



EMPLOYMENT TRIBUNALS

Claimant
Mr Anthony Camilleri

Respondents
Lyndon-Dykes Limited (L-D)
The Leven, Hotel Restaurant & Spa Limited (LHRS)
Waltons Hospitality Limited

JUDGMENT (Liability and Remedy) Employment Tribunals Rules of Procedure 2013 –Rule 21

MADE AT NEWCASTLE
EMPLOYMENT JUDGE GARNON

ON 23 November 2020

JUDGMENT

1. All claims against Waltons Hospitality Limited are dismissed on withdrawal.
2. The claims against Lyndon-Dykes Ltd, **other than** failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), are dismissed on withdrawal.
3. The claim of unfair dismissal is well founded against The Leven, Hotel Restaurant & Spa Limited. I order it to pay compensation to the claimant being a basic award only of **£10078.20**. The Recoupment Regulations do not apply
4. The claim of breach of contract (wrongful dismissal) is well founded against The Leven, Hotel Restaurant & Spa Limited. I order it to pay damages to the claimant of **£5375.04** gross of tax and National Insurance (NI).
5. The claim for compensation for untaken annual leave against The Leven, Hotel Restaurant & Spa Limited is well founded. I order the respondent to pay compensation of **£761.60**. gross of tax and NI.

REASONS

1. On 18 December 2019 the claimant presented claims against L-D and LHRS of unfair dismissal, failure to inform and consult under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), holiday pay and breach of contract by wrongful dismissal. On 17 April 2020 I conducted a preliminary hearing (PH) by telephone at which the claimant was represented by Mr John Graham. L-D was represented by employment consultants Aventure who had entered a response on 30 January 2020. LHRS has never filed a response. The facts I now set out come from the pleaded case supplemented by what I was told and recorded that day, which was subsequently sent to all interested parties.
2. L-D is a hotel operator based in Chorley, Lancashire. From 9 January 2018 until 18 October 2019 it operated Chapters Hotel in Stokesley, North Yorkshire (the Hotel) where the claimant had been Hotel Manager since 18 February 2005 until 29 November 2019 when L-D

terminated his employment, so it said on grounds of Gross Misconduct and Gross Negligence. On 30 August 2019 he had been suspended pending investigation of his conduct regarding disclosure of confidential information about L-D's "fiscal situation".

3. The Hotel had been losing money and not paying creditors, eg suppliers. At around 12.20 pm on Friday 29 August 2019, an agent from Gaz Prom came to the Hotel with 2 engineers. He told the claimant he was going to remove the gas meter and asked for the owner's telephone number. The claimant did not have it so at 12.33 sent an e-mail to Mr Andrew Lyndon-Dykes, a Director of L-D, asking him to call the Hotel urgently. He called a few minutes later and the claimant passed him on to the Gaz Prom agent. The claimant does not know what Mr Lyndon-Dykes said but recalls the agent saying "*Is that your final answer? Ok then, I will remove the meter*". The agent passed the phone to the claimant.

4. Mr Lyndon-Dykes told the claimant he was very sorry but could not carry any longer as the Hotel had been losing money and had to cease trading immediately. He instructed the claimant to start immediately to cancel all bookings for the Hotel and Restaurant. The Hotel was nearly fully booked for the next 6 or 7 days. The claimant said he would send Mr Lyndon-Dykes a screen shot of the bookings which may alter his decision, but he remained adamant his hands were tied, kept apologising for the situation and repeated the Hotel would have to cease trading immediately.

5. Mr Lyndon Dykes gave the claimant no instructions as to what to say to people and said only "*I am sorry I can't do anything else*". When asked whether wages due to be paid the following day would in fact be paid, he replied he did not know and would have to ask the accountants. He ended the call by instructing the claimant not to tell suppliers otherwise he would "*have a bomb*" to deal with. He promised to call back within the hour. He did not do so.

6. The claimant immediately started to cancel the bookings, as instructed. He tried to contact Mrs Powers the Group Administration and Marketing Manager for L-D for guidance but there was no response. Mr Callum McCartan (Area Manager of L-D) had not replied to an earlier text message seeking assistance. The claimant was worried about his own position so decided to make a call to his brother in law, Mr Steven Bell who had transferred the Hotel on 29 April 2016 to Shepherd Cox Hotels (Stokesley) Ltd who in turn transferred it to L-D. Mr Bell had no existing financial connection with the Hotel and was not a supplier. The claimant asked his advice with regard to the possibility wages were not going to be paid. Mr Bell asked what had prompted that decision and the claimant told him the gas had been cut off. The conversation went no further because the Hotel telephone started to ring.

7. The claimant later noticed 2 e-mails from Mr Lyndon Dykes at 15.56 and 16.00. The latter told the claimant not to cancel any more bookings and said Mr McCartan would handle the guests. The one at 15.56 said; "*Hi Tonio, hopefully Callum or Rachel has managed to get hold of you and let you know that we are staying open and there are plans in place **for the short and medium term**. F and B trade will be affected in a small way for a couple of days and not at all after that. We are going to have a conversation regarding your call to Steven, actions following it may very well have serious future implications on us and a business and on me personally. PLEASE DO NOT keep trying to sabotage us. Please do not tell anyone else!*"

8. The claimant had not heard from Mr McCartan or Mrs Powers but stopped cancelling bookings immediately. On 30 August he worked normally until at 17.00hrs. Mr McCartan then told him he was being suspended with immediate effect. He did not explain why. When asked for written confirmation he handed the claimant a pre-prepared un-headed note suspending

him pending a full investigation. He did not say why that was necessary to carry out an investigation. The note said it "*will only be for as long as it takes to complete the investigation*"

9. On 18 September the claimant was asked a few questions, told the information would be considered by Mr Lyndon Dykes and a decision made whether to hold a disciplinary hearing.

10. A Companies House search confirms on 14 October 2019, Mr Martin Robert Hindmarsh formed a new limited Company, LHRS, in which only 1 share with a nominal value of £1 was allotted to himself. Its registered office is the same as the Hotel, 27 High Street, Stokesley, Middlesbrough, TS9 5AD. Mr Hindmarsh's correspondence address was 3 Kirkbride Way, Ingleby Barwick, Stockton-On-Tees, TS17 5NN.

11. On 18 October 2019 all Hotel staff, save the claimant, were told by Mr Lyndon- Dykes the business was going to be run by Mr Hindmarsh. Mr McCartan would be reporting to him. That day they were given new contracts of employment to sign with the employer shown as LHRS and giving a commencement date for new employment of 18 October 2019. On the same day LHRS paid £20,000 to L-D for the fixtures and fittings at the Hotel. From that date staff, were paid by LHRS and their payslips show it as their employer. Local suppliers were informed by L-D, as from 18 October 2019, LHRS was running the Hotel. Mrs Powers confirmed in writing all staff, save the claimant, were transferred LHRS on 18 October.

12. The claimant heard nothing further until on 26 October he was invited to a meeting on 28 October 2019, chaired by a Mr Grant Roberts who had taken over the investigation from Mr McCartan. Mr Roberts asked 16 pre-prepared questions. On 5 November 2019 a note, not on headed notepaper, signed by "The Business" with no author and no contact details was hand delivered to the claimant's house asking he attend a disciplinary hearing on 8 November at 10.30am but did not say where the hearing was to take place.

13. On 6 November 2019 he wrote requesting an adjournment to L-D, hand delivered a copy to the Hotel and e-mailed a copy to Mr Lyndon-Dykes. R1's registered office address changed from c/o the Spa Hotel, Aviation Way, Durham Tees Valley Airport, Middleton St.George, DL1 2PD to Oak Royal Hotel, Golf and Country Club, Bury Lane, Withnell, Chorley, Lancashire PR6 8SW on 21 November 2019. It changed again in March 2020 to that of the Hotel. There was no reply to that letter.

14. The claimant attended at the Hotel on 8 November 2019 at 10.15am and was told the hearing had been cancelled. On 13 November 2019 at 23.37 he received an e-mail from Mr Lyndon Dykes setting a date of 19 November 2019 at 10.30 at the Hotel. He attended with a companion at 10.15am. The persons nominated to chair the hearing and take notes were not there. He asked staff members to contact them to ascertain the position. They tried to do so but were unable to give him any information. He waited and left the building at 10.55am.

15. On 24 November 2019 he received an e-mail from Mrs Powers re-scheduling the hearing to 26 November at the Hotel at 1.30pm. The chairperson for it was named as Mr Nathan Longthorne. The claimant attended with a companion. Mr Longthorne read out an introduction and asked questions all from a pre-prepared script. He gave no detail of the specific allegations. The claimant handed over written representations and as Mr Longthorne appeared to be only scan reading them, he read them out in full. Mr Longthorne asked him no questions then, reading from a pre-prepared note, thanked him for attending and said he would be informed of the decision that day. The claimant asked if Mr Longthorne would be making the decision. He replied he would not but report to Mr Lyndon Dykes who would. The claimant asked if L-D had transferred the Hotel to LHRS. Mr Longthorne said he did not know.

16. On 26 November the claimant received an email from Mr Lyndon Dykes at 23.36 informing him a decision had been reached and a formal letter would follow but did not say what the decision was. On 30 November the claimant received a letter dated 29 November, on un-headed paper, signed by Michelle Lyndon-Dykes, informing him a decision had been made to dismiss without notice for Gross Misconduct and Gross Negligence.

17. L-D's case **now** is that on 18 October 2019 there was a relevant transfer to LHRS. It denies failure to inform and consult saying there was an initial discussion about potential transfer but the claimant indicated his objection to the transfer of his employment and wished to remain with L-D. As his employment did not transfer on 18 October 2019 there was no need to inform or consult **with him** about the transfer. As a matter of law this is wrong, see Regulation 13 (1) TUPE. L-D denies he was unfairly dismissed saying a full and fair disciplinary process was followed. The gross misconduct wilfully and repeatedly disobeying a direct management instruction not to inform anyone about issues with the gas supply. Those he informed passed that information on allegedly causing significant damage to L-D. It also says he commenced cancelling bookings without any instruction to do so. In effect L-D denies the dismissal falls within Reg 7, see below

18. The assertion **the claimant objected to transferring his employment** to the new owner of the Hotel where he had been manager for nearly 15 years and wished to remain with L-D, a company based on the opposite side of the country which had taken the Hotel into a position of imminent closure, rather than remain at the Hotel under new ownership which might revive its business, **is fanciful**. Even if the new owner intended to be more "hands on" than Mr Lyndon-Dykes and make the claimant redundant, he would have had his redundancy payment, notice and holiday pay from it.

19. If his employer at the date of dismissal was LHRS, the claimant still says L-D should pay compensation of 13 weeks' pay for failure to consult under TUPE. It, having entered a response, is entitled to contest that. **Also, as I made abundantly clear in the notes to my orders in April, he asks for compensation for unfair dismissal, damages for wrongful dismissal etc from LHRS which had never filed a response and still has not replied to any Tribunal correspondence or any from not only this , but other claimants .**

20. Mr Kristofer Walton was appointed a director of LHRS, on 20 December 2019. His correspondence address was the same as the Hotel. He resigned on 17 January 2020.

21. Rule 21 of the Employment Tribunal Rules of Procedure 2013 (the Rules) provides
(1) Where on the expiry of the time limit in rule 16 no response has been presented, or any response received has been rejected and no application for a reconsideration is outstanding, or where the respondent has stated that no part of the claim is contested, paragraphs (2) and (3) shall apply.

(2) An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone.

(3) The respondent shall be entitled to notice of any hearings and decisions of the Tribunal but, unless and until an extension of time is granted, shall only be entitled to participate in any hearing to the extent permitted by the Judge.

22. Employment Judge Aspden decided at an early stage a Rule 21 judgment was inappropriate due to the TUPE issue, and I agree entirely. However, further information which

the parties have been required by to provide provides fuller picture. In an e-mail to the Tribunal of 31 January 2020 a “**Cat Walton**” said she had received a letter about a claim against “The Oak Country Club Ltd” which had never been a respondent. It is shown at Companies House as incorporated on 11 July 2018. Mr Andrew Lyndon-Dykes and Mrs Michelle Ann Lyndon-Dykes, the holder of the sole issued £1 share, have been directors, though not simultaneously. Its registered office address changed from Durham Tees Hotel, formerly the Spa Hotel, Aviation Way, Middleton St George, DL2 1PD to Oak Royal Hotel & Country Club, Bury Lane Withnell Chorley PR6 8SW on 3 March 2019 and to 4 Balfour Street Blyth Northumberland NE24 1JD on 2 March 2020. Ms Walton’s email said “Chapters” and “The Leven” were different companies with new owners “*who are also owners of the Oak Royal Hotel, Chorley*”. By e-mail on 20 February, she wrote “*the Leven*” had never employed the claimant who had “*worked for “Chapters Hotel and Restaurant (Lyndon-Dykes)*”

23. In an e-mail dated 15 April, replying to L-D’s response and the email of 20 February 2020, the claimant denied objecting to transfer, saying he had no knowledge of it, was employed by L-D and “assigned to the organised grouping of resources or employees that is subject to the relevant transfer” so transferred by virtue of Reg 4 to LHRS on 18 October 2019. He said he had documentary evidence of the transfer and a note entitled “statement of undertaking” that appears to be an indemnity given by L-D to LHRS in relation to disciplinary and dismissal matters demonstrating there had been discussions between them regarding ongoing employment disputes.

24. In an e-mail of 16 April, Mr Kris Walton asked to take part in the preliminary hearing I was about to conduct emphasising **he** was not LHRS but kept receiving emails which had nothing to do with “*our company*”. Companies House shows Waltons Hospitality Ltd has a registered office Francis House, Humber Place, The Marina, Hull, HU1 1UD. It was incorporated on **17 February 2020**. Its directors were Catherine and Kristofer Walton. From 20 December 2019 until he resigned on 17 January 2020 Kristofer Walton was a director of LHRS, with Mr Hindmarsh. One email refers to “*Walton’s Hospitality Ltd t/a The Leven*”. Mr Walton said he had been invited by Mr Hindmarsh to become a director of LHRS but had no power in that company. LHRS was running “The Leven”.

25. In my note I reproduced Mrs Walton’s emails of 15 April in full but the salient points are:
*This issue is with Lyndon-Dykes Limited as he was the lease holder until **14th Feb 2020** before being evicted due to none payment (please see attached)*
Since Lyndon-Dykes Limited were evicted from 27 High Street, Stokesley, they continued to use that address for their company and their other hotels. Please see attached a companies house document stating they changed their business address AFTER being evicted.
From your documentation, he employed the Claimant and also dismissed him.
*Any post sent to Lyndon-Dykes Limited or The Leven Hotel, Restaurant & Spa to 27 High Street, Stokesley has been returned to the post office unopened as these businesses **aren’t ours**. This is why no documentation has been replied to*
The email attached a letter from the landlord dated 14 February terminating the lease addressed to “*The Leven (formerly Chapters Hotel)*” but starting “*Dear Mr Andrew Lyndon-Dykes*” .

26. The limited evidence I had seen in April convinced me the case could take 3-4 days if the identity of the employer was disputed. L-D did not appear to be solvent and its latest accounts were overdue. LHRS did not appear to have any capital and had not responded to anything sent to it by the Tribunal. It was **possible** Waltons Hospitality Ltd may be liable to the claimant. It would have been wrong to join it under Rule 34 of the Rules of my own initiative but if the claimant applied it would be considered. I emphasised to Mr Walton I had

no wish to cause him anxiety but if facts were proved which showed the principal reason for dismissal was a desire **on the part of someone** to “offload” the claimant as Hotel manager to make the business more attractive to buyers and Waltons Hospitality Ltd acquired it as the last of a series of transactions, it may be vulnerable. I assured him it would be sent my notes although it was not yet a party and he asked it be emailed to Mrs Walton.

27. Reg 3 TUPE includes:

(1) *These Regulations apply to—*

(a) *a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;*

(2) *In this regulation “economic entity” means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.*

(6) *A relevant transfer—*

(a) *may be effected by a series of two or more transactions; and*

(b) *may take place whether or not any property is transferred to the transferee by the transferor.*

28. Reg 4 of TUPE includes

(1) *... a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and **assigned to the organised grouping of resources or employees** that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.*

(2) *Without prejudice to paragraph (1), ...on the completion of a relevant transfer—*

(a) *all the transferor’s rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and*

(b) *any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.*

(3) *Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of .. employees that is subject to a relevant transfer, is a reference to **a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1), including, where the transfer is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.***

29. Reg 7 includes:

(1) *Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated for the purposes of Part X of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for his dismissal is—*

(a) *the transfer itself; or*

(b) *a reason connected with the transfer that is not an economic, technical or organisational (ETO) reason entailing changes in the workforce.*

30. Case law governs whether or not there is a transfer of an economic entity which retains its identity. The lead case in European Law is Spijkers-v-Gebroeders Benedik Abattoir and in the United Kingdom building on Spijkers is Cheeseman-v-Brewer. One has to look at

whether (i) the type of business remains the same (ii) there is a significant transfer of tangible or intangible assets (iii) the majority of staff are taken on (iv) customers transfer (v) there is a similar activity before and after the transfer (vi) any interruption of the activities is of short or planned duration. It has been decided in a number of cases a short interruption of activities does not prevent there being a transfer eg Landsorganisationen i Danmark-v-Ny Molle Kro, P.Bork International-v-Forenigen Af Arbejdsledere i Danmark. Being employed before any one of a series of transactions leading to a transfer pre supposes there is a series but Forenigen Af Arbejdsledere i Danmark-v-Daddy's Dance Hall is a good example of a planned closure for refurbishment not preventing there being a series. Artificially engineered breaks in the activities are to be disregarded see Longden-v-Ferrari Limited. The Tribunal will disregard criterion (iii) if it concludes the failure to take on staff was designed to prevent TUPE from operating, ECM Vehicle Delivery Service Ltd-v-Cox . **The best examples of an economic entity which retains its identity are pubs and hotels which change hands .**

31. In April I ordered the claimant to inform the Tribunal in writing with a copy to each respondent and Mr Walton whether he wished to apply to add Waltons Hospitality Ltd as a third respondent and, if so, the grounds of his application. He did and it was added by Employment Judge Johnson. The parties were to send a list of all unavailable dates for a 3 day hearing in the period August 2020 to January 2021. A further telephone hearing was to be listed for 90 minutes on the first available date thereafter to decide how best to proceed.

32. The pandemic and other events delayed matters. On 21 September 2020 all parties were notified of a telephone hearing. I had decided to hold it with other claimants and respondents invited to see if together more light could be shed on the situation by considering what everyone had to say. Mr Walton had emailed to say Waltons Hospitality Ltd was no longer trading and was being struck off the Register of Companies. Company searches showed it was still "active", but that did not mean it was trading. Ms Catherine Walton resigned as a director on 31 August 2020 leaving Mr Walton as its sole director.

33. Company searches showed L-D as active but Mrs Lyndon-Dykes as its sole director, Mr Lyndon-Dykes having resigned in April 2020. Its accounts were overdue. LHRs was shown as active and a proposal to have it struck off the Register of Companies was lodged on 28 August 2020 signed by Mr Hindmarsh. On 11 May 2020, MH Hospitality & Leisure Ltd was incorporated. He is its sole director and holder of its one £1 share. It changed its registered office from 27 High Street Stokesley to 31 High Street Stokesley **on 13 July 2020**.

34. Three other claimants participated in the Preliminary Hearing on 25 September: Mr David Fenwick acting in person, Ms Claudia Muniz-Porley and Ms Linda Johnson both represented by Mr McDermott , an experienced CAB Employment law advisor. Mr Fenwick had presented his claim on 7 April 2020 against L-D, Martin Hindmarsh and Kris Walton **personally** but not against LHRs. Mr Hindmarsh presented no response but one was received from Walton's Hospitality Ltd signed by Mr Walton. Mr Fenwick had only been employed since 1 March 2019 as a Business Consultant, so had no right to claim unfair dismissal or a redundancy payment. His account of what staff were told in October did not differ from the claimant's, i.e. Mr Hindmarsh was to be responsible for paying staff wages from 2 December 2019 and Mr Walton was taking over the business to be known as The Leven Hotel. L-D said it transferred the Hotel under TUPE in October.

35. Ms Muniz-Porley, employed from 18 January 2011, presented her claim on 11 July against LHRs and Mr Hindmarsh. Ms Johnson employed since 1 September 2010 presented her claims on 19 August against the same respondents. Both ladies did work involved in the

day to day running of the Hotel. Both said in October 2019 the Hotel was taken over by LHRS the director of which was Mr Hindmarsh. Mr Walton became a director on 20 December 2019 and resigned on 17 January 2020. It was becoming increasingly likely Mr Hindmarsh was the first to “front” the Hotel but Mr Walton was to be providing the money.

36. On 23 March 2020 Ms Johnson and the other members of staff were furloughed. On 1 June 2020 she received a message on the company Facebook group chat from a Mr O’Byrne which stated due the current situation and hospitality future being uncertain the Hotel was closing and the final payment for all staff would be on 7 June 2020. The message finished “**Kris will be making a statement about his company**” Later that day Mr Walton sent a message “*due to the ongoing pandemic and hospitality industry we have taken the difficult decision to **not go ahead with the purchase of the Leven***”. The message was signed by “Kris and Cat Walton”.

37. On 9 June 2020 members of staff were asked to come to the Hotel at 10 am the next day to see Mr O’Byrne and *Nathan* (I assume Nathan Longthorne who had conducted the claimant’s disciplinary hearing on 26 November 2019) and messaged “*all will be revealed tomorrow, no obligation to come but it is recommended*” . It is likely closure was confirmed

38. On **2 July 2020** a friend of Ms Johnson told her she had seen members of staff going into the Hotel. Ms Johnson looked on Facebook saw the Hotel had been refurbished and was now open. Various members of the staff told her Mr Hindmarsh was running the Hotel. On 7 August 2020 Ms Johnson discovered the Hotel had reported she had received a wage which was going to affect her universal credit claim but she had not. She sent a text to Mr Hindmarsh asking why she had been reported as having earnings from the Hotel. **He replied** he had not made any such report and would get his accountant to look into it. Nothing was resolved and Mr Hindmarsh blocked Ms Johnson from sending any more texts. She was unsure if now LHRS or Mr Hindmarsh personally or some other entity was running the Hotel.

39. All parties were notified of the telephone hearing for 25 September 2020. That day Mr Walton emailed to say he would not be able to attend as he had no internet, which he would not need for a telephone call. I ordered all claimants, having regard to extensive notes I send to all parties, to inform the Tribunal in writing how they wish to proceed. If any party asked for a Rule 21 judgment they were to provide a detailed breakdown of the sums they are claiming.

38. On 6 October, Mr Graham representing the claimant applied for (a) Rule 21 judgment against LHRS, in respect of all claims **except** for compensation for failure to inform and consult under TUPE which he intends to pursue against L-D (b) his claims against Waltons Hospitality Limited to be dismissed on withdrawal (c) his remaining claim against L-D be listed for hearing with a time estimate of one day. The claimant recognises LHRS is insolvent and recovery of any part of the judgment can only be anticipated from the Insolvency Service. He therefore limited the amount claimed in the schedule of loss to the basic award, holiday pay and damages for wrongful dismissal, or a compensatory award, equivalent to 12 weeks statutory notice. He requested the Rule 21 judgement be phrased so the split is apparent on the face of it to enable applications to be made to the Insolvency Service in due course.

39. He had lodged objection with Companies House to LHRS being struck off the register and the striking off has been suspended, initially until 1 April 2021, to enable this action to be concluded. The reason he gives for proceeding against L-D only for failure to inform and consult is that it is by no means certain L-D is insolvent. At present its accounts are overdue but it received money from LHRS on transfer of the business which would be available to discharge its obligations. Not only is the claimant entitled to proceed with that claim but also

having regard to the timing of L-D's failures to inform, indeed secrecy, as to what was happening I, and any other Judge who may deal with that hearing would be likely to make that award against L-D anyway. Waltons Hospitality Ltd did not exist until after the claimant was dismissed and although a judgment against it is possible, it is unlikely

40. A limited liability company is an association of one or more human beings which is registered at Companies House. It is a legal **person** in its own right. The people who manage it, Directors, and those who "own" it, shareholders, are not personally responsible for its debts. Having now read, been told and recorded when conducting preliminary hearings, further information, it is obvious what was intended to happen. The Hotel run by L-D was critically insolvent by August 2019. On the brink of closure Mr Hindmarsh, with some financial and operational backing from Mr Walton found enough money to keep it open until it could be bought at a forced sale price. LHRS became transferee from L-D as transferor on 18 October 2019 . Whatever role Mr Lyndon-Dykes continued to play in running the Hotel was probably limited but necessary as he or L-D were tenants and could not assign the lease without landlord's consent. This claimant had been manager of the Hotel for nearly 15 years and was not wanted. Maybe he was not needed if hands on management could be done by Mr Hindmarsh and/or Mr Walton but no-one wanted to pay him redundancy or notice pay.

41. A bogus reason for dismissal and a ludicrous argument that he objected to the transfer were invented as a way to get rid of him without cost. This was an automatically unfair dismissal because the reason for it falls squarely within Reg 7 and the liability passes to LHRS. What happened later does not affect this claimant, though it may do others. None of the people who devised this scheme could have predicted the effects of the pandemic. Mr Hindmarsh and Mr Walton were both involved in the events from February-June 2020 until Mr Walton decided to pull out of the acquisition of the Hotel leaving Mr Hindmarsh to form a new company MH Hospitality & Leisure Ltd to run the refurbished Hotel. As concerns this claimant, it is overwhelmingly likely the liability to pay for his unfair and wrongful dismissal and his untaken annual leave transferred from L-D to LHRS, but no further . It is most unlikely Waltons Hospitality Ltd ever was a transferee.

42. Mr Graham has provided this schedule of loss showing the claimant's weekly gross pay was £447.92. His date of birth is 7 June 1955. His start date of continuous employment was 18 February 2005. His end date was in fact 30 November when he received the dismissal letter. His Statutory Minimum Notice Period was 12 weeks. The only error made by Mr Graham is that for calculation of a basic award because the actual date of termination is extended by s 97(2) by the statutory notice period and becomes 22 February 2020. By that date the claimant had 15 years service so his basic award is a little higher than claimed. As he was over 41 for each of his 15 years so his award is 1.5 weeks per year and $22.5 \times £447.92 = £10078.20$. His holiday pay due was 8.5 days = £761.60 His damages for wrongful dismissal (notice pay) is $12 \times 447.92 = £5375.04$..

**Employment Judge T.M. Garnon.
Judgment authorised by the Employment Judge on 23 November 2020**