



EMPLOYMENT TRIBUNALS

Claimant
Ms Gina Gannon

Respondent
Ms Teuta Bicaku (1st)
Ms Sofia Tombazidou-Crawford
t/a Ivory Dental Clinic (2nd)

v

Heard at: Watford

On: 8 July 2022

Before: Employment Judge Bedeau
Mrs G Bhatt MBE
Mr D Wharton

Appearances

For the Claimant: In person
For the Respondent: Ms S Tombazidou-Crawford

JUDGMENT

1. The claim of failure to inform and consult about a relevant transfer, is not well-founded and is dismissed.

REASONS

1. By a claim form presented to the Tribunal on 10 May 2021, the claimant alleges that the respondents breached the duty to inform and consult, contrary to Regulations 13, 14 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006, "TUPE". The respondents have denied that they breached of the regulations.
2. Oral judgment was given at the conclusion of submissions when the claimant stated that she would like to appeal. We decided to put the judgment in writing.

The issues

3. On the 28 January 2022, at a preliminary hearing, Employment Judge Manley set out the claims and issues. They are as follows:-
 - 2.1 Whether the respondent failed to inform and consult the claimant about a transfer in accordance with regulations 13 and 13A TUPE; and
 - 2.2 If the respondent failed to consult, what is the appropriate level of compensation in accordance with regulations 15 and 16 TUPE?

The evidence

4. We heard evidence from the claimant who did not call any witnesses. On behalf of the respondents, evidence was given by Ms Sofia Tombazidou-Crawford. In addition, the parties produced a joint bundle of documents comprising of 115 pages. References will be made the pages as numbered in the bundle.

Findings of fact

5. Having considered the oral and the documentary evidence, we made material findings of fact.
6. The respondent's ran a dental practice in Howards Gate, Welwyn Garden City. The main practitioner was Ms Sofia Tombazidou-Crawford who started the practice, Ivory Dental Clinic, in 2003. The practice employed four people. There was no employee or union representative.
7. The claimant commenced employment with the respondents on the 26 February 2018. Over time, she was given the title of Manager of the practice and nothing turns on her competence as a Manager.
8. Ms Tombazidou-Crawford was the subject of professional conduct proceedings before the General Dental Council, "GDC". The allegations being that she had engaged in dishonest conduct for a period of a year in relation to the claims submitted to the National Health Service. She attended a hearing before the GDC, on the 25 January 2021. On the 29 January 2021, it was confirmed that the GDC made an order on the 21 January 2021, that she be erased from the register and that registration be suspended immediately.
9. In August 2020, those acting on behalf of another dental practice, Dental Beauty, engaged in some cursory discussions with the respondents with a view to the respondents selling the practice. In December of that year, they enquired of the respondents whether it was possible to conduct DBS checks. At that time Ms Tombazidou-Crawford was going through a particularly difficult period with family issues, the health of her husband and her two children. She also had, at that time, to consider the conduct hearing

scheduled to take place on the 25 January 2021. For some time, she was not assiduous in pursuing the sale of the practice and had not finally decided whether the practice should be sold.

10. Also working in the practice is the other respondent, Ms Teuta Bicaku. She is a dentist and not someone who was managing the practice, that was really the role of Ms Tombazidou-Crawford assisted by the claimant. We were told, however, by Ms Tombazidou-Crawford, that the practice was a partnership.
11. At or around the end of February 2021, after the conduct hearing, it was mooted that Ms Bicaku should consider taking over the business, with Ms Tombazidou-Crawford playing a subsidiary role. The reason being was that they were both reluctant to sell the practice. It was in Ms Tombazidou-Crawford's words "a busy practice with thousands of patients", but Ms Bicaku did not feel confident enough to take over the running of the business.
12. The respondents continued their discussions with those representing Dental Beauty. She had to tell them, as she is legally obligated to do, about being struck off by the GDC. That put Dental Beauty, who was contemplating purchasing the business, in a slightly stronger position. It reduced its offer on more than one occasion. It, however, engaged in due diligence from January to March 2021 and, we find, that even at that stage no date was set for the eventual sale of the business to it. Dates were proposed, the 1 February, the 1 March by Dental Beauty but these were not agreed to by the respondents as they were again still reluctant to sell the practice.
13. We find that on Friday 5 March 2021, both respondents were again discussing whether to sell the business to Dental Beauty or to any other potential suitor. Although reluctant, Ms Bicaku, over the weekend, conceded that she was not able to run the practice. On Monday 8 March 2021, as she was not confident to manage that practice she communicated the decision to Ms Tombazidou-Crawford at or around 2 o'clock that afternoon.
14. From the message sent on 8 March 2021 at 2:22pm, by Mr Dev Patel, of Dental Beauty, he thanked Ms Tombazidou-Crawford for agreeing to get the deal done and invited her to sign the sale purchase agreement and send it back so that they could arrange for the funds to be sent by their lawyers. (page 104 of the bundle)
15. On Tuesday 9 March 2021, after the sale purchase agreement had been signed, Ms Bicaku rang the claimant to say that she and Ms Tombazidou-Crawford would be seeing her and other members of staff later that morning. The transfer was due to take place later in the afternoon after closing time and after the staff finished their shifts.
16. There is a dispute as to when that meeting took place. The claimant believed that the meeting took place on the 10 March 2021 and that it was brief. She said in evidence that she was told that the business had been

sold “last night” by Ms Tombazidou-Crawford. She suspected that the reason for the sale was to do with the fact that Ms Tombazidou-Crawford had lost her practicing certificate as a dentist. The claimant said that she was shocked at the news of the sale and had to go outside for a short while. She was questioned over the date of the meeting being, as she claimed, on the 10 March 2021. Upon being questioned by the Tribunal she conceded that she may have been wrong about the date, and that it is possible it took place on the 9 March 2021.

17. The evidence that the meeting took place on the 9 March 2021, is consistent with the respondents’ account as it was a day that is etched in Ms Tombazidou-Crawford’s memory. She explained the reason for the sale being that she could no longer run the practice as a dentist in light of the GDC’s ruling, and that Ms Bicaku was unable to take it over. She informed them of the identity of the new owner and the date of the transfer, and stated that they should stay with the new owner. She told the Tribunal, and we accepted her evidence, that she said goodbye for the last time to her staff and to the business she had founded in 2003. We also accepted the respondents’ evidence that the meeting was on the 9 March 2021. We further accepted that there was a discussion on the 9 March, with the claimant in the company of Sharon, a dental nurse, about the sale and the reasons for the sale of the practice.
18. Ms Tombazidou-Crawford told us that she was under the impression that Sharon and the claimant were content to work for the new company, Dental Beauty, but the claimant denied that that was the case.
19. Later they contacted another member of staff, Natalia, who was pregnant at the time with her first child, to inform her about the sale. They told the Tribunal that they were under the impression that Natalia too was content to work for the new company.
20. After the meeting with staff, the respondents had a meeting with the new owners when it was agreed that completion would be that afternoon following a telephone to the respondents’ solicitors that afternoon at 4.45pm by Ms Tombazidou-Crawford. That is confirmed in an email which we have been taken to in the bundle. It states that on the 9 March 2021, “I am pleased to confirm that we have completed.” The email is dated the same day and was sent at 5:38 in the evening. (108).
21. In the claimant’s P45, sent by the respondents, it states that her leaving date was the 9 March 2021, effectively the date when the agreement to complete was signed. The suggestion by the claimant that the respondents turned up on the 10 March 2021 to explain the sale is inconsistent with the contemporaneous documentary evidence and it is difficult to envisage a scenario whereby the respondent would turn up the day after completion to conduct its business affairs in the normal way when the business had been sold to another company and that other company owned it from the evening of the 9 March 2021.

22. In an email dated the 7 July 2021, sent at 8:39 in the evening by the respondents' solicitors, it states

“Under the sale and purchase agreement which was agreed between the parties on 8 March 2021 and which was then subsequently entered into on 9 March 2021 the parties acknowledged that the sale of the Practice by the Sellers to the Buyer on completion shall in respect of the transferring of employees constitute a relevant transfer under the TUPEE Regulations.” (90)

23. We, therefore, find that the transfer took place on the 9 March 2021.
24. According to the claimant, she submitted that she should have been told about discussions to do with the sale of the practice much earlier than on 10 March but in reality she must be referring to the 9 March. According to the respondents, it was not a straightforward process selling or deciding to sell the practice. Several issues came into play. There was a reluctance to sell up until the weekend prior to the 8 March. Not sufficient time to inform their staff until the day of the 9 March when matters were going to proceed to a sale and the claimant, and her colleagues, were informed prior to the relevant transfer.

Submissions

25. It is the claimant's case that she and staff were neither informed nor consulted about the transfer until after it had happened, in breach of the TUPE regulations.
26. The respondents submitted that the decision to sell the business was not taken lightly. They did not agree until the weekend before the 8 March 2021. Once they knew that the business would be sold on 9 March, they informed their staff, including the claimant on that day. Accordingly, they did not breach the regulations.

The law

27. Regulation 13 imposes a duty to inform and consult representatives. Regulation 13(2) reads:

“Long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives of any affected employees, the employer shall inform those representatives of

- (a) the fact that the transfer is to take place, the date or proposed date of the transfer and the reasons for it;
- (b) the legal, economic and social implications of the transfer for any affected employees;
- (c) the measures which he envisages he will, in connection with transfer, take in relation to any affected employees or, if he envisages that no measures will be so taken, that fact, and
- (d) if the employer is the transferor, the measures, in connection with the transfer, which he envisages the transferee will take in relation to any affected employees who will

transferee after the transfer by virtue of regulation 4 or, if he envisages that no measures will be so taken, that fact.”

28. Regulation 13A applies to employers employing fewer than 10 employees. It states:

“(1) this regulation applies if, at the time when the employer is required to give information under regulation 13(2) –

- (a) The employer employs fewer than 10 employees;
- (b) there are no appropriate representatives within the meaning of regulation 13(3); and
- (c) you too can the employer has not invited any of the affected employees to elect employee representatives.

(2) the employer may comply with regulation 13 by performing any duty which relates to appropriate representatives as if each of the affected employees were an appropriate representative.”

29. Regulation 13(2) only applies if there is a relevant transfer. Regulation 13(2)(a) states that the employer shall inform the affected employees of the transfer, the date or proposed date of it, and the reasons for it. Other provisions apply.
30. The only time at which the respondents had a definitive date was on the 9 March for the sale. By then staff had been informed in the morning of the potential sale of the business later in the afternoon. There was no earlier time at which staff could have been told. The decision, up until the 8 March, was to delay the sale or to avoid a sale. On 8 March the respondents had decided that they would go ahead with the sale and sign the sale purchase agreement.
31. We are satisfied that the claimant and her colleagues were informed, given the proximity of the sale, about the reasons for the sale and the date of the transfer on 9 March 2021. That the sale was going ahead later that day and that they should consider working for Dental Beauty. They were told the identity of the purchaser and that that company will be their new employer. It was the respondents’ understanding that they all agreed to work for the new company.
32. Tribunal has concluded that the respondents have complied with Regulation 13A TUPE Regulations. The claimant’s claim against the respondent is not well-founded and is dismissed.

Employment Judge Bedeau

Date: 7 October 2022

Sent to the parties on:

12 October 2022

For the Tribunal Office