



EMPLOYMENT TRIBUNALS

Claimant: Mr M Mousa

Respondents: 1. RCP Parking Limited
2. National Car Parks Limited

HELD AT: Manchester **ON:** 19 September 2017

BEFORE: Employment Judge Sherratt

REPRESENTATION:

Claimant: Mr J Jenkins, Counsel
1st Respondent Mr Chapman, Advocate
2nd Respondent: Ms J Hale, Solicitor

JUDGMENT having been sent to the parties on 25 September 2017 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. The claimant's claim has issues under the Transfer of Undertakings (Protection of Employment) Regulations 2006. Those issues were recognised in a preliminary hearing before Employment Judge Holmes on 22 June 2017, and he made provision for this preliminary hearing.

2. I have heard evidence from the claimant, from Mr Watling of the first respondent and from Ms Holt of the second respondent. Each advocate has had the opportunity to cross examine each witness. I have also been provided with a bundle of documents containing in the region of 200 pages. Each advocate has also made submissions and it is taking into account all that I have seen and heard that I reach the following conclusions:

- (a) Was there a relevant transfer of an undertaking and if so when? The parties eventually agreed that there had been a relevant transfer on 22 November 2016, and that the transfer was a service provision change under regulation 3(1)(b)(ii) of the 2006 TUPE Regulations.
- (b) If a relevant transfer did take place, was that transfer between the first and second respondents? Again the parties have agreed that this was

the case. The transfer was in relation to the management of the Store Street car park in Manchester, owned by a third party - Ballymore Group Limited.

- (c) Was there an organised grouping of employees whose principal purpose was carrying out the activities that were so transferred from the first to the second respondent? Counsel for the first respondent submitted that one person can be an “organised grouping”. Neither of the other representatives disagreed with this submission, so the claimant has the potential to be in his own right an “organised grouping”.

The Facts

3. Mr Mousa had worked for some considerable time for the first respondent and its predecessors at Gateway House car park in Manchester. On 22 August 2016 for operational reasons the first respondent decided to move the claimant to another Manchester car park known as Crown Gate. The claimant objected to that and as a result of his objection there was a grievance meeting. The outcome was communicated to the claimant in an email on 23 September 2016, sent at a time when the claimant was on holiday, and we know that it was received by him not necessarily on 23 September but within a few days thereafter when emails were available to the claimant to receive. The 23 September email told the claimant:

“I have considered your request to move from Crown Gate and it has been agreed the following will take place:

- Return to work on Friday 30 September 2016 to Crown Gate (use this day to collect all your personal items).
- On Monday 3 October 2016 you are to report to Store Street surface car park until further notice. Please be aware that you will be required to open Gateway House every morning at 06:00 hours.”

4. Gateway House was the car park the claimant moved from. It was within 50 metres or so of Store Street. His responsibility at Gateway was to unlock at 06:00. I have not been told of the claimant having any other obligations there.

5. Around this time on 26 September 2016 the first respondent received notice to terminate its agreement to manage the Store Street car park. That notice did not indicate to whom the operation of the car park would be transferred. The first respondent, I am told and there is no evidence to the contrary, received this information as a shock, not realising that the car park was up for tender or that anyone else was interested in it, therefore it would appear that on 23 September 2016 in good faith the first respondent made a decision to move the claimant to Store Street, not knowing that Store Street was about to be lost from their estate.

6. The claimant having been told, he moved to Store Street from 3 October 2016 and within the bundle the rosters are provided. The first one of those at page 180 has the claimant working at Store Street from 06:00 until 18:00 from Monday 3 October 2016 to Friday 7 October 2016. There is space for two operatives at Store Street on the rota and there is only one; the other space is spare. The rota does not

envisage the claimant working anywhere other than Store Street 12 hours a day, five days a week. The rota does not have anyone specifically working on Saturday and Sunday. I am told that the supervisor who lives fairly close by would go round various car parks of the first respondent in the Manchester area at the weekend doing whatever car park supervisors do.

7. The rosters thereafter show the claimant consistently working at Store Street from 06:00 to 18:00 12 hours a day Monday to Friday until the week commencing Monday 21 November 2016 when the roster has the claimant working on Monday 21 and Tuesday 22, and on Wednesday 23 it says "site handed over". That was the expiry of the two months' notice, and on that date the claimant having previously had some consultation started to work for the second respondent who had not at any time indicated that they did not believe the claimant should come to them under the TUPE regulations.

8. There was some question as to whether the second respondent knew about the claimant when they were putting in their bid for the site, but that is not a matter for me.

9. On the basis of that evidence it seems to me that looking at questions (c) and (d) together: "Was there an organised grouping of employees whose principal purpose was carrying out the activities that were so transferred from the first to the second respondent and if so was the claimant assigned to that organised grouping of employees?", it seems to me based on the intimation to the claimant as to where he would be working that he was the organised grouping of employees with the principal purpose of carrying out the car parking activities at Store Street. He was there before the transfer and it would appear he continued there afterwards or would have done had the second respondent not taken steps to speak to him with a view to taking measures following the transfer of the undertaking.

10. It seems to me the claimant was assigned to the organised grouping; he was so assigned immediately before the transfer for the purposes of regulation 4(3) of TUPE 2006, and that his employment transferred from R1 to R2 on 22 November 2016.

Employment Judge Sherratt

4 October 2017

REASONS SENT TO THE PARTIES ON

9th October 2017

FOR THE TRIBUNAL OFFICE