



EMPLOYMENT TRIBUNALS

Claimant

- (1) Mr J Lewis
- (2) Mr K Swan
- (3) Mr M Plant
- (4) Mr A Walker

v

Respondent

- (1) Castle Ceramics Limited
- (2) Secretary of State for BEIS

PRELIMINARY HEARING

Heard at: Birmingham

On: 27th February 2017

Before: Employment Judge Choudry

Appearances

For the Claimant: Mr Paul Roberts - Solicitor

For the First Respondent: Mr James Boyd – Counsel

For the Second Respondent : Mrs Mills - Solicitor

JUDGMENT

The First Respondent's application for an extension of time to present a response in accordance with rule 20 of the Employment Tribunal Rules 2013 is granted.

REASONS

Note: Reasons for the decision having been given orally at the hearing, written reasons will not be provided unless a written request is received from either party within 14 days of the sending of this record of the decision.

CASE MANAGEMENT SUMMARY

1. The Claimants brought complaints of unpaid wages, notice pay, redundancy pay, holiday pay, compensation for unfair dismissal and failure to inform and consult. The Respondents defend the claims. The Claimants were employed by Castle Ceramics (Dental Laboratory) Limited which entered into administration on 30th

**Case Number: 1300031/2017
1300032/2017
1300033/2017
1300034/2017**

September 2016. On the same day the claimant's employment transferred to the First Respondent pursuant to The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").

2. By a letter dated 17th February 2017 the Second Respondent sought to join Castle Ceramics (Dental Laboratory) Limited as a respondent, because the company was the Claimants' former employer and the Second Respondent is not and has never been the Claimants' employer, but is acting as statutory guarantor for Castle Ceramics (Dental Laboratory) Limited.
3. However, much of the matters about which the Claimants complain are in respect of matters which occurred post 30th September 2016 when their employment had transferred to the First Respondent, which is not an insolvent company. As such I asked Mr Roberts as to whether the Second Respondent needed to be a part of the proceedings. However, Mr Roberts indicated that he had thought very carefully about which respondents to bring his claims against and Regulation 8(3) of TUPE enabled him to bring claims against the Second Respondent from whom he was seeking payments in lieu of notice and holiday pay for the Claimants.
4. After giving the parties some time to consider the position in relation to whether it was necessary to join in Castle Ceramics (Dental Laboratory) Limited and the position of the Second Respondent it was clear that there were differing views in relation to operation of Regulation 8(3) which would not be able to be resolved during the case management hearing. As such the parties were ordered to serve on each other and the Tribunal by **13th March 2017** written submissions on whether Regulation 8(3) operates so as to fix liability for notice pay and holiday pay upon the Second Respondent. In addition, these submissions should also include representations as to whether Castle Ceramic (Dental Laboratory) Limited should be joined as a respondent and, if not, why not.
5. The matter would then be listed for a further preliminary hearing to deal with this issue and for the issuing of case management orders.

Employment Judge Choudry

10/04/2017

Sent to the parties on:

26/04/2017

For the Tribunal:

C Campbell