



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Susan Elizabeth Westwood

**Respondents:** (1) Locoexpresso Limited  
(2) Locoexpresso (Witham) Limited

**Heard at:** East London Hearing Centre On: 12 February 2021

**Before:** Employment Judge S Knight

## Representation

**Claimant:** In person, unrepresented

**Respondent:** Not in attendance, unrepresented

**JUDGMENT** having been sent to the parties on 22 February 2021 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Introduction

#### *The parties*

1. The Claimant was employed by the First Respondent and then the Second Respondent as a barista. The Respondents operated cafes at train stations.

#### *The claims*

2. The Claimant claims for:
  - (1) Failure to pay notice pay (breach of contract / wrongful dismissal);

- (2) Unauthorised deductions from wages in the form of unpaid holiday pay; and
  - (3) Failure to provide a statement of changes to the particulars of employment.
3. On 22 July 2020 ACAS was notified under the early conciliation procedure. On the same date ACAS issued the early conciliation certificates. On 22 July 2020 the ET1 Claim Form was presented in time. No ET3 Response Form has been provided by either Respondent.

***The issues***

4. At the start of the hearing I prepared a list of issues, which was agreed by the Claimant, as follows:
- (1) Whether the Claimant was employed by each Respondent.
  - (2) Whether the Claimant was owed notice pay, whether any was paid, and the difference between what was owed and what was paid.
  - (3) The number of days holiday accrued and untaken at the Effective Date of Termination, and the value of unpaid holiday pay.
  - (4) Whether the Second Respondent failed to provide a statement of changes of employment particulars,
  - (5) If so, whether I should award 0, 2, or 4 weeks' pay for the failure.

**Procedure, documents, and evidence heard**

***Procedure***

5. This has been a remote hearing which has been consented to by the Claimant. The Respondents did not respond to the Tribunal. The form of remote hearing was "**A: audio whether partly (someone physically in a hearing centre) or fully (all remote)**". A face-to-face hearing was not held because it was not practicable due to the COVID-19 pandemic and no-one requested the same.
6. The hearing was conducted by the telephone.
7. Prior to the start of the hearing I ensured that the Respondents had been properly served with the claim form and information about today's hearing. I therefore concluded that it was appropriate in the interests of justice to proceed with the hearing.
8. At the start of the hearing I checked whether any reasonable adjustments were required. Those in attendance confirmed that none were required.

***Documents***

9. The Claimant submitted an ET1 Claim Form and a bundle of documents.

10. The Respondents did not respond to the claim, provide any documents, or attend the hearing.

***Preliminary issue***

11. At the start of the hearing I considered whether the Claimant had in fact brought a claim for a failure to provide written particulars of employment. Although this claim was not expressed in the clearest terms within the ET1 Claim Form, it was clear that part of the first paragraph of the Claimant's details of claim in box 8.2 of the ET1 Claim Form referred to the Claimant not being informed of the transfer of her employment from the First Respondent to the Second Respondent, and not having been provided with updated written particulars of employment. I therefore concluded that this claim was contained within the ET1. However, if I was wrong about this then I gave such leave as was required to amend the claim form to include this claim.
12. There was a second preliminary issue, whether the claim was still live against the First Respondent. The First Respondent has been dissolved. There has been no application to restore it to the Companies Register. Therefore, I stuck out the claim against the First Respondent.

***Evidence***

13. At the hearing I heard evidence under oath from the Claimant. She adopted the narrative in her ET1 Claim Form as her witness statement, and added to it.

***Closing submissions***

14. The Claimant made helpful closing submissions, reflecting her claim as set out in the ET1 Claim Form.

**Relevant law**

***Deductions from wages***

15. Sections 13 to 27B Employment Rights Act 1996 ("**ERA 1996**") sets out the statutory basis for a claim of unauthorised deduction from wages. Section 13 ERA 1996 provides in particular as follows:

"(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "*relevant provision*", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or

(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer."

16. "Wages" is widely defined. According to section 27(1) ERA 1996, it includes "*any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise*".

### **TUPE**

17. The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**the TUPE Regulations 2006**") provide as follows insofar as is relevant as follows:

"3.— A relevant transfer

(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; [...]

(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. [...]

(6) A relevant transfer—

(a) may be effected by a series of two or more transactions; and

(b) may take place whether or not any property is transferred to the transferee by the transferor. [...]

“4.— Effect of relevant transfer on contracts of employment

(1) Except where objection is made under paragraph (7), 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.

(2) Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer—

(a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and

(b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee. [...]

***Right to receive written particulars of employment***

18. At all material times, the ERA 1996 gave employees a right to a written statement of the particulars of their employment (essentially, a written employment contract). The ERA 1996 also gave employees a right to a written statement of changes of the particulars of their employment (“**a statement of changes**”).

19. Section 1 ERA 1996 set out the right in regard to the initial employment contract as follows insofar as is relevant:

“1.— Statement of initial employment particulars.

(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.

[...]

(3) The statement shall contain particulars of—

- (a) the names of the employer and employee,
- (b) the date when the employment began, and
- (c) the date on which the employee's period of continuous employment began (taking into account any employment with a previous employer which counts towards that period).

(4) The statement shall also contain particulars, as at a specified date not more than seven days before the statement (or the instalment containing them) is given, of—

- (a) the scale or rate of remuneration or the method of calculating remuneration,
- (b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals),
- (c) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours),
- (d) any terms and conditions relating to any of the following—
  - (i) entitlement to holidays, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated),
  - (ii) incapacity for work due to sickness or injury, including any provision for sick pay, and
  - (iii) pensions and pension schemes,
- (e) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment,
- (f) the title of the job which the employee is employed to do or a brief description of the work for which he is employed,
- (g) where the employment is not intended to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end,

(h) either the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer, [...]"

20. Section 4 ERA 1996 set out the right to the written statement of changes as follows insofar as is relevant:

"4.— Statement of changes.

(1) If, after the material date, there is a change in any of the matters particulars of which are required by sections 1 to 3 to be included or referred to in a statement under section 1, the employer shall give to the employee a written statement containing particulars of the change. [...]

(3) A statement under subsection (1) shall be given at the earliest opportunity and, in any event, not later than—

(a) one month after the change in question[...]

(5) A statement under subsection (1) may refer the employee for a change in either of the matters specified in section 1(4)(e) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to the employee."

### Findings of fact

21. I find that the Claimant's evidence was accurate in all regards. She was an honest, reliable, and forthright witness.
22. The Claimant was an employee of the First Respondent. However, some time between 22 January 2019 and 16 June 2020 the Claimant's employment was transferred from the First Respondent to the Second Respondent. The transfer occurred more than a month before the termination of her employment. However, neither Respondent provided to the Claimant an update to her written particulars of employment.
23. The contract of employment for the Claimant provided for her to receive one month's notice of termination of her employment, in addition to holiday pay. The Claimant was paid £8 gross per hour originally, which with the increase to the minimum wage rose to £8.72. She worked 22 hours per week. The contract also provided for her holiday year to run from 1 April to 31 March. She was entitled to 28 days' holiday per holiday year. Payment for each holiday day was to be at 1/260th of her full-time equivalent salary.
24. The Claimant's weekly pay was £191.84.
25. The Claimant worked the equivalent of 2 days per week.
26. Her full-time equivalent salary was £479.60 per week or £24,939.20 per year.
27. The director of the Second Respondent closed down the business during the

COVID-19 pandemic.

28. On 16 June 2020 the director of the Respondents made a telephone call to the Claimant informing her that he was “letting her go as the hours are not there”. This was the summary dismissal of the Claimant.
29. In an email dated 23 June 2020 the director of the Second Respondent conceded that the Second Respondent would pay “2 weeks redundancy”. Plainly this was intended to mean notice pay. This is despite the Claimant being entitled to a month’s notice pay.
30. The First Respondent was dissolved on 17 November 2020. It no longer legally exists.
31. The Claimant was not paid notice pay.
32. The Claimant had not taken holiday during the 2020-2021 leave year. She had accrued leave in respect of 77 days elapsed in the leave year out of 365. With a leave entitlement of 28 days per year, this means she had accrued 5.9 days’ holiday pay. This accrued holiday pay remains unpaid.

### **Conclusions**

33. The First Respondent company has been dissolved. The Claimant has not applied to have it restored to the Register of Companies. The claim against the First Respondent has not been pursued today. Therefore, the claim against the First Respondent was struck out.
34. The Claimant was an employee of the First Respondent and then the Second Respondent. She was transferred between the two.
35. The Claimant was entitled to one month’s notice.
36. The Claimant was dismissed without notice.
37. The Claimant was wrongfully dismissed, in that she was dismissed in breach of contract without notice.
38. The Claimant was dismissed without notice pay.
39. The Claimant was not paid for accrued holiday.
40. The Claimant suffered an unlawful deduction of wages, in relation to 5.9 days’ holiday pay.
41. The Claimant’s complaint that she did not receive a statement of changes of particulars of employment is well-founded. This was a particularly serious breach given that the Claimant’s employer’s identity changed without her knowledge. The higher rate of 4 weeks’ pay is appropriate as a remedy.
42. The Claimant is owed  $\text{£}191.84 \times 52 / 12 = \text{£}831.31$  for wrongful dismissal.



43. The Claimant is owed  $\pounds 95.88 \times 5.9 = \pounds 565.69$  for unauthorised deductions from wages.
44. The Claimant is owed  $\pounds 191.84 \times 4 = \pounds 767.36$  for failure to provide a statement of changes of particulars of employment.
45. The Second Respondent will pay the Claimant the sum of  $\pounds 3,890.93$ .

**Employment Judge S Knight  
Date: 19 April 2021**