



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
Mrs A Dyer

AND

Respondent
L & M Coventry Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY
By Cloud Video Platform (CVP)

ON

5 April 2024

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: In person

For the Respondent: Ms H Suleman, Peninsula

JUDGMENT

The judgment of the tribunal is that the claimant's claims for entitlement to a statutory redundancy payment and for breach of contract in respect of her notice pay are not well-founded and are hereby dismissed.

RESERVED REASONS

1. In this case the claimant Mrs Alisa Dyer brings monetary claims for a declaration as to her entitlement to a statutory redundancy payment and for breach of contract in respect of her notice pay. The respondent denies the claims.
2. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was by CVP Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents to which I was referred are in a bundle provided by the parties, the contents of which I have recorded. The order made is described at the end of these reasons.
3. I have heard from the claimant. I have heard from Mr Steven Lucas of the respondent. I have also seen a signed statement from Mr Trevor Reardon in support of the respondent.
4. There was a degree of conflict on the evidence. I found 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 claimant Mrs Alisa Dyer was employed as Front of House at the Watermill Inn in Hayle in West Cornwall from 16 May 2018 until the termination of her employment on 28 June 2023. This pub is owned by a brewery, and the tenant at the time was L & M Coventry Limited, which is the respondent to this claim, and which is a company owned by Mr Steven Lucas and his wife.
6. At the end of June 2023 the respondent terminated its tenancy of the pub, and new tenants took over. There was a TUPE transfer of the pub on or about 3 July 2023. The claimant was aware of the concept that contracts of employment are protected and transferred under a TUPE transfer, because this had happened to her when the respondent took over the tenancy during her employment.
7. Both the respondent and the incoming tenant made some efforts to consult with the staff as transferor and transferee. However, it is fair to say that this was not as full as it should have been, and in all probability would not have complied with the relevant consultation provisions under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("the TUPE Regulations").
8. There was a WhatsApp Group for the employees of the pub which included the claimant. On Sunday, 25 June 2023 Mr Lucas posted a message to the effect: "We are not doing food tomorrow guys as we have a few issues to resolve ... Sorry for the short notice." The claimant was informed by Mrs Lucas on Monday, 26 June 2023 that they were leaving the pub. On 27 June 2023 Mr Lucas confirmed to the claimant that the pub was about to close until another tenant was found. The claimant suggests that Mr Lucas informed her during this conversation that her employment was terminated, but Mr Lucas denies this. On the evening of Wednesday, 28 June 2023 Mr Lucas sent a message to the claimant saying: "We need a copy of contract for accountant trying to sort out TUPE and redundancy etc". This was followed shortly thereafter with another message to all employees from Mr Lucas to this effect: "Just to keep you all in the loop the brewery have just left they have new tenants starting next Tuesday we have other meetings planned to discuss TUPE details etc for you guys."
9. On 29 June 2023 there was then a group message from one of the employees Becky to this effect: "just met Richard and Demelza the new landlords and they're lovely. So they want to keep the staff. These are their numbers ...". The claimant responded: "is that it? Surely there's a consultation or changeover or something! Becky responded: "just give them a call and you can ask them any questions. Very approachable people." Mr Lucas then added: "there will be a consultation as soon as it's arranged we will let people know, it was 9.30 last night when the swapover was confirmed."
10. Mr Lucas subsequently informed all members of staff that the brewery were confirming the contract with the new landlord on Monday 3 July 2023 and that there would be a meeting with a new tenants at 5 pm.
11. All of the respondent's employees attended that meeting except for the claimant and a colleague Mrs Stroud. One of the managers from the brewery, namely Mr Trevor Reardon, was at that meeting. He has prepared a written witness statement which appears to be in reply to separate tribunal proceedings brought by Mrs Stroud. He did not give evidence in person to this hearing, but it is a signed statement. The claimant does not dispute that all attendees at the meeting were told that their employment had transferred under TUPE to the new tenants and that it would continue with their terms and conditions remaining the same. The claimant also confirms that Mr Reardon arranged for someone to call her and Mrs Stroud to attend. By the time they attended the meeting had finished. Mr Reardon suggests that he informed the claimant and Mrs Stroud that their employment would be protected and transferred under TUPE, and that the new tenant was keen to retain them. He says that the claimant and Mrs Stroud informed him that they did not wish to transfer their employment and that they had been advised that they were redundant. The claimant denies that Mr Reardon reassured her that she would have her employment safeguarded and protected.
12. The claimant's case is effectively that the pub closed from Wednesday, 28 June 2023 until Tuesday, 4 July 2023, and that Mr Lucas had told her that her employment had ended, which was consistent with the pub having closed.

13. I prefer the respondent's version of events for these reasons. Both the claimant and the respondent were aware of the principles of TUPE, namely that where there is a new tenant at the pub the contracts of employment of existing staff are honoured and transferred to the new tenant. This is exactly what happened to the claimant and other employees when the respondent took on the tenancy. Mr Lucas denies communicating dismissal to the claimant. There was no need for him to have done so in the circumstances, and I accept his evidence in that respect.
14. Secondly, it is clear from the various WhatsApp messages that the claimant was aware that there was to be a new tenant, and that the new tenant wanted to have a meeting with all staff in the context of taking over their employment under TUPE. The claimant declined to attend that meeting. It seems clear to me that if the claimant wished to continue working for the new tenant that she would have been welcome to have done so.
15. As noted above the consultation process could have been more detailed by both the transferor and transferee, but that is not an issue in this case. I find that the respondent did not communicate dismissal to the claimant, and effectively she therefore resigned her employment by choosing not to remain in employment with the new tenant, the transferee.
16. Having established the above facts, I now apply the law.
17. In circumstances where I have determined that the claimant was not dismissed, she is not entitled to a statutory redundancy payment which entitlement only arises following a dismissal by reason of redundancy as defined in the Employment Rights Act 1996.
18. Similarly, whereas the claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 ("the Order") because it relates to a claim which was said to be outstanding on the termination of employment, in circumstances where the respondent did not dismiss the claimant the claimant is not entitled to damages for breach of contract in respect of her lost notice period.
19. In my judgment the claimant's claims for entitlement to a statutory redundancy payment and for breach of contract in respect of her notice pay are not well-founded and they are hereby dismissed.

Employment Judge N J Roper
Dated 5 April 2024

Judgment sent to Parties on 19 April 2024

For the Tribunal Office