



EMPLOYMENT TRIBUNALS

Claimant: Mr M Mousa

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

HELD AT: Manchester

22 November 2017
(in Chambers)

BEFORE: Employment Judge Sherratt

REPRESENTATION Written representations were received from all parties

RESERVED JUDGMENT ON COSTS

The judgment of the Tribunal is that:

1. The second respondent shall pay to the claimant the sum of £1,483.20 in respect of costs in connection with the preliminary hearing held on 19 September 2017.
2. The second respondent shall pay to the first respondent the sum of £1736 in respect of costs in connection with the preliminary hearing held on 19 September 2017.

REASONS

1. At a preliminary hearing on 23 June 2017 Employment Judge Holmes listed a further preliminary hearing on 19 September 2017 to determine a number of preliminary issues concerning TUPE.
2. Employment Judge Holmes provided for disclosure of relevant documents, inspection, the preparation of a bundle and then for the serving of witness statements by way of preparation for that hearing.

3. At the preliminary hearing on 19 September 2017 in a judgment with reasons given orally and sent to the parties on 4 October 2017 I found that there had been a relevant transfer of an undertaking from the first respondent to the second respondent on 22 November 2016 and on that date the claimant's employment transferred from the first respondent to the second respondent.
4. The claimant and first respondent have both applied for an order for costs against the second respondent.
5. The claimant asserts that the defence of the second respondent that there was no TUPE transfer had no reasonable prospect of success.
6. The first respondent argues that the second respondent's position not only had no reasonable prospect of success but also that to continue to argue the preliminary issues was vexatious and unreasonable, and so all costs in relation to preparation for and attendance at the preliminary hearing on 19 September 2017 should be recovered from the second respondent.
7. Looking at the minute of the preliminary hearing before Employment Judge Holmes on 22 June it is recorded that the claimant's representative was not opposed to the second respondent's idea of the preliminary hearing, although did question whether there would be a significant saving of time, and Ms Howes for the first respondent could see how it may be appropriate for such a determination to be made.
8. In the circumstances outlined by Employment Judge Holmes it does not seem to me that the second respondent acted unreasonably or was raising an issue with no reasonable prospect of success in the first preliminary hearing.
9. Following the exchanging of copy documents, the provision of the hearing bundle and the serving and perusal of the witness statements it seems to me that it should have become apparent to the second respondent that the claimant was assigned to the car park which was the subject of the transfer based upon the emails between him and the first respondent, and the work rotas provided by the first respondent.
10. In these circumstances I conclude that following perusal of the witness statements it should have been apparent that the second respondent's contention at the preliminary hearing, as set out in its response, had no reasonable prospect of success and so it is appropriate for the second respondent to pay the costs of the claimant and the first respondent in respect of attending the preliminary hearing on 19 September.
11. As to those costs, the claimant has provided a schedule and by way of summary assessment it seems to me that I should allow two hours at the guideline hourly rate of £118 per hour which is £236 in respect of the preparation by the solicitors for the hearing together with the sum of £1,000 in respect of counsel's fee for the hearing, which together totals £1,236 plus VAT at 20% which is £247.20 making a grand total of £1,483.20.

12. In respect of the costs of the first respondent I am prepared to allow the grade 1 fee earner who prepared for and attended the final hearing eight hours at the guideline hourly rate of £217 which comes to £1,736 but with no addition for VAT on the basis of my assumption that the first respondent is registered for VAT. If it is not then I will be prepared to reconsider this aspect of my judgment.

Employment Judge Sherratt

23 November 2017

JUDGMENT AND REASONS SENT TO THE PARTIES ON

24 November 2017

FOR THE TRIBUNAL OFFICE