



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs May Kirkland

**Respondents:** Mrs Marjorie Allen [First Respondent]  
Mr Stuart Dixon [Second Respondent]  
CMD Pubs (Crawcrook) Limited [Third Respondent]

**Heard:** Remotely (by telephone in public)      **On:** 4 February 2021

**Before:** Employment Judge S Shore

***Representation:***

**Claimant:** In Person

**Respondent:** No appearance on behalf of any respondent

## JUDGMENT FOLLOWING PUBLIC PRELIMINARY HEARING BY TELEPHONE

1. The first respondent failed to enter an appearance to the claimant's claim by the due date of 14 April 2020 and has failed to respond to the case management order of Employment Judge Garnon of 20 October 2020. I have therefore decided on the available materials that a determination can properly be made of the claimant's claims against her, pursuant to Rule 21 of the Employment Tribunals Rules of Procedure 2013 ("the Rules"). That determination is below.
2. The responses of the second and third respondents are struck out as having no reasonable prospect of success. The determination of the claimant's case against the second and third respondents is set out below.

### **Unfair Dismissal**

3. The claimant was unfairly dismissed. The principal reason for her dismissal was a relevant TUPE transfer, and was automatically unfair pursuant to regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").
4. The claimant is entitled to compensation. The effective date of the termination of her employment was 5 January 2020. At the date of her dismissal, she was 58 years old and had been employed by the first respondent since 1 May 2005. She had 14 complete years of service.

Basic Award

5. The claimant earned £131 per week gross and net. Her basic award is there for calculated at  $14 \times 1.5 \times £131 = \mathbf{£2,751.00}$

Compensatory Award

6. Loss of earnings from 29 March 2020 to 8 July 2020. 14 weeks @ £131 = **£1,834.00**
7. Loss of statutory rights **£262.00**
8. The total unfair dismissal compensation is  $£2,751.00 + £1,834.00 + £262.00 = \mathbf{£4,847.00}$
9. The claimant did not contribute to her own dismissal and any basic or compensatory award shall not be reduced.
10. There should be no deduction of compensation in the unfair dismissal claim following the principle in the case of **Polkey v AE Dayton Services Ltd** [1987] UKHL 8.
11. The Recoupment Regulations do not apply.
12. This award is made against the first respondent only.

Breach of Contract

13. The first respondent breached the claimant's contract of employment by failing to pay her notice pay. She is entitled to compensation calculated as  $12 \text{ weeks} \times £131 = \mathbf{£1,572.00}$
14. This award is made against the first respondent only.

Failure to Provide Written Statement of Terms and conditions of Employment

15. The first respondent failed to provide the claimant with a written statement of terms and conditions of employment as required by section 1 of the Employment Rights Act 1996.
16. The claimant is entitled to compensation calculated as  $4 \text{ weeks} \times £131 = \mathbf{£524.00}$
17. This award is made against the first respondent only.

Failure to Consult with Claimant on TUPE Transfer

18. The first respondent failed to consult with the claimant in respect of the relevant TUPE transfer, contrary to regulation 13 of the TUPE Regulations 2006, and the claimant is entitled to compensation in the sum of 13 weeks' pay. The calculation is  $13 \text{ weeks} \times £131 = \mathbf{£1,703.00}$
19. The first and third respondents are jointly and severally liable to pay the claimant this sum.

Totals

20. The total payable by the first respondent to the claimant is £4,847.00 + £1,572.00 + £524.00 = **£6,970.00**
21. The total payable jointly and severally by the first and third respondents to the claimant is **£1,703.00**
22. The case against the second respondent is stayed until 5 May 2021, when it will be dismissed unless a party applies to restore the case.

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was A - audio. It was not practicable to hold a face to face hearing because of the Covid19 pandemic.

**Employment Judge Shore**

**Date 4 February 2021**

**Note**

**Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or 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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