



EMPLOYMENT TRIBUNALS

Claimants: GMB and others

Respondents: 1. HC-One Limited
2. ADL Liverpool Limited

HELD AT: Manchester **ON:** 7 March 2017

BEFORE: Regional Employment Judge Robertson
(sitting alone)

REPRESENTATION:

Claimants: Ms R Bull, solicitor
1st Respondent: Ms J Hale, consultant
2nd Respondent: Mr D Gordon, consultant

JUDGMENT

1. No order is made in respect of the Unless Order made in these proceedings on 23 December 2016.
2. The second respondent, ADL Liverpool Limited, is joined as a respondent in the proceedings pursuant to the first respondent, HC-One Limited's, notice under regulation 15(5) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 served on 23 January 2017.
3. Case Management Orders for the further good conduct of the proceedings appear below.

CASE MANAGEMENT ORDERS

1. The claimants, the GMB trade union and 65 individuals, pursue complaints under regulation 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 relating to failure to inform or consult under the provisions of regulation 13.
2. The claimants have clarified by way of Further Particulars dated 6 January 2017 that their complaints are that the first respondent, HC-One Limited, should have informed them about measures envisaged by the second respondent, ADL

Liverpool Limited, in respect of a change to the pay date and changes to annual leave.

3. In the claim form the claimants named the second respondent as a party. This created obvious difficulties about the nature of the claims, and at a Case Management Hearing on 9 November 2016, an order was made for the claimants to supply Further Particulars of their allegations against the second respondent. An Unless Order was made on 22 December 2016 for the claimants to comply with the order made on 9 November 2016 by 6 January 2017, otherwise the claim against the second respondent would stand dismissed without further order. This Preliminary Hearing was to decide whether the claimants had complied with the Unless Order such that the claims did not stand dismissed.

4. In the event, it has not proved necessary for me to decide this issue. This is because on 23 January 2017, the first respondent served on the second respondent a notice under regulation 15(5) giving the second respondent notice of its intention to show the fact that it was not reasonably practicable to perform the duty to inform or consult under regulation 13 because the second respondent had failed to give the requisite information in accordance with regulation 13(4). Under regulation 15(5), the effect is that the second respondent becomes a party to the proceedings. The parties are agreed that as the second respondent has become a party by this route, the issue of the Unless Order is otiose. The parties agree that the second respondent is now a party only by virtue of regulation 15(5).

5. The proceedings will therefore continue against both respondents. I record that Mr Gordon, representing the second respondent, has told me that the second respondent's case is that it did not envisage taking any measures at the time it was under the duty to provide information within regulation 13(4).

6. There is also an issue in the case as to whether the individual claimants have the standing to pursue claims in their own right when there was a recognition agreement with the GMB trade union covering them. It may be that there are some claimants who were not within the scope of the recognition agreement, but this is unclear at this stage. I have made a Case Management Order for the claimants to clarify their position in this regard.

7. Finally, I record that Mr Gordon reserves his position as to whether to seek a costs order in respect of the second respondent's costs incurred through, in his view, previously being wrongly joined as a party. He agrees that any application should be made at the end of the proceedings when it is clear what, if any, costs have been thereby incurred.

8. Against this background, I have made the following Case Management Orders with which the parties must comply for the further good conduct of the proceedings.

9. By 31 March 2017, the claimants, except for the GMB trade union, shall either withdraw their individual claims or provide to the Tribunal full particulars of the grounds on which they contend to be entitled to pursue claims in their individual names, having regard to regulation 15(1)(c) of the 2006 Regulations.

10. If there remains any issue as to the entitlement of individual claimants to pursue their claims, the issue will be decided at the full hearing of the claims.

11. Also by 31 March 2017, the claimants shall inform the respondents and the Tribunal what remedy they are asking the Tribunal to award, should the claims succeed.

12. The parties have given disclosure of documents. The second respondent shall provide copies of any documents disclosed in its list of documents within seven days of any request by any other party for copies.

13. The parties shall agree the contents of a single Bundle of Documents for use at the hearing of the claims by 11 April 2017. The parties shall ensure that only relevant documents to which they intend to refer at the hearing are included in the agreed Bundle of Documents. The first respondent by consent shall be responsible for preparing sufficient indexed, paginated and securely bound copies of the agreed Bundle of Documents for use at the hearing and shall provide copies to the other parties immediately it has been agreed.

14. The parties shall prepare and serve written witness statements in respect of all witness evidence to be adduced at the hearing. No witness evidence may be given at the hearing without the leave of the Tribunal, which may be refused, unless a written witness statement in respect of such evidence has been prepared and served in accordance with this Case Management Order. Witness statements shall contain the full and complete evidence of the witness, they shall be page and paragraph numbered, they shall be fully and accurately cross referenced to the agreed Bundle of Documents and they shall be served, not necessarily simultaneously, by 2 May 2017.

15. The hearing of the claims will take place at the **Manchester Employment Tribunal, Alexandra House, 14-22 The Parsonage, Manchester M3 2JA** on the dates I have agreed with the parties, **23 and 24 May 2017**, before a full Tribunal panel, beginning each day at **10.00am** or as soon thereafter as the Tribunal can reach the claims. Because I have agreed these hearing dates with the parties, the Tribunal will now entertain applications for postponement only in the most exceptional circumstances.

Regional Employment Judge Robertson

Date 7 March 2017

JUDGMENT AND ORDERS SENT TO THE PARTIES ON

8 March 2017

FOR THE TRIBUNAL OFFICE