



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms C Key

**Respondent:** The Ship at Conyer Ltd

**Heard at:** Ashford

**On:** 3 May 2022

**Before:** Employment Judge Corrigan  
(Sitting Alone)

## Representation

Claimant: No attendance

Respondent: Mr P Coleman, Director

## JUDGMENT

1. The Claimant was not unfairly dismissed by the Respondent.
2. It was accepted that the Claimant was dismissed without notice and she is awarded damages of £1,201.67 to be paid by the Respondent to the Claimant.

## REASONS

### Claimant's non-attendance

1. The Claimant did not attend the hearing. At 6.15pm on Friday 29 April 2022 the Claimant emailed the tribunal to say that she would not be attending today as she had "just tested positive for Covid". She did not ask for an adjournment or attach any evidence. She did not suggest that she was unwell or suffering from symptoms.

2. The claimant did not copy the message to the respondent. She did not follow the process, outlined in the letter from the tribunal dated 26 April 2022 (which she attached to her email), to be followed where she thinks that an in-person hearing is not appropriate. It is clear from that process that this includes circumstances where a party has to self-isolate and that it can be possible to make other arrangements for the hearing to still go ahead, either by video or by hybrid hearing (whereby she could have attended by video with the respondent attending in person).
3. This morning, prior to being alerted to the above email from the claimant, the tribunal clerk tried to contact the claimant to see if she would be attending today and left a phone message for her to call the tribunal. Upon receipt of the claimant's email the tribunal clerk called the claimant again and left a message for her to contact the tribunal by 11 am if she was able to attend by video. The claimant made no contact with the tribunal.
4. The respondent had not been copied into the claimant's message and so attended believing the hearing would take place as planned. As a single parent he had had to make special arrangements to ensure he could attend the hearing on time.
5. The claimant submitted her claim two years ago on 5 May 2020 so it is important to avoid further delay if possible.
6. Rule 47 of the Employment Tribunals Rules of Procedure states "if a party fails to attend or to be represented at the hearing, the Tribunal may dismiss the claim or proceed with the hearing in the absence of that party. Before doing so, it shall consider any information which is available to it, after any enquiries that may be practicable, about the reasons for the party's absence."
7. I decided not to adjourn the matter given the length of time since the claim was submitted; the claimant had not requested an adjournment; she was informed by letter on 26 April 2022 that a video or hybrid hearing might be possible if she had to self-isolate; she was offered the opportunity to attend by video link this morning but did not respond; and she had made no suggestion that she was too unwell to attend by video.
8. I did not consider it right to dismiss the claim in her absence as the respondent agrees that the claimant is entitled to some notice pay. I therefore decided to deal with the matter in her absence.

### **Hearing**

9. The issues were set out in the Case Management Order dated 24 February 2022. I had regard to the claim, the response, a statement from the claimant and other attachments to her email dated 9 March 2022, and the bundle of documents provided by the respondent. On file there were text messages that the claimant had provided previously (on 10 September 2020). These had not been copied to the respondent but I did mention having seen the one that I have taken into account

during the hearing (though at that point I was not sure where among the papers I had seen it). Within the respondent's bundle there was a statement from the pub's chef who took over the pub from the respondent. I also heard from Mr Coleman.

10. Based on what I heard from Mr Coleman and the documents before me I made the following findings of fact.

### **Facts**

11. The claimant had been overpaid redundancy. She was entitled to a statutory redundancy payment of £2200.50 but was paid £2362.75. She was also entitled to 6 weeks' notice of dismissal. Her average net pay was £227.32 meaning her notice entitlement was £1363.92. I gave credit for the overpayment made by the respondent in respect of the redundancy payment of £162.25. That gave a balance outstanding of £1201.67.
12. Up until the end of February 2020 the pub was run by the respondent with Mr Coleman as director but the day to day decision making was made by the chef and his wife. After summer 2019 the pub was struggling and the respondent ran out of money. Mr Coleman took advice and decided the respondent could not continue to trade. It was not feasible to break the lease early so the chef decided to take over running the pub personally from 1 March 2020, though there appears to have been a short period of overlap until Mr Coleman says he last received any takings on 11 March 2020.
13. It was not financially viable to continue to employ the staff after 1 March 2020. The chef and his wife decided to dismiss the two full time staff members, including the claimant. They retained one part time staff member for approximately two shifts a week. They and their family also worked on an unpaid basis and used staff employed through their other family catering business, as necessary. Another staff member referred to by the claimant had already left by January 2020.
14. Mr Coleman was not sure if the claimant had been offered to remain on a part time basis, but believed that she would not have accepted part time hours in any event as she was unhappy with her level of hours. I accept this, as it is supported by the undated text message to the chef's wife on the tribunal file (sent in by the claimant on 10 September 2020) saying she needed more than 20 hours. It is also supported by the claimant's complaint in her statement about her hours being reduced.
15. He also believed there had been a serious personal falling out between the claimant and the chef's wife that meant the claimant would not have been offered ongoing work by the pub in any event. However he did not know the detail of this.
16. Mr Coleman was not aware of what had been said in the meeting with the claimant about her redundancy though he believed she would have known what was going on as it was a small tight knit team. The claimant's message of 31 October

2019 does suggest she was aware of the financial problems as it states “I’d really like to know what is going on and I would like to be made redundant....I get the feeling this place is being run into the ground, There is no money anywhere. No staff have been replaced”. The claimant was told there was no money for a redundancy payment at that time.

## **Conclusions**

17. I considered that the TUPE regulations probably applied to the take over of the pub by the chef and the claimant was dismissed because of the transfer, but agreed with the respondent that the principal reason for the dismissal was economic in that there was a redundancy situation. This meant the usual reasonableness considerations for a redundancy dismissal applied (regulation 7(2) Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE regulations)). These were set out in the Case Management Order.
18. I agreed that the principal reason for the claimant’s dismissal was redundancy in that the chef was taking over the pub and did not need the two full time staff members because he and his family were planning to work for free.
19. Redundancy is a potentially fair reason for dismissal.
20. I have to consider whether the respondent acted reasonably in all the circumstances in treating that as a sufficient reason for dismissal taking into account the questions in the Case Management Order.
21. I considered it likely that the respondent did not warn and consult the claimant. I find she knew of the pub’s financial difficulties and was informed of what was happening in the dismissal meeting. However she was not meaningfully consulted as her views were not sought or considered prior to the decision.
22. Both of the two full time staff members were made redundant. There was no need for a selection process.
23. The respondent did not offer ongoing part time work of a couple of shifts a week as they did to the remaining part time employee however the claimant had already made it known that she wanted more than 20 hours a week and also that she wanted to be made redundant.
24. Despite the issues with the consultation I find the respondent acted within the range of reasonable responses in all the circumstances. The pub was in financial difficulty, the chef was personally taking over the pub and intended to achieve its survival by much of the work needed being covered by his family working for free. He could not afford and did not need the existing staff. I find this is one of the exceptional cases where consultation would likely have been futile, especially given the claimant’s position on the hours she needed and earlier request to be made redundant.
25. It was not unreasonable to dismiss the claimant for redundancy in these circumstances, even without consultation.
26. If one of the reasons why the claimant was not offered ongoing work was a serious falling out with the chef’s wife this does not change my view on the reasonableness of the dismissal for redundancy. In circumstances where the

chef was personally taking on the pub and hoping to achieve it's survival by relying on his wife and others in his family to work for free it was not unreasonable to take account of a serious falling out with between the claimant and his wife.

27. In any event the pub closed in March 2020 as a result of lockdown and only traded approximately 16 weeks in the following 12 months. It is likely that the claimant would have been dismissed for redundancy in any event before the end of her notice period.

28. I set out my findings in respect of notice pay in the section headed facts above.

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Employment Judge Corrigan  
3 May 2022

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