



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103312/2020

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Held in Glasgow (by CVP) on 23 November 2021

Employment Judge B Beyzade

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Mr. M Ramzan

**Claimant
Represented by:
Ms. C Cochrane
Solicitor**

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New Strathaven Manzil Limited

**Respondent
Not present and
not represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The judgment of the Tribunal is that:

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1.1. the complaint of breach of contract in respect of the failure to pay 1 weeks' notice pay following the termination of the claimant's employment on 18 January 2020 is well-founded and the respondent is ordered to pay the claimant the sum of ONE HUNDRED AND NINETY SEVEN POUNDS AND FOUR PENCE (£197.04) gross from which tax and national insurance requires to be deducted, provided that the respondent intimates any such deductions in writing to the claimant and remits the sum deducted to Her Majesty's Revenue and Customs.

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1.2. The claim in terms of section 38 of the Employment Act 2002 succeeds; the respondent is ordered to pay the claimant the sum of THREE HUNDRED AND NINETY-FOUR POUNDS AND EIGHT PENCE (£394.08).

1.3. The complaint of failure to comply with the duty, under Regulation 13 of the *Transfer of Employment (Protection of Employment) Regulations 2006* (“TUPE Regulations”), to inform and consult was not presented to the Employment Tribunal before the end of or within the period of three months as provided for in the statutory provisions set out in paragraph 31 of the Reasons below; and the Tribunal is satisfied that it would have been reasonably practicable for his complaints to have been presented before the end of that period. In the circumstances, the Tribunal does not have jurisdiction to consider the claimant’s TUPE Regulations complaint, which is dismissed.

REASONS

Introduction

2. The Claimant presented a complaint of breach of contract (notice pay), failure to provide a written statement of particulars of employment, failure to provide the claimant with itemised pay statements, and a failure to inform and consult the claimant pursuant to the TUPE Regulations which the respondent denied.
3. On 1 December 2020, the Tribunal issued a judgment striking out the respondent’s response. The claimant’s complaint of failure to provide a written pay statement, having been withdrawn by the claimant, was dismissed under Rule 52 of the *Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013* by a judgment dated 24 August 2021.
4. A final hearing was held on 23 November 2021. This was a hearing held by CVP video hearing pursuant to Rule 46. I was satisfied that the parties were content to proceed with a CVP hearing, that it was just and equitable in all the circumstances, and that the participants in the hearing were able to see and hear the proceedings.
5. The claimant’s representative prepared and filed an Inventory of Productions in advance of the hearing consisting of eight pages.

6. On the morning of the hearing the respondent did not appear and were not represented. Notice of the final hearing was sent to the parties on 15 October 2021. The Clerk to the Tribunal confirmed that prior to the hearing the respondent were sent the log-in details for the hearing and contact was made
5 by telephone without success. The hearing was adjourned briefly to enable the respondent to attend and the Clerk to the Tribunal contacted the respondent a further time by both email and telephone. As the respondent did not attend the hearing by 10.40am, the Tribunal determined that it was just and equitable for the hearing to proceed in the respondent's absence.

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7. At the outset of the hearing the claimant and his representative were advised that the Tribunal would investigate and record the following issues as falling to be determined, the claimant and his representative being in agreement with these:

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(i) Is the claimant entitled to be paid his notice pay in respect of 1 weeks' pay in lieu of notice in the sum of £197.04 gross?

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(ii) Is the claimant entitled to an award of 13 weeks' pay amounting to £2,561.52 arising from the respondent's breach of the duty to inform and consult the claimant pursuant to the TUPE Regulations?

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(iii) Is the claimant entitled to be paid two weeks' pay in the sum of £394.08 as compensation for the failure to provide a written statement of employment particulars pursuant to section 1 of the Employment Rights Act 1996 ("ERA 1996") and section 38 of the Employment Act 2002 ("EA 2002")?

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8. The claimant gave evidence at the hearing on his own behalf.

9. The claimant were represented by a solicitor who made closing submissions on his behalf. The Tribunal was grateful to Ms Cochrane for her clear and helpful submissions, which the Tribunal found to be informative.

Findings of fact

10. On the documents and oral evidence presented the Tribunal makes the following essential findings of fact restricted to those necessary to determine the list of issues -
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11. The claimant started employment with Strathaven Manzil Limited, a takeaway restaurant on 01 October 2019. Strathaven Manzil Limited had its registered offices at 7 Green Street, Strathaven, South Lanarkshire, ML10 6LT.
12. The claimant's role involved cooking food including making pakoras and naan bread.
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13. The claimant's terms of employment including his role, his pay and his hours were agreed with Strathaven Manzil Limited orally at the start of his employment. The claimant's pay was £8.21 gross per hour. His gross weekly pay was £197.04. The claimant worked 104 hours per month.
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14. The claimant was provided with a payslip dated 31 December 2019 from Strathaven Manzil Limited confirming his basic pay for that month in the amount of £853.84 gross and £837.64 net.
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15. On 07 January 2020 Strathaven Manzil Limited were dissolved and therefore ceased to exist. The claimant was not told who the identity of his employer was either by Strathaven Manzil Limited or any new company that had taken over his employment.
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16. On the same date the claimant's employment was transferred to New Strathaven Manzil Limited which also had its registered office at 7 Green Street, Strathaven, South Lanarkshire, ML10 6LT.
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17. The claimant's employment was terminated without notice on 18 January 2020. On that date the claimant was told to stop working and that he was not required to attend work the next day. He was informed that his employer

required a driver. The claimant asked if he was needed to work thereafter, and he was told that he was not required to work at the restaurant anymore.

5 18. ACAS Early Conciliation was commenced on 17 April 2020 and an ACAS Early Conciliation Certificate was issued on 17 May 2020.

19. The claimant's claim was presented to the Tribunal on 11 June 2020.

Observations

10 20. On the documents and oral evidence presented the Tribunal makes the following essential observations on the evidence restricted to those necessary to determine the list of issues –

15 21. The claimant was not provided with written terms of employment. The claimant agreed terms of employment with Strathaven Manzil Limited orally at the start of his employment. The Tribunal accepted the claimant's evidence in relation to the content of the oral agreement. The claimant's evidence was supported by a payslip dated 31 December 2019, which confirmed the name of his former employer, his working hours, and his rate of pay.

20 22. The claimant was not advised of the identity of his new employer when his previous employer's company were dissolved on 7 January 2020. Having instructed a solicitor after his employment ended and been advised that his employer was New Strathaven Manzil Limited, the claimant commenced a claim against the respondent, who he believed to be his new employer. The
25 new company operated from the same registered office address and was described as 'take-away food shops and mobile food stands' according to records held with the Registrar for Companies at Companies' House, which was the same service offered at the restaurant at which the claimant worked. The claimant confirmed he believed that this was his new employer and that
30 his employer would create a new company when they had to pay new bills. Although the respondent entered a response denying liability, its response was struck out and the respondent did not attend the hearing or proffer any evidence. The Tribunal accepted that on the balance of probabilities, the

claimant's employment transferred to New Strathaven Manzil Limited on 07 January 2020. However, there was no evidence of any attempt by the claimant's previous employer or the new employer to inform or consult the claimant in relation to the transfer of his employment or to advise him of the details of his new employer.

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23. The claimant's employment ended on 18 January 2020. The claimant did not give evidence in relation to the delay in making a Tribunal claim between that date and 11 June 2020. The claimant's solicitor stated during her submissions that the claimant did not make initial contact with a solicitor until 31 January 2020. It was not clear why the claimant did not seek advice sooner. The Tribunal was told that the claimant was not able to seek full advice and to instruct his solicitor to commence proceedings until 17 April 2020, which was due to delays arising from COVID-19, his solicitor's offices being closed and the time it took to obtain an interpreter. The claimant's solicitor explained that there were delays in terms of seeking instructions, obtaining interpreters and being able to commence proceedings (albeit no details could be provided in relation to the timings for each of these). Despite these delays ACAS Early Conciliation was completed by 17 May 2020 and the claim was started on 11 June 2020.

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Relevant law

24. To those facts, the Tribunal applied the law –

25. Section 86 of the ERA 1996 provides:

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“The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—

- (a) is not less than one week's notice if his period of continuous employment is less than two years,*

(b) *is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and*

(c) *is not less than twelve weeks' notice if his period of continuous employment is twelve years or more."*

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26. The starting point is that contracts of employment which give rise to the entitlement to pay are a matter of contract: based upon an agreement between the parties, employer, and employee, although it is recognised that those two parties rarely have the same bargaining power. Many forms of employment protection have been established by Parliament over the years to ensure that employers deal properly and in accordance with minimum contractual entitlements with their employees. The statutory provisions dealing with the relevant employment protection rights are set out in the Employment Tribunals Act 1996, at Section 3 read with the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994/1624 for the notice pay claim, Part II of the Employment Rights Act 1996, particularly at Sections 13, 14, 23 and 24, for the unlawful deduction from wages claims. The Tribunal had regard to its overriding objective at Rule 2 of the Employment Tribunals Rules of Procedure 2013 to deal with cases fairly and justly.

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27. Section 38 (1) to (5) of the Employment Act 2002 provides that:

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"(1) This section applies to proceedings before an employment tribunal relating to a claim by a worker under any of the jurisdictions listed in Schedule 5.

(2) If in the case of proceedings to which this section applies (a) the employment tribunal finds in favour of the worker, but makes no award to him in respect of the claim to which the proceedings relate, and (b) when the proceedings were begun the employer was in breach of his duty to the worker under section 1(1) or 4(1) of the Employment Rights Act 1996 (duty to give a written statement of initial employment particulars or of particulars of change) or (in the case of a claim by an employee) under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on

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Sunday), the tribunal must, subject to subsection (5), make an award of the minimum amount to be paid by the employer to the worker and may, if it considers it just and equitable in all the circumstances, award the higher amount instead.

5 *(3) If in the case of proceedings to which this section applies (a) the employment tribunal makes an award to the worker in respect of the claim to which the proceedings relate, and (b) when the proceedings were begun the employer was in breach of his duty to the worker under section 25 1(1) or 4(1) of the Employment Rights Act 1996 or (in the case of a claim by a worker)*
10 *under section 41B or 41C of that Act, the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.*

15 *(4) In subsections (2) and (3)—(a) references to the minimum amount are to an amount equal to two weeks' pay, and (b) references to the higher amount are to an amount equal to four weeks' pay.*

(5) The duty under subsection (2) or (3) does not apply if there are exceptional circumstances which would make an award or increase under that subsection unjust or inequitable.” Schedule 5 includes the claim of unfair dismissal.”

20 28. In relation to the claimant's TUPE Regulations claim the following provisions were relied on:

25 *“13 Duty to inform and consult representatives (1) In this regulation and regulations [13A,] 14 and 15 references to affected employees, in relation to a relevant transfer, are to any employees of the transferor or the transferee (whether or not assigned to the organised grouping of resources or employees that is the subject of a relevant transfer) who may be affected by the transfer or may be affected by measures taken in connection with it; and references to the employer shall be construed accordingly. (2) Long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives of any affected employees, the*
30 *employer shall inform those representatives of— (a) the fact that the transfer*

is to take place, the date or proposed date of the transfer and the reasons for it; (b) the legal, economic and social implications of the transfer for any affected employees; (c) the measures which he envisages he will, in connection with the transfer, take in relation to any affected employees or, if he envisages that no measures will be so taken, that fact; and (d) if the employer is the transferor, the measures, in connection with the transfer, which he envisages the transferee will take in relation to any affected employees who will become employees of the transferee after the transfer by virtue of regulation 4 or, if he envisages that no measures will be so taken, that fact. [(2A) Where information is to be supplied under paragraph (2) by an employer— (a) this must include suitable information relating to the use of agency workers (if any) by that employer; and (b) “suitable information relating to the use of agency workers” means— (i) the number of agency workers working temporarily for and under the supervision and direction of the employer; (ii) the parts of the employer's undertaking in which those agency workers are working; and (iii) the type of work those agency workers are carrying out.] (3) For the purposes of this regulation the appropriate representatives of any affected employees are— (a) if the employees are of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union; or (b) in any other case, whichever of the following employee representatives the employer chooses— (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this regulation, who (having regard to the purposes for, and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the transfer on their behalf; (ii) employee representatives elected by any affected employees, for the purposes of this regulation, in an election satisfying the requirements of regulation 14(1). (4) The transferee shall give the transferor such information at such a time as will enable the transferor to perform the duty imposed on him by virtue of paragraph (2)(d). (5) The information which is to be given to the appropriate representatives shall be given to each of them by being delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives

of a trade union) sent by post to the trade union at the address of its head or main office. (6) An employer of an affected employee who envisages that he will take measures in relation to an affected employee, in connection with the relevant transfer, shall consult the appropriate representatives of that employee with a view to seeking their agreement to the intended measures. (7) In the course of those consultations the employer shall— (a) consider any representations made by the appropriate representatives; and (b) reply to those representations and, if he rejects any of those representations, state his reasons. (8) The employer shall allow the appropriate representatives access to any affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate. (9) If in any case there are special circumstances which render it not reasonably practicable for an employer to perform a duty imposed on him by any of paragraphs (2) to (7), he shall take all such steps towards performing that duty as are reasonably practicable in the circumstances. (10) Where— (a) the employer has invited any of the affected employee to elect employee representatives; and (b) the invitation was issued long enough before the time when the employer is required to give information under paragraph (2) to allow them to elect representatives by that time, the employer shall be treated as complying with the requirements of this regulation in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives. (11) If, after the employer has invited any affected employees to elect representatives, they fail to do so within a reasonable time, he shall give to any affected employees the information set out in paragraph (2). (12) The duties imposed on an employer by this regulation shall apply irrespective of whether the decision resulting in the relevant transfer is taken by the employer or a person controlling the employer.”

15 Failure to inform or consult (1) Where an employer has failed to comply with a requirement of regulation 13 or regulation 14, a complaint may be presented to an employment tribunal on that ground— (a) in the case of a failure relating to the election of employee representatives, by any of his employees who are affected employees; (b) in the case of any other failure

relating to employee representatives, by any of the employee representatives to whom the failure related; (c) in the case of failure relating to representatives of a trade union, by the trade union; and (d) in any other case, by any of his employees who are affected employees. (2) If on a complaint under paragraph (1) a question arises whether or not it was reasonably practicable for an employer to perform a particular duty or as to what steps he took towards performing it, it shall be for him to show— (a) that there were special circumstances which rendered it not reasonably practicable for him to perform the duty; and (b) that he took all such steps towards its performance as were reasonably practicable in those circumstances. (3) If on a complaint under paragraph (1) a question arises as to whether or not an employee representative was an appropriate representative for the purposes of regulation 13, it shall be for the employer to show that the employee representative had the necessary authority to represent the affected employees [except where the question is whether or not regulation 13A applied]. [(3A) If on a complaint under paragraph (1), a question arises as to whether or not regulation 13A applied, it is for the employer to show that the conditions in sub-paragraphs (a) and (b) of regulation 13A(1) applied at the time referred to in regulation 13A(1).] (4) On a complaint under paragraph (1)(a) it shall be for the employer to show that the requirements in regulation 14 have been satisfied. (5) On a complaint against a transferor that he had failed to perform the duty imposed upon him by virtue of regulation 13(2)(d) or, so far as relating thereto, regulation 13(9), he may not show that it was not reasonably practicable for him to perform the duty in question for the reason that the transferee had failed to give him the requisite information at the requisite time in accordance with regulation 13(4) unless he gives the transferee notice of his intention to show that fact; and the giving of the notice shall make the transferee a party to the proceedings. (6) In relation to any complaint under paragraph (1), a failure on the part of a person controlling (directly or indirectly) the employer to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement (7) Where the tribunal finds a complaint against a transferee under paragraph (1) well-

5 founded it shall make a declaration to that effect and may order the transferee
to pay appropriate compensation to such descriptions of affected employees
as may be specified in the award. (8) Where the tribunal finds a complaint
against a transferor under paragraph (1) well-founded it shall make a
10 declaration to that effect and may— (a) order the transferor, subject to
paragraph (9), to pay appropriate compensation to such descriptions of
affected employees as may be specified in the award; or (b) if the complaint
is that the transferor did not perform the duty mentioned in paragraph (5) and
the transferor (after giving due notice) shows the facts so mentioned, order
15 the transferee to pay appropriate compensation to such descriptions of
affected employees as may be specified in the award. (9) The transferee shall
be jointly and severally liable with the transferor in respect of compensation
payable under sub-paragraph (8)(a) or paragraph (11). (10) An employee may
present a complaint to an employment tribunal on the ground that he is an
20 employee of a description to which an order under paragraph (7) or (8) relates
and that— (a) in respect of an order under paragraph (7), the transferee has
failed, wholly or in part, to pay him compensation in pursuance of the order;
(b) in respect of an order under paragraph (8), the transferor or transferee, as
applicable, has failed, wholly or in part, to pay him compensation in pursuance
of the order. (11) Where the tribunal finds a complaint under paragraph (10)
well-founded it shall order the transferor or transferee as applicable to pay the
complainant the amount of compensation which it finds is due to him.”

29. Regulation 16 provides:

“16 Failure to inform or consult: supplemental

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(3) “Appropriate compensation” in regulation 15 means such sum not
exceeding thirteen weeks' pay for the employee in question as the tribunal
considers just and equitable having regard to the seriousness of the failure of
the employer to comply with his duty.

30 (4) Sections 220 to 228 of the 1996 Act shall apply for calculating the amount
of a week's pay for any employee for the purposes of paragraph (3) and, for

the purposes of that calculation, the calculation date shall be— (a) in the case of an employee who is dismissed by reason of redundancy (within the meaning of sections 139 and 155 of the 1996 Act) the date which is the calculation date for the purposes of any entitlement of his to a redundancy payment (within the meaning of those sections) or which would be that calculation date if he were so entitled; (b) in the case of an employee who is dismissed for any other reason, the effective date of termination (within the meaning of sections 95(1) and (2) and 97 of the 1996 Act) of his contract of employment; (c) in any other case, the date of the relevant transfer.”

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- 10 30. Additionally the Tribunal considered the time limits for presenting a claim in Regulation 15(12) and 16 which provides as follows:

“*(12) An employment tribunal shall not consider a complaint under paragraph (1) or (10) unless it is presented to the tribunal before the end of the period of three months beginning with— (a) in respect of a complaint under paragraph (1), the date on which the relevant transfer is completed; or (b) in respect of a complaint under paragraph (10), the date of the tribunal's order under paragraph (7) or (8), or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.*

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20 *[(13) Regulation 16A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (12).]”*

31. The burden rests on the claimant to persuade a tribunal that it was 'not reasonably practicable' to bring a claim in time (*Porter v Bandridge Ltd [1978] ICR 943, CA*) at 948).

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32. The Tribunal will often focus on the 'practical' hurdles faced by the claimant, rather than any subjective difficulties such as a lack of knowledge of the law or an ongoing relationship with the employer. In the case of *Dedman v British Building and Engineering Appliances [1973] IRLR 379*, per Scarman LJ who held that practicability does not always mean "knowledge". Where a claimant states a lack of knowledge as to the time limits, Scarman LJ found that the
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Tribunal should ask ([1974] ICR at 64): "What were his opportunities for finding out that he had rights? Did he take them? If not, why not? Was he misled or deceived? Should there prove to be an acceptable explanation of his continuing ignorance of the existence of his rights, it would be inappropriate to disregard it, relying on the maxim "ignorance of the law is no excuse". The word "practicable" is there to moderate the severity of the maxim and to require an examination of the circumstances of his ignorance'."

Discussion and decision

10 33. On the basis of the findings made the Tribunal disposes of the issues identified at the outset of the hearing as follows –

15 34. On the claimant's claim for notice pay, the relevant facts are that the claimant was entitled to notice of dismissal of one week. That notice was not given. He was entitled to be paid a (full) week's pay for that one-week period in terms of section 86 of the ERA 1996. I accepted the claimant's solicitor's submission that there was an implied term in the oral agreement that the claimant made at the start of his employment that the claimant was to be provided with the minimum statutory period of one week's notice on termination of his employment by his employer. Instead, the respondent did not make any payment in respect of the claimant's notice pay or pay in lieu of notice. The claimant's claim for one weeks' notice pay therefore succeeds. The amount of a week's pay is £197.04 gross.

25 35. Where a Tribunal finds that an employer has breached its duty to provide full and accurate employment particulars, it must award the "minimum amount" of two weeks' pay (subject to exceptional circumstances which would make an award or increase unjust or inequitable). There was no evidence that the respondent had issued written terms of employment to the claimant. The claimant told the Tribunal that the terms of his employment were agreed by him at the start of his employment orally with his employer, and the Tribunal accepted the claimant's evidence. The claim under section 38 of the EA 2002 is thus well founded-and succeeds. The amount of two weeks' pay is £394.08.

36. In relation to the claimant's TUPE Regulations claim, I have considered the time limits provisions set out above in Regulation 15 (12) and (13) of the TUPE Regulations with care. I am satisfied that the effective date of the transfer of the claimant's employment to the respondent pursuant to the TUPE Regulations was on 07 January 2020 (the claimant's solicitor accepted that this was the relevant transfer date during submissions) and the claimant's employment with the respondent terminated on 18 January 2020.
37. Regulation 15(12) requires the claimant to have presented his claim within a period of three months beginning with the date on which the relevant transfer was completed.
38. The above are not only requirements with which a claimant must comply. They go far beyond that to the very jurisdiction of an Employment Tribunal in that, it is expressly stated that "*an employment tribunal shall not consider*" such a complaint unless it is presented as required in that provision. Some limited flexibility is introduced in that the provision provides, that where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented in the required period, it will nevertheless be presented 'in time' if it is then presented within such further period as the Tribunal considers reasonable.
39. I first remind myself that the onus of proving that it was not reasonably practicable to present the claim in time rests on the claimant: *Porter v Bandridge [1978] ICR 943*. That case also establishes that the correct test is not whether the claimant knew of his rights but whether he ought to have known them. Further, in *Wall's Meat Co Ltd v Khan [1978] IRLR 199 CA* it was suggested that this involves a simple question, "*Had the man just cause or excuse for not presenting his complaint within the prescribed time?*"
40. The transfer of the claimant's employment to the respondent took place on 07 January 2020. The claimant was therefore required to commence his claim pursuant to Regulation 15(12) by not later than 06 April 2020. Although there

was a requirement to start ACAS Early Conciliation prior to this date, as this was not started until 17 April 2020, there is no account to be taken of in terms of any time spent within ACAS Early Conciliation. The primary time limit in respect of his TUPE Regulations claim therefore expired on 06 April 2020.

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41. In this regard, in essence, the claimant's solicitor states that he did not know until 17 April 2020 that he had been dismissed by the respondent on 18 January 2020. Even if the Tribunal accepted that the claimant was not aware of his ability or right to make a claim against the respondent until 17 April 2020 (the claimant gave no evidence in relation to this matter), there was a further delay thereafter in terms of the claimant starting his claim.

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42. Indeed, the claimant gave no evidence whatsoever relating to it not being reasonably practicable for his claim form to have been presented at any time prior to 11 June 2020. Finally, on points of detail in this respect, the pandemic on which the claimant relies was not declared until 11 March 2020, which is after the claimant sought initial legal advice on 31 January 2020. Additionally, the first 'lockdown' was not put into place until 23 March 2020, libraries were not closed until that date and as there was no reason to believe that the claimant did not have good Internet access, a simple claim form could have been submitted online by him or his solicitor on behalf of the claimant.

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43. For these reasons, and in the context of my fundamental finding, he has failed to satisfy me that it was not reasonably practicable for him to present his claim form relating to his claim under the TUPE Regulations within three months of the effective date of termination as I have found it to be: i.e. by no later than 6 June 2020.

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44. Moreover if as the claimant's solicitor suggested it were not reasonably practicable for the claimant to present his claim until 17 April 2020, when he was informed about the circumstances of a potential claim against the respondent (I have considered delays that occurred as a result of the pandemic, the closure of the claimant's solicitor's offices and lack of interpreters albeit I was not provided with particulars and dates relating to the

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same), the claimant did not present his claim until almost two months after this date. Therefore the further period of time that the claimant took to present his claim was not reasonable in all the circumstances as required pursuant to TUPE Regulation 15(12).

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45. The Tribunal therefore dismisses the claimant's claim brought pursuant to Regulations 13 and 15 of the TUPE Regulations for want of jurisdiction.

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46. If the claimant's TUPE Regulations claim had been presented within the statutory time limit (which the Tribunal did not find), the Tribunal would have found that there was no information and consultation process undertaken by the respondent or the claimant's previous employer before or after the relevant transfer. It was found as a fact that the claimant transferred across from his previous employer to the respondent on 07 January 2020, however the Tribunal had no reliable evidence as to exactly how many employees were employed by the previous employer or the respondent. Given the nature of the respondent's business the takeaway restaurant was likely to be a micro business. There was no evidence that any steps were taken to inform the employees of the fact of the transfer or the effect this would have on their contracts of employment or on any measures to be taken after the transfer. The respondent has provided no reason as to why no steps were taken to undertake this process. There was no evidence to suggest that there was a defence to this; there was no evidence of special circumstances that made it impossible to inform and consult. There was no defence to the failure to inform and consult and there was no evidence to suggest that it would not be practicable or reasonably practicable to conduct this exercise and no defence to the total failure to do so. Had the claimant's claim been lodged within the statutory time limit, the Tribunal would have awarded to the Claimant 13 weeks' gross pay amounting to £2,561.52.

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Conclusion

47. The claimant's claims for notice pay and failure to provide a written statement of particulars of employment succeeds. The claimant's claim for failure to

inform and consult pursuant to the TUPE Regulations does not succeed and is accordingly dismissed.

Employment Judge: Beyzade Beyzade

5 Date of Judgment: 10 January 2022

Entered in register: 14 January 2022

and copied to parties

10 *I confirm that this is my judgment in the case of 4103312/2020 Mr M Ramzan v New Strathaven Manzil Limited and that I have signed the order by electronic signature.*