



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Mrs Jackie Townsend (1)
Mrs Dawn Harrison (2)

AND

Respondents

Mrs Claire Leat (1)
Mario's Grub Limited (2)
Mr Marywan Abdullah Karman (3)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY

ON

13 June 2024

By CVP Video

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimants:	Ms J Al-Janabi, Solicitor
For the First Respondent:	In person
For the Second Respondent:	No Appearance Entered
For the Third Respondent:	No Appearance Entered, Some Submissions

JUDGMENT

The judgment of the tribunal is that:

1. There was a relevant transfer under the TUPE Regulations 2006 from the first respondent to the second respondent on 3 April 2023; and
2. Both claimants were unfairly dismissed on 23 April 2023 by reason of that transfer.

The first claimant Mrs Townsend:

3. The second respondent is ordered to pay compensation to the first claimant for unfair dismissal in the sum of £12,060.60. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ("the Recoupment Regulations") do not apply in this case; and

4. The first claimant's claim for breach of contract is well-founded, and the second respondent is ordered to pay the first claimant 8 weeks' notice pay in the net sum of £2,261.04; and
5. To the extent that there was any claim for accrued but unpaid holiday pay this is no longer pursued, and it is dismissed on withdrawal by the first claimant; and
6. The second respondent failed to consult with both claimants about the prospective TUPE transfer, and the second respondent is ordered to pay the first claimant 13 weeks' pay in the sum of £3,900.00; and
7. Neither the first respondent nor the second respondent had ever issued the first claimant with a written statement of particulars of employment and the second respondent is ordered to pay the first claimant four weeks' pay in the sum of £1,200.00 pursuant to section 38(4)(b) of the Employment Act 2002.

The second claimant Mrs Harrison:

8. The second respondent is ordered to pay compensation to the second claimant for unfair dismissal in the sum of £12,776.61. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ("the Recoupment Regulations") do not apply in this case; and
9. The second claimant's claim for breach of contract is well-founded, and the second respondent is ordered to pay the second claimant 9 weeks' notice pay in the net sum of £2,543.67; and
10. To the extent that there was any claim for accrued but unpaid holiday pay this is no longer pursued, and it is dismissed on withdrawal by the second claimant; and
11. The second respondent failed to consult with both claimants about the prospective TUPE transfer, and the second respondent is ordered to pay the second claimant 13 weeks' pay the sum of £3,900.00; and
12. Neither the first respondent nor the second respondent had ever issued the second claimant with a written statement of particulars of employment and the second respondent is ordered to pay the second claimant four weeks' pay in the sum of £1,200.00 pursuant to section 38(4)(b) of the Employment Act 2002

RESERVED REASONS

1. This is the judgment following a Hearing to determine whether or not there was a relevant transfer under the TUPE Regulations, and to determine unfair dismissal and other monetary claims presented by both claimants.
2. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by CVP video platform. A face-to-face hearing was not held because all issues could be determined in a remote hearing.
3. I have heard from both claimants. I have heard from Mrs Claire Leat the first respondent. The second respondent Mario's Grub Ltd did not enter a notice of appearance in defence of these claims. The third respondent Mr Karman did not enter a notice of appearance within the relevant time limit. He subsequently sought to enter a notice of appearance out of time, but despite a direction from the tribunal to the effect that he would need to apply for an extension of time, he failed to do so. We do however have his proposed defence to the claims, although it has not been accepted because it was received out of time.

4. I find the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The Facts:
6. The first respondent Mrs Claire Leat was the sole practitioner of a hair salon in Bristol trading as Crazy Angels. The first claimant Mrs Jackie Townsend and the second claimant Mrs Dawn Harrison were employed by the first respondent as hairstylists. Neither had been issued with a written contract of employment. The first claimant Mrs Townsend commenced employment in June 2014, and she earned £300 gross per week over 32 hours. After statutory deductions this was reduced to £282.63 per week net. The second claimant Mrs Harrison commenced employment on 1 December 2013, and she earned £300 gross per week over 32 hours. After statutory deductions this was also reduced to £282.63 per week net.
7. The second respondent Mario's Grub Ltd is a limited company. The third respondent Mr Marywan Abdullah Karman, who is known as Mario, is the proprietor and a director of that company.
8. In early 2023 the first respondent was facing the end of the 10 year lease on her salon premises, and she was concerned about the prospective increase in rent in the event that she renewed. She therefore decided to sell her business. She engaged agents to advertise the salon business and to make the necessary arrangements to assign the remainder of her lease. The first respondent approached the third respondent, who owned a neighbouring shop, and they agreed that she would sell her salon. The third respondent informed her that he intended to continue the business as a salon, and that he would employ new barbers and change the layout of the salon, but that he would also keep the current staff (meaning the first and second claimants).
9. There was then a meeting which was probably in late March or early April 2023 between the parties to the proceedings at which they all discussed the continuing employment of the first and second claimants, and their hours, wages, and holiday entitlement. This conversation took about 30 minutes. The third respondent assured the other parties the situation would remain the same as it had been under the first respondent's ownership.
10. The first respondent agreed that she transferred her business on 3 April 2023. She says that she dealt with the third respondent Mr Karman (Mario) but that she was initially unsure whether the business was transferred to the second respondent, or to the third respondent. In his attempt at a late response to this claim, the third respondent asserts that the second respondent was the transferee and that it took over the first respondent's business, and that he was only ever an employee of the second respondent.
11. All current parties agree that the first respondent's business Crazy Angels stayed open and continue to trade under that name. Both claimants continued to work as hairstylists at the same premises, utilising the same stock and the equipment which had previously been in place. They also dealt with the existing clients of the first respondent's business as they had done previously. All current parties therefore agree that there was a transfer of the first respondent's business as a going concern with effect from 3 April 2023.
12. It was the second respondent Mario's Grub Ltd which then made payments to the first respondent following the transfer. The payments were for the balance of the existing lease; for equipment and stock; and for goodwill. I therefore find that there was a relevant transfer of the first respondent's business Crazy Angels as a going concern to the second respondent Mario's Grub Ltd on 3 April 2023.
13. It is also agreed by all parties that on 19 April 2023 the third respondent advised that the business would cease trading. Both claimants were subsequently told that their employment was terminated summarily with effect from Saturday, 22 April 2023. They were paid until that date, but neither received any payment in lieu of notice, nor any statutory redundancy pay. There was no consultation with regard to these dismissals, which occurred despite earlier assurances as to the continuation of the business with its current employees.
14. I find that the principal reason for the dismissals of the first and second claimants was because of the relevant transfer.

15. Having established the above facts, I now apply the law.
16. The Law:
17. The relevant regulations are the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the Regulations").
18. Regulation 3(1) provides that the 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.
19. Regulation 3(2) provides that "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.
20. Regulation 4(1) provides that: 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.
21. Regulation 4(2) provides that: Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer – (a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and (b) any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to the organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.
22. Regulation 4(3) provides that: Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1)...
23. Regulation 7(1) provides that: Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated for the purposes of Part X of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for his dismissal is – (a) the transfer itself; or (b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce. The effect of Regulations 7(2) and (3) is that where there is an economic, technical or organisational reason entailing changes in the workforce of either the transferor or the transferee before or after a relevant transfer, the automatically unfair dismissal provisions of regulation 7(1) do not apply, but rather the dismissal is treated as a redundancy dismissal which is potentially fair under section 98 of the 1996 Act.
24. Regulation 13 requires both the transferor and the transferee to consult with employees ahead of a relevant transfer. Regulation 13(2) sets out the information which must be the subject of that consultation. Regulation 16(3) allows appropriate compensation of up to 13 weeks' pay to be ordered following a failure to consult.
25. Compensation for unfair dismissal is dealt with in sections 118 to 126 inclusive of the Act. Potential reductions to the basic award are dealt with in section 122. Section 122(2) provides: "Where the tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce the amount accordingly."
26. The compensatory award is dealt with in section 123. Under section 123(1) "the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer".

27. The claimants' claims for breach of contract in respect of their notice pay are permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") and the claims were outstanding on the termination of employment.
28. Under section 38 of the Employment Act 2002, if the employer was in breach of his duty to give a written statement of initial employment particulars and the employment tribunal finds in favour of the employee or makes an award to the employee, then the tribunal must increase the award by an amount equal to two weeks' pay, and may, if it considers it just and equitable in all the circumstances, increase the award by four weeks' pay instead.
29. I have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 ("the ACAS Code").
30. I have been referred to and have considered the following cases, namely: ECM (Vehicle Delivery Service) Ltd v Cox and others [1999] ICR 1162; Spijkers v Gebroeders Benedik Abattoir CV 24/85 [1986] 2 CMLR 296; and Cheesman v R Brewer Contracts Ltd [2001] IRLR 144 EAT.
31. A business transfer pursuant to the wording of Regulation 3(1)(a) requires four key elements, namely that there is (i) a transfer to another person; (ii) that there is an identified economic entity that transfers; (iii) that the economic entity is situated in the UK immediately before the transfer; and (iv) that the economic entity retains its identity after the transfer.
32. In Spijkers the Court made it clear that it is important to consider the following matters: (a) the type of undertaking or business concern; (b) whether assets, tangible or intangible, are transferred; (c) whether employees are taken over; (d) whether customers are transferred; and (e) the degree of similarity between the activities carried on before and after the transfer and the period, if any, for which those activities are suspended. These are single factors in an overall assessment which should not be considered in isolation. In addition, the facts characterising the transaction in question should be considered to determine whether the undertaking has continued and retained its identity in different hands (ECM (Vehicle Delivery Service) Ltd).
33. Judgment:
34. in this case I find that there was a relevant transfer for the purposes of the TUPE Regulations from the first respondent Mrs Leat to the second respondent Mario's Grub Ltd on 3 April 2023. Both tangible and intangible assets were transferred, including stock, equipment, and goodwill. The employees were taken over. The customers were transferred. The business carried on its activities exactly as it had done before immediately after the date of the transfer.
35. Within about three weeks of the transfer the two claimants were then dismissed summarily without any consultation with regard to those dismissals. The first respondent had arranged a meeting to discuss what effect the transfer would have on the two claimants prior to the transfer, but the second respondent did not comply with the requirements of the TUPE Regulations with regard to consultation ahead of the relevant transfer, and in particular the second respondent did not set out the information required under Regulation 13(2). I find that the second respondent failed to consult with the claimants in advance of the relevant transfer, and that the principal reason for their dismissals was the relevant transfer.
36. The claimants' claims to the effect that they were unfairly dismissed because of the transfer; that they were dismissed without notice; that the respondents failed to provide a written statement of the particulars of employment; and that the second respondent had failed to inform and consult under the TUPE Regulations, are all well-founded.
37. I now turn to the appropriate remedy. Neither claimant seeks reinstatement or re-engagement.
38. The First Claimant Mrs Townsend:
39. Compensation for unfair dismissal is calculated as follows. Mrs Townsend was aged 66 at the date of her dismissal. After eight years' continuous service her basic award is £3,600.00 (12 x £300.00). With regard to the compensatory award, the claimant claims £500.00 for loss of statutory rights together with losses from her dismissal to the date of this hearing at

the net rate of £282.63 per week which is £17,014.29, less alternative pension payments received of £10,745.81. The total compensatory award is £6,768.48, and she claims 25% s207A(2) uplift on this amount of £1,692.12. The total compensatory award is £8,460.06, which together with the basic award of £3,600.00 comes to total compensation for unfair dismissal in the sum of £12,060.60. I consider that it is just and equitable to make this award.

40. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ("the Recoupment Regulations") do not apply in this case.
41. The claim for notice pay is well-founded. The first claimant's statutory period of notice was eight weeks. The second respondent is ordered to pay her eight weeks' net pay in the sum of £2,261.04.
42. The first claimant was not issued with a written statement of the particulars of her employment, and I consider it just and equitable to make an award of four weeks' pay which at £300.00 per week is £1,200.00.
43. In addition, I make an award for failure to inform and consult under the TUPE Regulations in the amount of 13 weeks' pay at £300 per week, which is £3,900.00.
44. The Second Claimant Mrs Harrison:
45. Compensation for unfair dismissal is calculated as follows. Mrs Townsend was aged 52 at the date of her dismissal. After nine years' continuous service her basic award is £4,050.00 (13.5 x £300.00). With regard to the compensatory award, the claimant claims £500.00 for loss of statutory rights together with losses from her dismissal to the date of this hearing at the net rate of £282.63 per week which is £17,014.29, less alternative payments received from other employment of £10,533.00. The total compensatory award is £6,981.29, and she claims 25% s207A(2) uplift on this amount of £1,745.32. The total compensatory award is £8,726.61, which together with the basic award of £4,050.00 comes to total compensation for unfair dismissal in the sum of £12,776.61. I consider that it is just and equitable to make this award.
46. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ("the Recoupment Regulations") do not apply in this case.
47. The claim for notice pay is well-founded. The second claimant's statutory period of notice was nine weeks. The second respondent is ordered to pay her nine weeks' net pay in the sum of £2,543.67.
48. The second claimant was not issued with a written statement of the particulars of her employment, and I consider it just and equitable to make an award of four weeks' pay which at £300.00 per week is £1,200.00.
49. In addition, I make an award for failure to inform and consult under the TUPE Regulations in the amount of 13 weeks' pay at £300 per week, which is £3,900.00.

Employment Judge N J Roper
Dated 13 June 2024

Judgment sent to Parties on:

20 July 2024

For the Tribunal Office