

IN THE MATTER OF A PUBS CODE STATUTORY ARBITRATION

AND IN THE MATTER OF SECTION 94 OF THE ARBITRATION ACT

AND IN THE MATTER OF AN ARBITRATION BETWEEN:

RED LION (NORTON) LIMITED

Claimant

and

GREENE KING LIMITED

First Respondent

GREENE KING RETAILING LIMITED

Second Respondent

IN RESPECT OF PREMISES KNOWN AS:

RED LION HARLAND PLACE NORTON STOCKTON ON TEES TS18 5ED

AWARD

INTRODUCTION

Upon the recommendation of the RICS, I, Mr Dominic Stanger, was appointed as Arbitrator by the Pubs Code Adjudicator (PCA), in respect of a dispute concerning Red Lion, Harland Place, Norton, Stockton on Tees.

Such appointment was pursuant to Regulations 58(2)(b) & 60(4)(b) of the Pubs Code etc. Regulations 2016 (the Code).

In these proceedings, the Claimant is represented by Mr John Walker of Guest Walker and the Respondents are represented by **POB's sol**

PROCEDURAL MATTERS

The Claimant served an MRO notice on the Respondents on or around 7 June 2021 and the Respondents issued the full response under cover of a letter dated 29 June 2021. The full response included the Respondents' proposed MRO tenancy.

The Claimant contended that the terms and conditions of the proposed MRO tenancy were not compliant because the proposed tenancy included a number of terms and conditions which were unreasonable by virtue of Regulation 31(2) of the Code, including those terms which are not common terms in agreements between landlords and pub tenants who are not subject to product or service ties.

Under these circumstances the Claimant contended that the Respondents had not complied with the requirements of Regulation 29 of the Code and on or around 13 July 2021 the Claimant referred the matter to the PCA resulting in my appointment.

Following my appointment on 12 November 2021, I granted the parties an initial stay to consider a buy back offer that had been made. On 13 December the Claimant asked me to proceed. I held a meeting by Zoom on 16 December attended by the claimant Mr Blackburn, his advisor Mr Caffrey and the Respondent's solicitor **POB's sol**. A further stay to 7 January 2022 was agreed to allow the Claimant to consider the Market Rent Only MRO lease terms proposed by the Respondent. On 7 January the Claimant asked me to proceed with the Arbitration. I held a further meeting by Zoom on 13 January. At that meeting the parties informed me that there was a preliminary issue to be resolved, namely whether the changes to the lease terms, either agreed, or awarded by me, should be documented by way of a new lease, or a variation to the old lease. I issued directions on this issue on 14 January. On 26 January the Claimant's solicitor Mr Walker emailed me to let you know that agreement had been reached that there would be a new lease, and asking for more time for negotiations on the terms of the lease.

On 16 February **POB's sol** informed me that a mistake had been noticed in the MRO lease issued with the full response to the tenant, namely that it did not exclude the security of tenure provisions of the Landlord and Tenant Act 1954. These provisions were excluded in the current lease. The Mr Walker asked me to proceed with the Arbitration on the sole issue as to whether the lease should or should not exclude the security of tenure provisions of the 1954 Act. Accordingly on 14 March I issued my draft directions on that issue requesting comments from the parties. **POB's sol** replied on 16 March stating her opinion that this issue is outside the scope of my jurisdiction as Arbitrator. She said my jurisdiction derives from Part 4 of the Small Business Enterprise and Employment Act 2015 and the Pubs Code etc Act 2016, and whether the terms of the MRO lease "are terms which are not common

terms in agreements between landlord and pub tenants who are not subject to product ties" (Regulation 31(2)(c), and that because the issue relates to a clause that was missing from the MRO lease, this matter does not fall within my jurisdiction. She proposed that I make an award that the Respondent must provide a revised response to the Claimant pursuant to Regulation 33(2)(c) and disposing of the Arbitration.

Mr Walker responded on 24 March noting the error in the full response offering the MRO lease. Mr Walker appears to accept **POB's sol**'s position that I cannot Arbitrate on a clause that is missing from the MRO lease that has been issued. He states his opinion that this single error could be rectified by agreement between the parties, which would then allow me to Arbitrate on the issue of security of tenure. He says that the principle of the Pubs Code is that procedures should be used in a sensible and cost effective way. Delay and additional costs in determining this matter is prejudicial to his client who is of limited means. **POB's sol** replied saying that Mr Walker's response did not alter the position regarding the absence of jurisdiction.

Section 31 of the Arbitration Act 1986 gives me the power to rule on my own jurisdiction. I have considered the matter, and now make my award as follows.

AWARD

IT IS ORDERED THAT: -

1. The Arbitration is terminated;
2. The Respondents shall provide the Claimant with a revised response, correcting the error regarding the security of tenure provisions, (within the meaning of Regulation 33(3) of the Code) within 21 days of the date of this Award;
3. The Respondents shall pay my reasonable fees and expenses.
4. The Respondents shall pay the Claimant's reasonable costs.

REASONS

The termination of the Arbitration

I am persuaded by **POB's sol**'s arguments that I am appointed only to consider the terms that are in the MRO lease, and I do not therefore have jurisdiction to Arbitrate terms that are absent from the lease.

Revised Response

The Pubs Code section 33 (2)(b) allows me to order that the pub owning business provides a revised response to the tied pub tenant within 21 days.

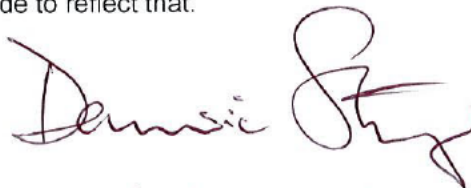
The Costs Award

1. Regulation 3(3) of the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016 provides:

The pub-owning business must pay the reasonable fees and expenses of the Adjudicator (or of the person appointed by the Adjudicator under regulation 58(2)(b) or 60(4) of the Pubs Code etc. Regulations 2016) in respect of the arbitration, except where—

- (a) *The tenant made the referral or gave the notice; and*
 - (b) *The Adjudicator (or the person appointed by the Adjudicator under regulation 58(2)(b) or 60(4)(b) of the Pubs Code etc. Regulations 2016) concludes that the referral was vexatious.*
2. The Regulation applies in relation to an MRO dispute and therefore applies in this case. I find that the referral has not been vexatious.
3. The award for costs shall therefore be that laid down by Regulation 3(3) of the Pubs Code (Fees, Costs and Financial Penalties) Regulations 2016.
4. The Respondents have agreed to pay the Claimant's reasonable costs and an appropriate order has been made to reflect that.

Arbitrator's signature



Date Award made:

5 April 2022