimants would not be disentitled to a redundancy payment under section 141 of the Employment Rights Act 1996 because in fact no suitable offer of alternative employment was made by the First Respondent or any associated employer (Finkles Pub) before the end of employment, and the offer which was in fact made immediately thereafter of 12 to 14 hours cleaning at the pub, split between the Claimants, was not suitable in relation to either of them.
9. The complaints in respect of providing untrue written reasons for termination (under section 93 of the Employment Rights Act 1996) are dismissed, as no request for such reasons was ever actually made.
10. The First Respondent has made an unauthorised deduction from the Claimants' wages by not paying further accrued holiday pay for the 21 days from 6th to 27th November 2018. That is pro rata, based on an annual 5.6 weeks holiday, an entitlement to 0.32 weeks pay.

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11. The First Respondent is ordered to pay compensation for holiday entitlement as follows:

Mrs Whitehouse	£40.09 gross
Miss Dawson	£75.17 gross

EMPLOYMENT JUDGE LANCASTER

DATE 29th May 2019

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a written request is presented by either party within 14 days of the sending of this written record of the decision.

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