



EMPLOYMENT TRIBUNALS

Claimant

Kim Burrows

v

Respondent

New Look Limited

Heard at: Watford

On: 2 December 2019

Before: Employment Judge Allen

PRELIMINARY HEARING

Appearances:

For the Claimant: Miss Kim Burrows assisted by her father Roger Burrows

For the Respondent: Mr Kirk of counsel and Ms Nicholson in attendance for New Look Limited.

COVID-19 Statement on behalf of Sir Keith Lindblom, Senior President of Tribunals

"This has been a remote / paper hearing on the papers which has been consented to / not objected to by the parties. The form of remote hearing was [insert the code and description from the list above]. A face to face hearing was not held because [insert e.g. it was not practicable and no-one requested the same or it was not practicable and all issues could be determined in a remote hearing / on paper]. The documents that I was referred to are in a bundle of [x] pages, the contents of which I have recorded. The order made is described at the end of these reasons. [The parties said this about the process: [add]]"

JUDGMENT

REASONS

Documents Provided

1. I have been provided with the following documents:

- Letter of 16 October 2020 to Claimant notifying her of the Company Voluntary Arrangement
- Statement of Respondent's position on CVA
- Copy of the Judgement in Britannia Heat Transfer Limited (in Administration)
- Chairman's report of creditors and members meeting

- CVA proposal 26 August 2020

Issues

2. The Respondent argues that the claimant is caught by the terms of the CVA; must discontinue proceedings in the Employment Tribunal and should lodge a claim with the CVA supervisor by 31 December 2020.

Findings

3. 2019 - Ms Burrows commenced a claim of constructive dismissal on the grounds of discrimination against the Respondent in the Employment Tribunal.
4. In 2020 the Respondent set about restructuring its business and in September 2020 entered into a Company Voluntary Arrangement (CVA) with its creditors. The CVA seeks to keep the company afloat; like many others in the current public health crisis, it has suffered a significant fall in revenue income and is in danger of going into administration.
5. 26 August 2020 – Creditors notified of the meeting to approve the CVA
6. 15 September 2020 – Creditors Meeting which approved the CVA
7. 21 September 2020 – CVA lodged with the High Court
8. 25 September 2020 - Ms Burrows first hears of the CVA.
9. 16 October 2020 - Letter to Claimant notifying her of the Company Voluntary Arrangement.
10. Ms Burrows Employment Tribunal Claim and address are known to the Respondent because it has responded.
11. This predates the CVA.
12. There was nothing to prevent the Respondent notifying Ms Burrows of the meeting at which the CVA was voted on by the creditors as required by IA'86 S257 2B.
13. Ms Burrows was not notified of the meeting at which the CVA was approved.
14. The CVA is widely drawn to capture company creditors and includes a number of definitions which seek to identify the company's creditors and how their legal rights are affected.

The Law

15. Voluntary Arrangement

- 15.1 The Voluntary Arrangement is binding on all Creditors who had notice of the meeting, whether or not they attended, or voted. - IA, section 260(2)(b). IA, section 257(2B) specifies to whom notice should be

given namely every creditor of whose claim and address the nominee is aware.

16. Insolvency Act '86 S5

“(1) This section applies where a decision approving the voluntary arrangement has effect under Section 4a.

(2) The voluntary arrangement

(a) takes effect as if made by the company at the time the creditors decided to approve the voluntary arrangement, and

(b) binds every person who in accordance with the rules –

(I) was entitled to vote in the qualifying decision procedure by which the creditors’ decision to approve the voluntary arrangement was made, or

(ii) would have been so entitled if he had notice of it,

As if he were a party to voluntary arrangement.”

Conclusions

17. Some time was taken during the hearing to establish that a CVA does not offend against S203 ERA. I accept the case law provided in support of this Re Britannia Heat Transfer Ltd [2007] B.P.I.R. 1038.
18. In addition, I am satisfied that Ms Burrows was a former employee as defined by the CVA and a CVA creditor also defined by the document.
19. However, the Voluntary Arrangement does not inhibit the Employment Tribunal in any way in dealing with the merits of the claim. If the Claimant succeeds, and if the Voluntary Arrangement is the Respondent's, the position will vary according as to whether or not the Claimant had notice of the Meeting of Creditors where the Arrangement was approved.
20. If the Claimant did not have notice of the proposed Voluntary Arrangement, then the Tribunal can proceed in the normal way. If, however, the Claimant did have notice, he or she is bound by the Arrangement, and the award which the Tribunal makes may need to be adjusted.
21. Counsel for the respondent brought my attention to IA'86 S5(2)b as set out above. The Employment tribunal has no jurisdiction as far as that legislation is concerned. Ms Burrows claim was well known to the Respondent as was her address.
22. Since Ms Burrows was not notified as required by IA S257 2B she may proceed with her action against the Respondent.

Employment Judge Allen
7 March 2021

Date:

Judgment sent to the parties on
31 March 2021

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For the Tribunal office