



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms K Reilly**

**v**

**John Teahan**

**Heard at:** Watford

**On:** 25 July 2020

**Before:** Employment Judge Alliot

## **Appearances**

**For the Claimant:** In person

**For the Respondent:** In person

## **JUDGMENT**

The judgment of the tribunal is that:

1. The claimant's claim for unfair dismissal is well founded and the respondent is ordered to pay her:-
  - 1.1 A basic award of £1,140.
  - 1.2 Compensation for loss of statutory rights in the sum of £200.
2. The claimant's claim for breach of contract for failure to pay notice pay is well founded and the respondent is ordered to pay her £1,200.
3. The claimant's claim for accrued holiday entitlement not taken at the time of the termination of her employment contract is well founded and the respondent is ordered to pay her the sum of £240.

## **REASONS**

1. The claimant was employed as a barmaid at The Bell public house pursuant to a contract of employment dated 1 January 2009. The claimant was employed by her father who ran the pub.

2. It is the claimant's case that she worked a minimum of 16 hours per week for £120. She worked four days a week doing a four hour shift each day.
3. The contract of employment gives the holiday year from 1 January to 31 December and the claimant's holiday entitlement was 28 days per annum including bank holidays.
4. On 1 August 2019 Mr M Reilly, the claimant's employer, was given notice to quit the pub by the freeholder, Mr O'Sullivan. The claimant characterised it as her father surrendering the lease.
5. During August 2019 the claimant was informed that her father was going to surrender the lease, cease trading at the pub and that the change in ownership would take place on 2 September 2019. Further, the claimant had a chat with Mr O'Sullivan, along with other members of staff, who asked them how they felt about carrying on. All the staff said that they would like to carry on being employed and Mr O'Sullivan apparently said "fine it would all be put in place".
6. The respondent told me that all negotiations for taking over the lease of the pub were held with Mr O'Sullivan and that he only met Mr Reilly once. The assignment of lease document has a Clause 12 dealing with employees and Transfer of Undertakings crossed out. The respondent told me that this was agreed with Mr O'Sullivan as he did not want to keep on the existing staff and wanted all of them to apply for employment with himself. Further, the respondent told me that he did not think that the TUPE regulations applied to management and he regarded the claimant as having worked in management.
7. It would appear that the claimant's involvement in the running of the pub was greater than that of a simple barmaid as she helped out her father in a number of other capacities. Be that as it may, it did not affect the fact that she was employed pursuant to a contract of employment.
8. As a matter of law it is not possible for any party to contract out of the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981.
9. The respondent did not want to take on the claimant as an employee and ignored a letter she wrote on 3 September 2019 seeking clarification. I find that the claimant was dismissed by the respondent on 2 September 2019.
10. I find that the reason for the claimant's dismissal was that her contract of employment had transferred to the respondent. As such the dismissal was automatically unfair.
11. I find that the claimant was entitled to 10 weeks' notice and was dismissed in breach of contract without notice.
12. By 2 September 2019 the claimant had accrued holiday entitlement of 18 days. She had taken four days holiday and there had been six bank

holidays. Accordingly, she had eight days of holiday entitlement outstanding at the date of the termination of her employment.

13. Taking into account all the circumstances, I find that the consultation and information provided to the claimant prior to the transfer was such that the statutory requirement to consult and inform was discharged. Accordingly, I find that there was no failure to consult or inform as regards both the transferor and the transferee.

### Calculations

#### Unfair dismissal

14. Basic award: The claimant had 10 full years of employment but was under the age of 22 for one of those years.

$$9\frac{1}{2} \times \text{£}120 = \text{£}1,140$$

15. Compensatory award: The claimant has succeeded as regards her claim for 10 weeks' notice pay. 10 weeks' notice from 2 September 2019 would have expired on 11 November 2019. By that time the claimant had secured alternative employment at a comparable wage. Accordingly, I award no compensation for loss of earnings.

16. Loss of statutory rights: I would normally award £500 for loss of statutory rights to an individual working a five-day week. In my judgment 16 hours translates into two days and accordingly I award the sum of £200 for loss of statutory rights.

#### Notice pay

17. The claimant was entitled to 10 weeks statutory notice.

$$10 \times \text{£}120 = \text{£}1,200$$

#### Holiday pay

18. The claimant had 8 days' holiday entitlement outstanding at the date of the termination of her employment.

$$8 \times \text{£}30 = \text{£}240$$

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Employment Judge Alliot

Date: ...17 August 2020.....

Sent to the parties on: .....

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For the Tribunal Office