



EMPLOYMENT TRIBUNALS

Claimant: Ms Osborne

First Respondent: Le Putt Ltd (in liquidation)

Second Respondent: Elite Golfing Ltd (in liquidation)

Heard at: Watford **On:** 10 September 2020

Before: Employment Judge Daniels (sitting alone)

Appearances:

For the claimant: Did not appear (but sent written submissions)

For the first/second respondents: Did not appear

JUDGEMENT

1 The first and second respondents are insolvent. There was a transfer of a business from the second respondent to the first respondent on or about 31 July 2018.

2 The claim against the first respondent for unpaid arrears of pay in June 2018 is well founded.

3 The claim against the first respondent for unpaid statutory maternity pay is well founded.

4 The claim against the first respondent for unpaid notice pay (of four weeks) and/or for unpaid statutory minimum notice is well founded.

5 The claim against the first respondent for statutory redundancy pay is well founded.

6 The claim for failure to be provided with terms and conditions of employment under s1 ERA 1996 is not proved and is dismissed.

7 The claim for compensation for failure to be informed and consulted under TUPE Reg 13 is not proved and is dismissed.

8 The claims for unfair dismissal and direct discrimination are not proved and are dismissed.

REMEDY

1 The claimant is entitled to be paid by the first respondent unpaid arrears of pay for June 2018 of **£275.96**.

2 The claim against the first respondent for unpaid statutory maternity pay is well founded. The claimant (having already claimed 4 weeks' SMP at the higher rate as above) is entitled to be paid the further sum of 2 weeks' unpaid maternity pay at the higher rate (£271.49 per week), namely **£542.98** and a further 33 weeks' pay at £145.18 (**£4790.94**). The total unpaid statutory maternity pay due and which remains unpaid is **£5333.92**.

3 The claim against the first respondent for unpaid notice pay (of four weeks) and/or for unpaid statutory minimum notice is well founded. One months' notice pay is due to the claimant in the sum of **£1307.15**. Of this, the unpaid statutory minimum notice pay element due is **£904.95**.

4 Statutory redundancy pay, still unpaid by the first respondent, is due to the claimant of **£965.22**.

5 The Recoupment Regulations do not apply.

Note: The claimant has notified of her intention to claim from the National Insurance Fund such of the above sums are duly payable by the Fund in the event of an insolvent employer.

REASONS

Introduction

The claimant did not appear at the hearing but presented a signed witness statement plus a bundle of documents. The claimant applied for the case to be heard by written submissions. The application by the claimant to do so was agreed as this was in the interests of justice. There was no appearance by the respondents or any evidence presented by them, save I considered the contents of the Response.

1 Facts

- 1.1 The claimant was employed by Magnolia Leisure Ltd on 9 March 2015 as a food and beverage assistant for a hotel and golf and country club which was based at the Best Western plus Magnolia Park Hotel Aylesbury. As part of her duties she was also required to carry out the duties of a receptionist.
- 1.2 Under the terms of her contract of employment dated to March 2015 she was entitled to one month's notice of termination of employment.
- 1.3 On 1 March 2017 the business of Magnolia Leisure Ltd was transferred to Elite Golfing limited the Second Respondent which was a transfer of a business for the purposes of the Transfer of Undertakings Protection of Employment Regulations 1981.
- 1.4 She and all her colleagues working at the club were advised on one March 2017 that salaries would now be paid by the Second respondent there was no other change to her duties.
- 1.5 On 19 April 2018 the claimant started maternity leave with the Second Respondent. Her baby was born on 10 May 2018.
- 1.6 On 31 July 2018 the business of the second respondent was transferred to the first respondent. This was a transfer of business for the purposes of the TUPE Regulations. Most if not all of her colleagues continued to work at the club without interruption or change.
- 1.7 By letter dated 31 July 2018 the claimant received a letter while she was on maternity leave advising her that she was dismissed as the business was ceasing to trade and as a result and payment was terminated with immediate effect.
- 1.8 Before the claimant went on maternity leave she was paid an hourly rate of £8.50 an hour her monthly pay was variable and dependent on her hours and the amount of overtime worked. Her P60 for tax year 2018 shows that her salary was £16,730.47 and a net pay was £15686.27. Her average gross weekly pay was £321.74 and her net weekly pay was £301.65
- 1.9 The claimant should have received statutory maternity pay in June 2018 of 1201.08 but only received £925.12 leaving a balance due of £275.96 to the claimant.
- 1.10 The claimant claimed salary arrears due to 31 July 2018 of £275.96; maternity pay from July to October 2018 and statutory maternity pay for October 2018 for 33 weeks at £145.18 in the sum of £4790.94. She also claimed one month's notice pay of £1349.20 and Statutory redundancy pay of £965.22. She also claimed failure to be provided with new terms and conditions of employment and compensation of 13 weeks' pay for failure to be informed and consulted under TUPE. She also claimed compensation for unfair dismissal and direct discrimination.

Summary conclusions

- 1.11 The first and second respondents are insolvent.
- 1.12 There was a transfer of a business from the second respondent to the first respondent on or about 31 July 2018.
- 1.13 The claim against the first respondent for unpaid arrears of pay in June 2018 is well founded as there is clear evidence of eligibility for such sums and of non-payment of these sums.
- 1.14 The claim against the first respondent for unpaid statutory maternity pay is well founded as there is clear evidence of non-payment of such sums.
- 1.15 The claim against the first respondent for unpaid notice pay (of four weeks) and/or for unpaid statutory minimum notice is well founded as one month's notice was due and no notice was given at all.
- 1.16 The claim against the first respondent for statutory redundancy pay is well founded. The dismissal was for a reason relating to redundancy in law and no redundancy payment was made.
- 1.17 The claim for failure to be provided with terms and conditions of employment under s1 ERA 1996 is not proved.
- 1.18 The claim for compensation for failure to be informed and consulted under TUPE Reg 13 is not proved as insufficient evidence is presented to prove the claim.
- 1.19 The claim for unfair dismissal and direct discrimination are not proved as insufficient evidence is presented to prove the claim.
- 1.20 The claims for unfair dismissal and sex discrimination are not proved as insufficient evidence is presented to prove the claim.

Employment Judge Daniels

10 September 2020

Sent to the parties
on:13/10/2020

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For the Tribunal:
Jon Marlowe