



EMPLOYMENT TRIBUNALS

Claimant: Ms H O'Keefe

First Respondent: Gold Panda Limited

Second Respondent: Mrs S Panwar

Third Respondent: Pandeli Limited

Heard at: Birmingham

On: 27, 28, 29 & 30 April 2023

Before: Employment Judge Flood
Mrs I Fox
Mr K Palmer

Representation

Claimant: Ms Hampshire (Counsel)
R1, R2 and R3: Mr Tidy (Solicitor)

JUDGMENT

1. The employment of the claimant transferred from the first respondent to the third respondent by operation of Regulation 3 (1) (a) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') on or around 12 April 2021. The transfer was not the sole or principal reason for the dismissal of the claimant.
2. The complaints under Regulation 15 TUPE that the first and third respondents failed to comply with their obligations to provide information and to consult with the claimant under regulations 13 and 13A are well-founded. The claimant is awarded the sum of £5,504 representing thirteen weeks pay and the first and third respondents are jointly and severally liable for the award made.
3. The complaint of unfair dismissal under Part X Employment Rights Act 1996 ('ERA') is well-founded. The claimant was unfairly dismissed by the third respondent. The third respondent is ordered to pay to the claimant the sum of **£11,141.37** which is made up of the following:
 - a. A basic award of **£1,269.24**
 - b. A compensatory award of **£11,613.19** broken down as follows:

- i. Loss of statutory rights of £846.16
- ii. Past loss of earnings to the date of the hearing of £9,565.73 made up as follows:

| | | |
|---|-------------|------------------|
| Loss of earnings from 15 June 2021 until 30 March 2023 | | £33,092.19 |
| <u>Less</u> sums received by way of mitigation | | |
| Earnings as a temporary chef with KSB Recruitment from 16 June 2021 to 12 November 2021 | [£7,564.45] | |
| Earnings whilst employed by Phoenix Hospitality Ltd from 1 November 2021 to 30 January 2022 | [£3,539.67] | |
| Earnings whilst employed by Phoenix Hospitality Ltd in February and March 2022 | [£2,359.78] | |
| Earnings whilst employed by Bennetts Willow Barn Ltd from 4 April 2022 to 7 October 2022 | [£9,822.75] | |
| Earnings through temporary work as a chef with Idemia, Tewkesbury through Blue Arrow for the dates: 2nd, 3rd, 6th, 7th, 8th, 9th, and 10th March 2023 | [£240.00] | |
| Total mitigation | | [£23,526.46] |
| PAST LOSSES | | £9,565.73 |

- iii. Future losses representing 12 weeks ongoing financial loss, less average weekly mitigation calculated over period of past loss above i.e $(12 \times £355.83 = 4269.96)$ less $(12 \times £255.72 (23,526/92) = £3,068.66)$ amounting to £1201.30.
- c. No adjustment is made to the compensatory award in respect of any chance that the claimant would have been fairly dismissed if a fair procedure had been followed, or for some other reason ('Polkey reduction').
- d. No adjustment is made to the compensatory award under section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of any failure to follow the requirements of the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- e. No reductions are made to the basic and compensatory awards on the grounds of contributory fault (ERA sections 122(2) and 123(6)).

4. The Recoupment Regulations apply. The total monetary award for unfair dismissal is £12,882.43, being the total of the basic and compensatory awards. The prescribed element is £9,565.73, and the period to which that element is attributable is between 15 June 2021 and 30 March 2023. The amount by which the monetary award for unfair dismissal exceeds the prescribed element is £3,316.70.
5. The complaint in respect of holiday pay is well-founded. The third respondent made an unauthorised deduction from the claimant's pay by failing to pay her for 35 days holiday accrued but untaken upon termination of employment. The third respondent is ordered to pay to the claimant the gross sum of £2,961.56.
6. The complaint of breach of contract against third respondent in relation to notice pay and failure to pay pension contributions is well-founded. The claimant is awarded the sum of £1,344.79 in damages representing the lost pension contributions (her notice pay having been mitigated by sums received in furlough pay during June 2021).
7. The claimant's complaints of direct age discrimination (contrary to s 13 of the Equality Act 2010) against the first, second and third respondents are not well founded and are dismissed.
8. The claimant is not entitled to a redundancy payment under section 163 Employment Rights Act 1996.
9. The third respondent was not in breach of any duty to provide the claimant with a written statement of the reasons for dismissal and no award under section 92 ERA is made.

Employment Judge Flood

Date: 31 March 2023

Notes:

Reasons for the judgment having been given orally at the hearing and a request for written reasons having been made, written reasons will be provided as soon as reasonably practicable..

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