



EMPLOYMENT TRIBUNALS

Claimant: Mr M Bowen

Respondent: Reuseaworld LTD

Heard at: Bristol Employment Tribunal by video (CVP)

On: 20 July 2023

Before: Employment Judge Macey

Representation

Claimant: In person

Respondent: Mr A Fitzgerald, manager at the respondent

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. By consent the name of the respondent is amended to Reuseaworld LTD.
2. The claimant's complaint of failure to pay a statutory redundancy payment is not well-founded. This means the claimant is not entitled to a statutory redundancy payment.
3. The claimant's complaint of breach of contract for failure to pay him notice pay is not upheld and is dismissed.

REASONS

THE NAME OF THE RESPONDENT

1. The claimant had named the respondent on the claim form as Reusabook. Mr Fitzgerald confirmed that Reuseabook was the trading name of a business within Reuseaworld Limited. The parties agreed by consent to amend the name of the respondent to Reuseaworld Limited.

CLAIMS AND ISSUES

2. The claimant is bringing the following claims:
 - 2.1. Failure to pay a statutory redundancy payment; and
 - 2.2. Failure to pay notice pay.
3. The claimant alleges that he was offered the option of redundancy or working for a new company, and he accepted the offer of redundancy. The respondent asserts that there was a TUPE transfer, to which the claimant objected and that there was no redundancy situation. The claimant says that he was not told about the transfer and had no job.
4. The issues that I had to determine were:
 - 4.1. Was there a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 "TUPE"?
 - 4.2. If yes, was the claimant consulted with in respect of that transfer?
 - 4.3. If yes, did the claimant object to his job transferring?
 - 4.4. Was the claimant dismissed?
 - 4.5. Was the claimant entitled to a redundancy payment?
 - 4.6. Was the claimant entitled to notice pay?

PROCEDURE, DOCUMENTS AND EVIDENCE HEARD

5. The form of this hearing was a remote hearing by CVP.
6. There was no bundle of documents and no written witness statements. It was agreed that the contents of the ET1 would be the claimant's written evidence and that the contents to the ET3, the attachments to the ET3 and the respondent's reply dated to the response accepted letter would be Mr Fitzgerald's written evidence. The claimant gave evidence for himself and Mr Fitzgerald gave evidence on behalf of the respondent.

FACTS

7. The relevant facts are set out below. Where I have had to resolve any conflict in the facts, I indicate how I have done so at the relevant point.
8. The claimant was employed by the respondent as a collections driver from 1 March 2018 to 18 January 2023.
9. The respondent became part of CTR (Group) Limited in or around August or September 2022. The respondent says this earlier acquisition was not a TUPE transfer and the claimant did not dispute this.
10. At that time part of the respondent's business operated an online second-hand books business under the trading name of Reuseabook. The respondent at that time had approximately 51 or 52 employees and the part of the respondent trading as Reuseabook had approximately 36 to 40 employees. Most of the staff were involved in grading the books, putting them on shelves and picking and packing. There were two collections drivers (the claimant being one of them) and a driver manager, Mr Woods. The

collections drivers were involved in collecting second-hand books mostly from charity shops.

11. In December 2022 approximately one or two weeks before Christmas Mr Woods went to another site for a couple of days. There was speculation among the employees at Reuseabook about the future of Reuseabook and whether the drivers would still have a job.
12. When Mr Woods returned from the other site the claimant asked Mr Woods about the speculation concerning the future of Reuseabook. Mr Woods said to the claimant, "*There will be a future meeting. It's about us moving to CTR or redundancy. Your two options.*"
13. The claimant says he verbally accepted the redundancy. On being questioned it became clear that this did not happen during the same conversation, the claimant stated that Mr Woods the following day had asked the claimant what the claimant had decided, and the claimant answered that he would take redundancy. The claimant did not lead any evidence about this separate conversation, nor is it mentioned in the ET1. The claimant also was not entirely clear whether this verbal acceptance happened in January 2023 or the day following the initial conversation with Mr Woods. I find that there was no conversation the following day or in January 2023, and the claimant did not verbally accept to take redundancy.
14. The respondent says that although Mr Fitzgerald had informally discussed with Mr Woods the possibility of there being a TUPE transfer Mr Woods had no authority or direction to have any formal meetings with the claimant. I accept the respondent's evidence on that point.
15. There were no trade union representatives at the respondent and the respondent did not invite the affected employees to appoint or elect employee representatives prior to commencing consultation in January 2023.
16. The respondent says Mr Fitzgerald held a consultation meeting with the collections drivers on 5 January 2023. Mr Fitzgerald's note of the meeting on 5 January 2023 is attached to the ET3. The claimant says that there was no meeting on 5 January 2023 and that the notes of the meeting attached to the ET3 are made up.
17. In cross-examination the claimant put to Mr Fitzgerald that the claimant had been absent from work that week, but the claimant had not led any evidence on this, and this was not mentioned in the ET1. I find that Mr Fitzgerald did have a meeting with the claimant and the other collections driver in the first week of January 2023. Mr Fitzgerald was very clear in cross-examination that the first meeting did happen in the first week of January 2023 and that the notes of the meeting have not been made up, I accept his evidence on this point.
18. During the meeting in the first week of January 2023 Mr Fitzgerald explained to the claimant and the other collections driver that following the acquisition of the respondent by CTR (Group) Limited in August 2022 they had been looking at how to organise the businesses. Further that from a business point of view Reuseabook would stop collections and the collections would be done

within CTR collections (CTR Collections Limited) "CTR", the collections part of CTR (Group) Limited.

19. Mr Fitzgerald further explained that collections staff would transfer across to CTR, both the driver team and the driver manager. Mr Fitzgerald also explained that their employment rights were protected by TUPE, that their contracts of employment would move across to CTR and they would become employees of CTR from the transfer date. Mr Fitzgerald confirmed that all current terms and conditions would transfer over, but one practical change was that their salary payment would align with CTR which meant an uplift in salary from £20,666 per annum to £22,500 and that moving onto CTR payroll they would be paid weekly, one week in arrears.
20. Mr Fitzgerald also explained in this meeting that the job role would be the same, the focus would be on books, continuing the role of collections driver, with the same routes and shops, and that they would continue to be managed and directed by Mr Woods.
21. The claimant's response to being provided with this information was that he was not happy, that he had been expecting a redundancy offer because his job at Reuseabook is ending and that he was not interested, and would not move to CTR. The claimant explained he did not want to work here anymore and that he will not move across. Further that he needs some time off, and he wanted the money to let him take some time off and that "*you just need to pay me my redundancy money*".
22. Mr Fitzgerald explained to the claimant that there was no offer of redundancy money because there is no redundancy. Further that exactly the same role would continue at CTR. That the claimant had a choice, he can choose not to transfer and leave, but that would be his choice and the claimant would not get redundancy. Mr Fitzgerald explained the role exists, it is the same role, it is a transfer of who is paying you and is a continuation of the claimant's current role.
23. The claimant and Mr Fitzgerald had a further discussion on 10 January 2023. The respondent has notes of this discussion. The claimant says the notes are embellished but did not provide specific detail about what had been added. I find that the respondent's notes of the discussion are correct.
24. The claimant told Mr Fitzgerald that, "*I'm definitely not moving across, I'm not interested, I just want my redundancy. Thought it was all going to be nice and straightforward, you pay me off and I go happily.*" Mr Fitzgerald informed the claimant that the respondent cannot give the claimant redundancy, "*when we have a role there that is exactly the same.*" The claimant replied it was not the same role, as there are two vans a day and that he is not going to work for CTR. Mr Fitzgerald explained the outline of the key terms and told the claimant that it absolutely is the same role. The claimant replied, "*Well not doing it, don't want to, not interested... Not going to happen*".
25. Mr Fitzgerald then suggested that as the claimant wanted some time off that if the claimant was absolutely sure that he was not coming across and the claimant resigned, Mr Fitzgerald would try and help by allowing the claimant to work one week and then give the claimant 3 weeks payment in lieu of

notice. Mr Fitzgerald suggested that the claimant think about it and that they talk again on 12 January 2023.

26. The claimant says that he had a discussion with Mr Fitzgerald outside the warehouse at the respondent on 16 January 2023, though on cross-examination he said it was 17 January 2023. The respondent says that the discussion was held on 12 January 2023 and following that discussion the respondent sent a letter to the claimant dated 13 January 2023.
27. The letter dated 13 January 2023 is attached to the ET3. The claimant says he never received the letter but that he did receive an email with notes of the discussions. The letter on the face of it states that it was sent by email and that the notes of the meetings are enclosed. I find that the claimant did receive the letter dated 13 January 2023 by email.
28. The letter dated 13 January 2023 refers to "*our conversation yesterday regarding your employment.*" I find that the claimant and Mr Fitzgerald did have a discussion on 12 January 2023 and not on either 16 or 17 January 2023.
29. The claimant says the notes of the discussion on 12 January 2023 are embellished, but he did not provide specific detail about how the notes had been embellished. I find that the respondent's notes of the discussion on 12 January 2023 are correct.
30. The claimant wanted to have the discussion on 12 January 2023 outside the warehouse. Mr Fitzgerald suggested that they go to the office, but the claimant refused. The claimant informed Mr Fitzgerald that he was not going to resign, that he knows his rights. Further he stated, "*You can't give me work in Reuseabook, I have a contract with Reuseabook, and so my jobs gone and so you have to make me redundant.*"
31. Mr Fitzgerald replied, "*Not the case Martin. You would be transferring across to CTR where the role – the same role – continues. Reuseabook is stopping collections it will continue with CTR.*" The claimant then replied, "*Not the same role, I know what will happen, your online reviews are terrible, I'm not wearing the CTR shirt, doing 2 vans a day. I'm not going.*"
32. Mr Fitzgerald explained at this point that it was the same role and that if the claimant decided not to move across his options would be to resign or wait until the respondent ceased operations on 18 January 2023 and then the claimant's role would end.
33. The claimant says that Mr Fitzgerald became aggressive at this point in the meeting and Mr Fitzgerald admitted on cross-examination that he was frustrated but that at no point did he get aggressive or confrontational. The respondent says Mr Fitzgerald again suggested that they go inside and have a note-taker but that the claimant refused. This is confirmed by the note of the discussion.
34. The claimant informed Mr Fitzgerald during this discussion on 12 January 2023 that "*I'm not moving across to CTR, so you have to make me*

redundant". Mr Fitzgerald informed the claimant that *"the work is there and so it's not a redundancy situation."*

35. Mr Fitzgerald also suggested to the claimant that they should have a further discussion on 16 or 17 January 2023.
36. The respondent sent a letter by email to the claimant dated 13 January 2023. This letter stated:

"We have met three times now, on 5th January 10th January and 12th January – and so I have also attached my meeting notes for these meetings to this letter; I hope that these are useful in clearly laying out what has taken place to date.

In short, the issue revolves around the business decision to cease collecting books from within the Reuseabook business and to TUPE transfer this part of the business across to CTR Collections on 18th January 2023. This means that your role as collection driver will transfer across to CTR Group on this date and your existing role will continue – on its current terms (except for a slight improvement in your pay) – with the new employer.

You have however clearly stated in each of our meetings that you will not transfer across to CTR Collections. In refusing, your view is that the Company is therefore obliged to make you redundant..."

37. The letter further stated:

"...My understanding of the situation, as I have said to you, is however very different. I believe that there is no redundancy situation arising, because the role continues to exist, on the same terms, within the CTR Collections. Because you are refusing to transfer across, you have no right to claim either redundancy or unfair dismissal, and so there is no right to a redundancy payment."

38. Mr Fitzgerald attempted to speak with the claimant on 16 and 17 January 2023 but the claimant actively avoided him. On 17 January 2023 the claimant drove away from Mr Fitzgerald.
39. On 18 January 2023 the collections part of the Reuseabook business ceased and on 19 January 2023 CTR commenced the collections that the collections drivers at Reuseabook had previously been undertaking.
40. The other collections driver transferred across and continued his work and job role in the same manner for CTR from 19 January 2023 as he had at Reuseabook. The claimant on cross-examination put to Mr Fitzgerald that this was because the other collections driver had health issues and that the claimant would have had two vans and would not have just been collecting books. The claimant did not lead evidence on this, nor was this in the ET1.
41. I find that the other collections driver did continue with the same job role, with the same routes that he had been undertaking at Reuseabook. I also find that

the claimant also would have been undertaking the same job role collecting books after 18 January 2023 for CTR.

42. The claimant's last day working for the respondent was 18 January 2023.
43. The respondent says that it sent the claimant a letter dated 19 January 2023. This letter is attached to the ET3. The claimant says that he did not receive the letter dated 19 January 2023. The letter dated 19 January 2023 does not state on the face of it that it was sent by email. It has the correct postal address of the claimant, but it was not sent by special delivery. I find that the claimant did not receive this letter because there is no proof that it was signed for and received by the claimant.
44. ACAS early conciliation commenced on 21 February 2023 and ended on 4 April 2023. The claimant presented his claims for a statutory redundancy payment and notice pay on 10 April 2023.

LAW

45. Section 135 of the Employment Rights Act 1996 ("ERA") provides as follows:

"(1) 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, or*
- (b) is eligible for a redundancy payment by reason of being laid off or kept on short-time."*

46. To be entitled to a statutory redundancy payment the claimant has the burden of proving on the balance of probabilities that he has been dismissed.

47. Section 95 of the ERA provides that the following are dismissals for the purposes of a statutory redundancy payment claim:

"(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ..., only if) –

- (a) The contract under which he is employed is terminated by the employer (whether with or without notice);*
- (b) He is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract; or*
- (c) The employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."*

48. To be entitled to notice pay the claimant needs to prove on the balance of probabilities that he has been dismissed by the respondent. For a breach of contract claim a dismissal is either, termination by the employer or, the employee terminated the contract under which he is employed in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

Is there a TUPE Transfer?

49. Regulation 3 of TUPE 2006 states:

- “(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;*
 - (b) ...
- (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.*

50. The Court of Appeal in **Cheesman -v- R Brewer Contracts Ltd [2001] IRLR 144** set out a two-limb test for assessing whether there was a transfer under Regulation 3(1)(a) of TUPE. The first limb is whether there is a stable and discrete economic entity, i.e., it must be sufficiently structured and autonomous and the secondly, has that economic entity transferred? Has it retained its identity post transfer? This was approved in **Balfour Beatty Power Networks Ltd -v- Wilcox [2006] EWCA Civ 1240**.

51. In **Fairhurst Ward Abbotts Ltd -v- Botes Building Ltd [2004] EWCA civ 83** it was held that the economic entity could be identifiable for the first time at the point of the transfer when it was part of an undertaking.

52. In **Spijkers v- Gebroeders Benedik Abbatoir CV: 24/85 [1986] 2 CMLR 296** the European Court of Justice set out factors to assist with establishing whether the economic entity retained its identity post-transfer, these factors are:

- 52.1. The type of undertaking before and after the transfer;
- 52.2. Whether there was a transfer of tangible assets;
- 52.3. Whether there was a transfer of intangible assets;
- 52.4. Whether the majority of staff transferred (and this could be by reference to either the number of staff who transferred or whether the majority of the skilled staff transferred);
- 52.5. Whether there was a transfer of customers;
- 52.6. The degree of similarity between the activity the economic entity was doing before and after the transfer; and
- 52.7. The duration of any interruption in that activity following the transfer.

The effect of the transfer on contracts of employment

53. Regulation 4(1) of TUPE states:

- (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.”

54. Regulation 4 of TUPE further states:

“(7) Paragraphs (1) and (2) shall not operate to transfer the contract of employment and the rights, powers, duties and liabilities under or in connection with it of an employee who informs the transferor or the transferee that he objects to becoming employed by the transferee.

(8) Subject to paragraphs (9) and (11), where an employee so objects, the relevant transfer shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.

(9) Subject to regulation 9, where a relevant transfer involves or would involve a substantial change in working conditions to the material detriment of a person whose contract of employment is or would be transferred under paragraph (1), such an employee may treat the contract of employment as having been terminated, and the employee shall be treated for any purpose as having been dismissed by the employer.

(10) No damages shall be payable by an employer as a result of a dismissal falling within paragraph (9) in respect of any failure by the employer to pay wages to an employee in respect of a notice period which the employee has failed to work.

(11) Paragraphs (1), (7), (8) and (9) are without prejudice to any right of an employee arising apart from these Regulations to terminate his contract of employment without notice in acceptance of a repudiatory breach of contract by his employer.”

The duty to inform and consult representatives

55. Regulation 13 of TUPE states:

“(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 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) ...

(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.”

56. Regulation 13A of TUPE states:

“(1) This regulation applies if, at the time when the employer is required to give information under regulation 13(2) –

(a) the employer employs fewer than 10 employees;

(b) there are no appropriate representatives within the meaning of regulation 13(3); and

(c) *the employer has not invited any of the affected employees to elect employee representatives.*

(2) *The employer may comply with regulation 13 by performing any duty which relates to appropriate representatives as if each of the affected employees were an appropriate representative.”*

57. The employer has the burden of proving on the balance of probabilities that it has fewer than 10 employees at the time when it is required to give information under Regulation 13(2) TUPE.

CONCLUSIONS

Was there a relevant TUPE transfer?

58. The transfer can be of part of an undertaking. Here the collections driver and driver manager were the team involved with the economic activity of collecting books for the Reuseabook business within the respondent. This part of Reuseabook had a driver team (the driver manager and the two collections drivers) and vans to undertake the collections.

59. The collection of books for Reuseabook was sufficiently structured and autonomous and was a discrete part of the Reuseabook business within the respondent.

60. This part of an undertaking was also situated immediately before the transfer within the United Kingdom.

61. The next question is whether the entity retained its identity post-transfer. Applying the **Spijkers** factors to the facts, firstly the part of the undertaking which was to transfer was collecting books on behalf of the Reuseabook business within the respondent.

62. The vans did not transfer.

63. The intangible assets, such as connections with the various charity shops transferred.

64. The plan was to transfer all the staff in the team, in fact only two out of the three driver team transferred. The majority of staff, therefore, did transfer.

65. Following 18 January 2023, the work undertaken by the economic entity remained the same. The collections driver that did transfer collected books from charity shops.

66. Finally, there was no break in the economic activity, it continued on 19 January 2023.

67. I conclude that the economic entity did retain its identity post-transfer and I conclude that there was a transfer under TUPE on 18 January 2023 of the collections part of the Reuseabook business within the respondent to CTR. This was an intra-group transfer within the same group of companies.

If yes, was the claimant consulted with in respect of that transfer?

68. The requirement to inform and consult under TUPE is with either trade union representatives or appointed/ elected employee representatives of the affected employees.
69. The respondent did not have fewer than 10 employees when the obligation to inform and consult arose, I found above that the respondent had 51 or 52 employees at that time, so technically the respondent should have invited the affected employees to appoint or elect employee representatives as there were no trade union representatives at the respondent.
70. In the first week of January 2023 Mr Fitzgerald did directly inform the claimant and the other collections driver of the fact of the transfer in a meeting with both. In this meeting Mr Fitzgerald further informed the claimant and the other collections driver that the probable transfer date would be mid-January 2023, but Mr Fitzgerald did not provide a specific date during this meeting. The fact of the transfer was also confirmed in writing in the letter dated 13 January 2023.
71. On 12 January 2023 when the claimant and Mr Fitzgerald had a discussion Mr Fitzgerald informed the claimant that the respondent would cease collections on 18 January 2023. The letter dated 13 January 2023 also informed the claimant of the transfer date, being 18 January 2023.
72. In the meeting in the first week of January 2023 Mr Fitzgerald also explained the reasons for the transfer, which following the acquisition of the respondent by CTR (Group) Limited in August 2022 they had been looking at how to organise the businesses. That it was clear from a business point of view that collections would cease within the respondent and would continue within CTR. The reason for the transfer was also confirmed in the letter dated 13 January 2023.
73. In the meeting in the first week of January 2023 Mr Fitzgerald explained the legal implications of the transfer, i.e., that the collections drivers (including the claimant) would become employees of CTR, that their contracts of employment would move to CTR with the terms and conditions unchanged except for an increase in salary and being paid weekly, that their employment rights were protected by TUPE and that the role content of their jobs would be the same, with the same sorts of routes and shops.
74. The fact that the claimant's role would continue with CTR on the same terms except for the salary increase was also confirmed in the letter dated 13 January 2023.
75. Mr Fitzgerald did also inform the claimant in the meeting in the first week of January 2023 of the measures the transferee (CTR) was taking in connection with the transfer, i.e., the salary increase and changing to being paid weekly. The change to being paid weekly was not confirmed in the letter dated 13 January 2023.

76. I conclude that the respondent did directly inform the claimant of the fact of the transfer, the probable date of the transfer, the reasons for the transfer and the legal, economic and social implications of the transfer.

77. I conclude in respect of the measures taken in connection with the transfer by the transferee (CTR) the claimant was informed of the salary increase both orally and in writing and was informed of the change to being paid weekly orally in the meeting in the first week of January 2023.

78. Consultation is required in respect of any measures the employer is proposing to take in respect of the affected employees and the representations of appropriate representatives should be considered and replied to. Neither the claimant nor the other collections driver made any representations about the proposed measures of the salary increase and the change to being paid weekly. Therefore, there was no representations for either the respondent or CTR to reply to.

If yes, did the claimant object to his job transferring?

79. The claimant told Mr Fitzgerald a number of times that he did not want to move to CTR. In the meeting in the first week of January 2023 the claimant said he was not interested and would not move to CTR and that he did not want to work here anymore and that he would not move across.

80. On 10 January 2023 the claimant told Mr Fitzgerald that he was definitely not moving across.

81. On 12 January 2023 the claimant said he was not going (i.e., to CTR) but he preceded this with stating that CTR's online reviews were terrible, that he would not wear the CTR shirt or do 2 vans a day. After Mr Fitzgerald informed the claimant it would be the same role, the claimant again said that he was not moving across to CTR.

82. I conclude that it is clear from the evidence that the claimant did inform Mr Fitzgerald, and, therefore the respondent, a number of times that he did not want to move across to CTR and, therefore, he did object to the transfer.

83. The next question is whether the transfer involved a substantial change in working conditions to the material detriment of the claimant.

84. I have found above that the work the claimant was going to be carrying out for CTR post transfer would have been the same work that he had been doing for the respondent. Mr Fitzgerald also reassured the claimant in the meeting in the first week of January 2023, on 10 January 2023 and on 12 January 2023 that the job role would be exactly the same.

85. Two changes were the proposed increase in salary from £20, 666 to £22, 500 and the move to being paid weekly. I conclude that neither of these changes were a substantial change in the working conditions to the material detriment of the claimant.

Was the claimant dismissed?

86. The first question is whether there was a fundamental breach of contract by the respondent, which was not affirmed by the claimant, and that was the reason why the claimant resigned. If the answer to this question is yes, then there is a constructive dismissal and the impact of any objection to the transfer is irrelevant.
87. I conclude that there was no fundamental breach of contract by the respondent or anticipated fundamental breach of contract by CTR. The job role was to be exactly the same. The increase in salary and the change to being paid weekly were not fundamental breaches of the contract.
88. As I have concluded above that the claimant did object to the transfer and there was no substantial change in working conditions to the detriment of the claimant the effect of Regulation 4(8) of TUPE is that the transfer on 18 January 2023 operated so as to terminate the contract of employment of the claimant, but the claimant is not to be treated for any purpose as having been dismissed by the respondent.

Was the claimant entitled to a redundancy payment?

89. As the claimant was not dismissed by the respondent, he is not entitled to a statutory redundancy payment.
90. In respect of whether there was a contractual offer and acceptance to pay the claimant a statutory redundancy payment whether or not there was in fact a genuine redundancy situation or a dismissal, Mr Woods did not have actual authority to make the claimant such an offer.
91. As the claimant's manager the claimant was entitled to rely on what Mr Woods said on behalf of the respondent, so Mr Woods did have apparent authority to make an offer. The nature of the claimant's and Mr Woods' discussion in December 2022 was an informal chat about the speculation surrounding the future of the Reuseabook business within the respondent and the CTR Group. The claimant approached Mr Woods and Mr Woods shared his view of what could happen in the future. I conclude that this was not an offer to pay the claimant a redundancy payment regardless of whether or not the claimant was in fact redundant. This was merely informing the claimant of what may happen in the future.
92. In any event I also found above that the claimant did not accept any offer to take a redundancy payment.
93. The claimant's complaint of failure to pay him a statutory redundancy payment is not well-founded. This means the claimant is not entitled to a statutory redundancy payment.

Was the claimant entitled to notice pay?

89. Again, as the claimant was not dismissed by the respondent he is not entitled to notice pay.

90. The claimant's complaint of breach of contract for failure to pay him notice pay is not upheld and is dismissed.

Employment Judge Macey

Date: 9 August 2023

Judgment sent to the Parties on 29 August 2023

For the Tribunal Office

Notes

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.