



EMPLOYMENT TRIBUNALS

Claimant: Patricia McMinigal
Respondent: Michelle Edgington (1)
Jacqueline Daubney (2)
Interested Party: Admiral Taverns Limited

Heard at: London South Employment Tribunal (remotely by video)

On: 08.01.2024 and 09.01.2024.

Before:

Judge L Mensah
Dr C Brown
Mrs A Sadler

Representation

Claimant: In person
Respondent: In person (1)
Not in attendance (2)

Witnesses
Ms S Baker for the Claimant
The parties in person.

JUDGMENT

1. The Tribunal gave full oral judgment at the hearing. The Tribunal found:

(i) The claim for automatic Unfair Dismissal connected with a transfer of undertaking as against the First Respondent is well founded and is made out. The Claimant was an employee of the Second Respondent but transferred to the First Respondent on the 25.02.2022. Liability for the sums herein is awarded against the First Respondent.

(ii) The claim for ordinary Unfair Dismissal is also well founded and made out. The Claimant was substantively and procedurally unfairly dismissed.

(iii) The claim for unpaid and accrued holiday pay is well founded and is made out.

(iv) The claim for an entitlement to notice pay, is well founded, and is made out.

(v) The Tribunal also find the First Respondent is liable for the award for the failure of the transferor and the transferee to inform and consult the Claimant of the proposed change of owner of the business.

2. By virtue of the above, the Tribunal award the following (Gross pay is £311.52 and net is £282.51),

Basic award:

(i) 12 weeks' pay that is 1.5 weeks for every full year of service and 8 full years. Basic award age 61 at date terminated. 8 years full service at 1.5 weeks per year. Is $£311.52 \times 1.5 \times 8 = \mathbf{£3743.40}$ gross.

(ii) No reduction is made to the basic award as there was no contributory conduct prior to dismissal.

Compensatory award:

(i) We award 7 weeks gross pay being the period we have found the public house was closed for a refurbishment (25.02.2022 to the 15.04.2022) and the First Respondent could have taken the Claimant through a fair procedure for dismissal for Some Other Substantial Reason and misconduct in that time, although not gross misconduct.

(ii) We reduce the award by 5% for the Claimant's contributory conduct on the 25.02.2022 (EDT).

(iii) We uplifted the compensatory award by 15 % due to the failure of the First Respondent to follow the ACAS code in any respect when dismissing the Claimant.

(iv) 7 weeks gross pay is $7 \times £311.52 = £2180.64$ net. Compensatory award total is **£2398.70 gross** (includes uplift and reduction)

Holiday Pay:

- The Claimant's claim for **holiday pay** is made out and we award 3 weeks untaken and outstanding holiday. $3 \times £311.52$ is **£934.56 gross**.

Notice Pay

(i) The Claimant's claim for **notice pay** is made out and we award 8 weeks' pay in accordance with the statutory minimum provisions under Section 86 ERA 1996. 8 weeks x £311.52 is **£2492.16**.

Failure to Inform and Consult as required under the Transfer of Undertakings (protection of employment) Regulations 2006.

(i) The Claimant's claim for failure to consult under TUPE regulations is well founded and is made out and we award 2 weeks gross pay: £311.52 X 2= **£623.90**

Loss of Statutory rights

(i) We award a sum to represent the loss of statutory rights of **£500**.

Total gross sum: £10,692.74 subject appropriate deductions for tax and NI.

Recoupment

We understand the Claimant did claim Universal Credit. The Recoupment Regulations apply to this award. The prescribed element is net. The period prescribed is the 25.02.2022 to the 15.04.2022. The excess of the prescribed element is £2180 gross or £1977.57 (net). The annex to this judgment explains the operation of the Recoupment Regulations.

Judge L Mensah

Employment Judge **Mensah**
Date 09 January 2024

¹ Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing, or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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