



EMPLOYMENT TRIBUNALS

Claimant: Ms J Burns

Respondents: 1) Halliwell Conservative Club
2) The Trustees of Halliwell Conservative Club
3) The Executive Committee of the Halliwell Conservative Club
4) Jason Waring
5) Association of Conservative Clubs Limited (The)

HELD AT: Manchester **ON:** 15 July 2022

BEFORE: Employment Judge Batten

REPRESENTATION:

Claimant: P Sangha, Counsel

Respondents: C Littlewood, Deputy Chief Executive Officer - fifth respondent

JUDGMENT having been sent to the parties on 15 July 2022 and written reasons having been requested by the fifth respondent, the following reasons are provided:

REASONS

Introduction

1. By a claim form presented on 7 February 2022, the claimant pursued claims of unfair dismissal, for a redundancy payment and for holiday pay due at the termination of her employment.
2. On 18 March 2022, responses were received from the second and fifth respondents effectively denying that they had employed the claimant. The first, third and fourth respondents did not enter any response to the claim.

The Issues

3. At the start of the hearing, the Tribunal discussed the issues in the claim with the parties. It was agreed that the issues for the Tribunal to determine were as follows:

- (1) Who or what was the employer of the claimant?
- (2) In relation to unfair dismissal, what was the reason for the claimant's dismissal? (It was not disputed by the respondents that the claimant was dismissed for redundancy)
- (3) Was it reasonable for the respondents to dismiss the claimant for the reason of redundancy in all the circumstances of the case?
- (4) If the claimant was unfairly dismissed, what compensation shall be awarded to her, having regard to section 123 of the Employment Rights Act 1996?
- (5) What was the claimant's redundancy pay entitlement?
- (6) What was the claimant's entitlement to holiday pay at the termination of employment?
- (7) What monies were due and owing to the claimant at the termination of her employment? What remains outstanding and unpaid?

The Evidence

4. The Tribunal was provided with a bundle of 89 pages of relevant documents, compiled by the claimant's representative to which one missing page, being an email from the Chief Executive of the fifth respondent in 2014, was inserted. The respondents tendered no additional evidence.
5. The claimant gave evidence under oath from a written witness statement and was subject to cross examination. The respondents produced no witness statements. However, the Tribunal allowed Mr Littlewood for the respondents to give oral evidence under oath and he was subject to cross-examination. From time to time, Mr Littlewood was given the opportunity to check certain information with Mr Philip Smith, the Chief Executive Officer of the fifth respondent.

Findings of Fact

6. Having considered all the evidence, the Tribunal made findings of fact. Where a conflict of evidence arose, the Tribunal resolved such on the balance of probabilities, taking account of contemporaneous documents where these exist and the conduct of those concerned at the material time. The findings of fact relevant to the issues which have been determined are as follows.
7. The claimant was employed from 23 February 2004 as the bar stewardess at the Halliwell Conservative Club in Bolton, working 6 days per week. Her contract of employment appears in the bundle at pages 59 and 60. It says, "*The claimant is employed by the Halliwell Conservative Club*" and there is reference to "*the committee*", for example, if she had a grievance or for how to give notice of termination of her employment.

8. The claimant gave unchallenged evidence that “the committee” comprised 3 representatives of the trustees together with other officers of the club including the fourth respondent who was the club’s Treasurer at the material time.
9. In May 2014, the fifth respondent proposed to purchase the premises of the club and lease it back to the club. A sale price and rent were agreed. In addition to the purchase of the premises, the existing trustees of the club retired, and they were replaced by the fifth respondent which became a trustee of the club along with Mr Philip Smith, the Chief Executive Officer of the fifth respondent. In the bundle at page 64 there is an email which refers to these two as “the new trustees”.
10. A Deed of Appointment of the new trustees was signed. The fifth respondent paid the legal fees for that Deed together with the legal fees for the sale of the premises. The Deed of Appointment has not been produced in evidence nor has the Club’s constitution/rules been produced. Both are documents which might have assisted the determination of the relationships between the parties in this case. The Tribunal considered that copies of such important documentation should be in the possession of the fifth respondent, particularly given its involvement in the club’s business and its ownership of the club premises, together with the fact that the fifth respondent paid the legal fees for the Deed which was drawn up upon it becoming a trustee. Indeed, there was no evidence from the respondents which might have assisted the Tribunal in that regard, and so the Tribunal accepted the claimant’s evidence (which was not challenged by the respondents) that the 2 new trustees became, from that time onwards, members of the club’s committee. Mr Littlewood for the respondents accepted in evidence that this was the case.
11. Further, in light of the evidence available, the Tribunal accepted the submissions of Counsel for the claimant that the fifth respondent had assumed the role of what might be described as a professional trustee. The claimant also understood that to be situation as demonstrated in her email to Mr Littlewood, in the bundle at page 68. Importantly, on 15 May 2014, Mr Philip Smith (the Chief Executive Officer of the fifth respondent) emailed to say that the fifth respondent would act as a buffer to protect the officers of the club and to take on the club’s debts. In light of that assurance, in 2014 the club’s premises were sold to the fifth respondent and the premises were leased back to the club.
12. In March 2020, the UK Government announced the first COVID-19 lockdown. The Halliwell Conservative Club was forced to close due to the restrictions which were put in place on all sorts of leisure venues which included bars and restaurants. Shortly thereafter, the claimant was placed on furlough.
13. In between the several COVID lockdowns, the claimant researched a number of ways to reopen and operate the club in compliance with Government guidelines which were subject to change from time to time. Unfortunately, there was no outdoor seating area at the club which might assist with social distancing. Regrettably also, the roof had started leaking during the closure period. Eventually, the leak spread through the first floor and into the ground floor of the club’s premises to the extent that the club required substantial

renovation before it could reopen. Ultimately, the club became unviable and never reopened.

14. By the end of her employment, the claimant understood that the fourth respondent, Mr Waring (who was the club's treasurer) was the only active officer on the committee. He approached the fifth respondent about surrendering the lease. The fifth respondent was at all times aware of the club's financial situation, and it was decided that the club would close, and the building would be sold by the fifth respondent, which owned it.
15. On 1 September 2021, the claimant was told that the Halliwell Conservative Club would be closing and that the premises would be sold. In the bundle at page 73 is a letter from Mr Waring, the fourth respondent, to the claimant about the closure which is signed in Mr Waring's capacity of "Club Treasurer". The letter informs the claimant that any queries about the club and her position should be referred to the fifth respondent, and the letter specifically names Mr Littlewood, the fifth respondent's Deputy Chief Executive Officer as the person to approach. In those circumstances, the Tribunal considered that there had been a discussion and involvement of the fifth respondent in the decision to close the Halliwell Conservative Club and sell up. Such involvement amounted to management of the Club as would be expected given the fifth respondent's position as a trustee and as a member of the committee.
16. On 17 October 2021, the claimant wrote to Mr Littlewood to claim her redundancy payment. On 20 October 2021, Mr Littlewood said that the club was insolvent, and that the claimant should apply to the Redundancy Payments Office for her redundancy pay. However, the Redundancy Payments Office has refused the claimant's request for a redundancy payment or any other payments from the statutory scheme, because the club was not formally insolvent, nor could it be so, because it was an unincorporated association.
17. The claimant was paid for her 12 weeks' notice period in lieu. She was not required to work her notice period because the club had effectively closed. The claimant's employment ended on 4 November 2021.

The Law

18. A concise statement of the applicable law is as follows.

Employment and employer

19. The Employment Rights Act 1996 ("ERA") section 230(1) defines an 'employee' as:

an individual who has entered into or works under ... a contract of employment.

20. Section 230(2) ERA provides that a 'contract of employment' means:

a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.

21. Section 230(4) ERA provides that 'employer' in relation to an employee or worker, means the person by whom the employee is or was employed.

Unfair dismissal

22. Section 98 ERA deals with unfair dismissal which is a claim brought against an employer by its employee. Under section 98 (1) and (2) ERA, the Tribunal must first decide what was the reason for the claimant's dismissal.

23. The respondents have advanced redundancy as the reason for the claimant's dismissal. Redundancy is a potentially fair reason for dismissal under section 98 (2) (c) ERA.

24. The definition of redundancy is set out in Section 139 (1) ERA:

An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to ... the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.

25. If the respondent can show a potentially fair reason for dismissal, the Tribunal must then consider the test in section 98 (4) ERA: whether in the circumstances including the size and administrative resources of the respondent's undertaking the respondent acted reasonably or unreasonably in treating that reason as a sufficient reason for dismissing the claimant; and the Tribunal must make its decision in accordance with equity and the substantial merits of the case.

26. In assessing the reasonableness of a dismissal for redundancy, the Tribunal must follow the guidelines laid out in Williams and others v Compair Maxam Ltd [1982] ICR 156 and must consider factors such as:

- 23.1 whether employees were warned and consulted;
- 23.2 the pool for selection and whether objective selection criteria were fairly applied;
- 23.3 the manner in which dismissals were implemented; and
- 23.4 whether any alternative work was available.

27. The Tribunal must also consider whether the dismissal falls within the band of reasonable responses available to an employer in the circumstances of the case.

Redundancy pay

28. In relation to redundancy pay entitlement, section 135 ERA provides that:

“An employer shall pay a redundancy payment to any employee of his if the employee –

(a) is dismissed by the employer by reason of redundancy.

29. The definition of redundancy is set out in Section 139 (1) ERA:

An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to ... the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.

Holiday pay

30. The Working Time Regulations 1998 (“WTR”), Regulations 13 and 13A, provide that every worker is entitled to a minimum of 5.6 weeks’ paid holiday entitlement in each holiday year.
31. Regulations 14(1) and (2) WTR provide that a worker is entitled to payment in lieu of accrued unused holiday entitlement where her employment is terminated during the leave year and provides a formula for calculation of such entitlement.
32. In the absence of any express contractual provisions as to holiday entitlement, the holiday year for calculation purposes is determined in accordance with Regulation 13 and commences on the anniversary of the date on which the claimant’s employment began. Where, on the termination date, the proportion of statutory annual leave she has taken under regulations 13 and 13A WTR is less than the proportion of the leave year that has expired, the worker is entitled to be paid for the accrued unused holiday entitlement calculated in proportion to the amount of the leave year worked.

Submissions

33. Counsel for the claimant made a number of detailed submissions which the Tribunal has considered with care but does not rehearse in full here. In essence it was asserted that: in an unincorporated association the claimant is employed by the Executive Committee for the time being; that the fifth respondent, as trustee and member of the club committee, assumed the role of a professional trustee of the club and indemnified the committee as such; the club’s closure constituted a redundancy situation; and there was no dispute that the claimant was entitled to a redundancy payment and to payment of her accrued untaken holiday entitlement at the termination of her employment when the club closed down.
34. Mr Littlewood for the respondents submitted that: he had not personally been involved in the claimant’s employment and so was unable to comment on such; that the fifth respondent had followed all lawful instructions provided to it by the committee; that the fifth respondent had not pursued the members over the surrender of the lease in 2021; and that he considered any liability arising

was a liability of the club's members albeit that, if debts arising were payable by the membership, the fifth respondent would meet those debts.

Conclusions (including where applicable further findings of fact)

35. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way.

The employer of the claimant

36. The Tribunal found that the Halliwell Conservative Club was an unincorporated club or association, comprising of a membership, with a committee set up to run the club on behalf of the members. It was not disputed that the claimant was employed by the club's committee which is the third respondent in these proceedings. The evidence showed that the third respondent committee was comprised of the club's officers, including Mr Waring (the fourth respondent) who was the club's Treasurer, and also the club's trustees which are named as the second respondent in these proceedings. Mr Littlewood confirmed in evidence that the fifth respondent became a trustee and member of the committee in 2014, along with its Chief Executive, when the fifth respondent purchased the premises of the club – see paragraphs 9 and 10 above. The Tribunal considers that the club's committee and its members are liable to the claimant, in the capacity of her employer. Mr Littlewood's confirmed such in his evidence to the Tribunal and indicated that, if the club had debts, the fifth respondent undertook to meet those debts and liabilities on behalf of the members of the club, subject to the committee/officers having acted in good faith.

The claimant's dismissal for redundancy

37. It was the case, by 2021, that the club had no money, having suffered from a lack of revenue for so long due to the COVID Lockdown(s). In the hearing bundle at page 62, the fifth respondent represented that it acts as a buffer to protect the officers of the club, such as Mr Waring, from debt or obligations of the club in the event that the club's committee has no money. Such reassurance was expressly given by the fifth respondent to the committee members. and this was also the claimant's understanding, as set out in her email to Mr Littlewood of 17 October 2021. It was the reason why the claimant wrote to the fifth respondent seeking payment of her statutory entitlements from the committee including the trustees who were members of the committee which, in turn, included the fifth respondent.
38. The Tribunal had no hesitation in finding that the claimant was dismissed because of a redundancy situation – this was not disputed. The committee members undertook no consultation nor any procedure to put into effect the termination of the claimant's employment and so this was a procedurally unfair dismissal. However, the club's circumstances compelled it to close. There was no revenue, and the premises were in such a state of disrepair. The fifth respondent was unwilling to effect the necessary repairs due to the significant expense involved for which there was unlikely to be any or any significant return for a long time. The redundancy of the claimant was therefore inevitable.

39. The Tribunal considered itself bound by the decision in the case of James W Cook & Co (Wivenhoe) Ltd v Tipper & Others [1990] ICR 176 not to investigate the commercial decision (to close) where this was a genuine redundancy situation. The claimant was well aware that the club was structurally unsound and that there were no monies to make it good. The decision to close and sell was understandable in unfortunate circumstances. There was no possible TUPE situation which arose either. In those circumstances, the claimant's redundancy was inevitable. She is therefore entitled to a statutory redundancy payment.
40. The claimant had also pursued a compensatory award for unfair dismissal. The Tribunal drew Counsel for the claimant's attention to the judgment in Tipper wherein no compensatory award was made in light of the inevitability of redundancy. Having considered Tipper and taken instructions, Counsel withdrew the claim for a compensatory award for unfair dismissal. In any event, the Tribunal considered that it would not be just and equitable in the circumstances of this case, and having regard to Tipper, to make a compensatory award.

Redundancy pay entitlement

41. Nevertheless, the Tribunal considered that the claimant is entitled to a redundancy payment, which is the equivalent of a basic award for unfair dismissal. The Tribunal has calculated the claimant's statutory redundancy pay entitlement as being the sum of **£10,079.64** based on a gross weekly income of £395.28. The claimant had completed 17 years' service at the club and was aged 59 at the date of termination of her employment. The redundancy pay calculation/amount was agreed with the parties during the hearing.

Holiday Pay

42. From January 2020 to 4 November 2021 the claimant had not taken any holidays. She gave evidence that it was not reasonably practicable to take any holidays whilst on furlough. Mr Littlewood, for the respondents, said he was happy to accept what the claimant said about not taking holidays for this period. In those circumstances, the Tribunal found that the claimant was entitled to be paid for accrued unused holidays from January 2020 until her termination date, 4 November 2021.
43. The Tribunal has calculated the claimant's outstanding holiday entitlement due at termination of employment using the holiday year in her contract of employment, which is the calendar year, 1 January to 31 December. The claimant's contractual annual holiday entitlement is capped at the statutory minimum amount, of 28 days' holiday per annum.
44. The calculation/amount of holiday pay was agreed with the parties during the hearing.
45. For the period 1 January 2020 to 4 November 2021, the claimant was entitled to a total of 51.5 days' holiday. The claimant earned £326.72 net per week, working 6 days per week - the claimant's net earnings figure was taken from

the Schedule of Loss, point 3.1, calculated by her solicitors and was agreed between the parties. The Tribunal therefore calculated that the claimant was due the net sum of **£2,804.34** for her outstanding accrued untaken holiday entitlement at the termination of her employment. The holiday pay calculation/amount was agreed with the parties during the hearing.

Summary

46. The Tribunal makes the following awards to the claimant:

Redundancy payment	£10,079.64
Holiday pay accrued to termination of employment	<u>£2,804.34</u>
Total	<u>£12,883.98</u>

47. There shall be no compensatory award for unfair dismissal.

Employment Judge Batten
Date: 1 May 2023

REASONS SENT TO THE PARTIES ON:

10 May 2023

FOR THE TRIBUNAL OFFICE

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