



EMPLOYMENT TRIBUNALS

Claimant: Mr W Myszka

Respondent: (1) Mr Tom Harker
(2) Ms Corinna Francis
(3) The Bull Inn Rolvenden Limited

Heard at: London South (via CVP)

On: 17th and 18th August 2022

Before: Employment Judge Nicklin

Representation

Claimant: in person

Mr Harker: in person

Ms Francis: Mr M White, Lay representative

The company: Mr Harker, Director

Note: This has been a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was video, conducted using Cloud Video Platform (CVP). It was not practicable to hold a face-to-face hearing because of the COVID-19 pandemic.

JUDGMENT

It is the judgment of the tribunal that:

1. The Bull Inn Rolvenden Limited shall be joined as the Third Respondent to the claim with service dispensed with by consent.
2. There was a transfer of the business concerning The Bull Inn, Rolvenden, Kent, pursuant to the TUPE Regulations 2006, as amended ("TUPE 2006"), which took effect on the completion of the sale and purchase agreement between the Third Respondent and the Second Respondent on 30th September 2020.
3. The Claimant does not have sufficient qualifying service to bring a claim for automatic unfair dismissal pursuant to Regulation 7 of TUPE 2006. The claim for unfair dismissal is accordingly dismissed.

4. The Claimant was wrongfully dismissed, in breach of contract, by the Third Respondent because he was not given his statutory one-week period of notice in accordance with section 86 of the Employment Rights Act 1996 **Case No. 2307509/2020** (“the ERA 1996”). As a result of his entitlement to holiday pay for the same period, no further award is made pursuant to sections 91(5) and 89(4) of the ERA 1996.
5. The Third Respondent made a series of unlawful deductions from the Claimant’s wages between April – October 2020 in respect of:
 - a. oral variations to the terms of the Claimant’s pay which did not comply with section 13 of the ERA 1996. These deductions total £4,800 gross; and
 - b. in respect of (i.) unused and (ii.) taken but unpaid holiday pay amounting to £1,107.72 gross.
6. Pursuant to Regulation 4 of TUPE 2006, the **Second Respondent** (Ms C Francis) is liable to pay the amounts due to the Claimant at paragraph 5 above, in the total sum of **£5,907.72 gross**. This sum is to be paid to the Claimant **net** of any necessary deductions for tax and National Insurance, as may be the case.
7. The First Respondent (Mr T Harker) was not the Claimant’s employer. Accordingly, all claims against the First Respondent are hereby dismissed.

Employment Judge Nicklin

Date 18th August 2022

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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