



## EMPLOYMENT TRIBUNALS

**Between:**

Mr S Hussain  
**Claimant**

**and**

1. Safeguard Group Services Ltd  
(In compulsory liquidation)
  2. Safeguard Security Group Ltd  
(In voluntary liquidation)
  3. Secretary of State for Business,  
Energy and Industrial Strategy
- Respondents**

### At a Hearing

**Heard at:** Nottingham

**On:** Thursday 19 July 2018

**Before:** Employment Judge P Britton (sitting alone)

**Representation**

**For the Claimant:**

In person

**For the 1<sup>st</sup> Respondent:**

No appearance

**For the 2<sup>nd</sup> Respondent:**

No appearance

**For the 3<sup>rd</sup> Respondent:**

Written representations

## JUDGMENT

1. These proceedings are stayed for 6 months to enable the Claimant to make contact with the Official Receiver at Chatham obtain a copy of the court order viz R1 and then make application to the relevant court and obtain consent to continue.

2. Croner Group Ltd is to provide by seven days from the date of the issue of this judgment the explanation required at paragraph 8 of these reasons.

## REASONS

**Summary of the position to date**

1. In essence, the reason for this hearing today was to determine who was the Claimant's employer at the relevant time in terms of R1 or R2. There has already been a significant history in this case linking to 2601873/16: the claim

**Case No: 2600468/17**

originally brought by the Claimant against Securitas Security Services UK Ltd. In respect of that case as at 6 April 2017, my colleague Employment Judge Camp held that there was no transfer (TUPE). In terms of any wages the Claimant may have been owed by Securitas, the matter was in fact settled by way of a COT3 via ACAS.

2. On 25 May 2017, the Claimant brought case number 2600468/17 initially against the first Respondent (R1) Safeguard Group Services Ltd (SGS). This was a claim for notice pay; a statutory redundancy payment and outstanding holiday pay. The essential scenario being as to whether or not post the going into voluntary liquidation of the second Respondent (R2) Safeguard Security Group Ltd (SSGL), he in fact continued to be employed by SGS at Wards Recycling between about the middle of June 2016 and circa 2 August 2016.

3. On that issue, this Judge held an attended preliminary hearing on 21 July 2017. He allowed the claim to proceed having found it was not reasonably practicable to have brought it within the usual time limit. He thence ordered the joinder of SSGL and third in due course he ordered the joinder of the Secretary of State (R3) in terms of what might be his obligations to make payments to the Claimant out of the Insolvency Fund. R3 filed a response essentially being that it would appear that the claimant was not employed by R2 at the material time. Of course if as per the judgment of EJ Camp there was no TUPE at the material time to Securitas, this would leave R1 as the employer.

4. On the 4 December 2017 following the first Response (ET3) of R3, Ian Dronsfield, the Liquidator for SSGL, supplied a signed statement to this tribunal. Suffice it to say that in terms of the contents thereof, it appears clear that at the material time the Claimant was in fact an employee of SGS.

5. Albeit the Secretary of State sought to resist that possible conclusion by way of further representations, it seems to me that in terms of the documentation that Mr Dronsfield appended to the statement it is clear that in fact my analysis is correct. This would therefore have meant for the purposes of today, that thus liability would fall upon SGS to pay the Claimant his statutory entitlement to notice pay, redundancy and outstanding holiday pay.

6. Insofar as I would therefore have made that finding, I would then have made plain that in terms of the redundancy element, section 166 of the Employment Rights Act 1996 would apply and thus the Claimant could make application to the Secretary of State for payment from the Insolvency Fund. Under that provision R1 (SGS) does not have to be formally insolvent for payment to be made unlike payments for such as statutory notice pay or outstanding holiday pay where pursuant to s184 R1 does have to be insolvent in which case payment is usually made from the Insolvency Fund.

7. However I was then prompted to undertake a further company search following Croner Group Ltd informing the Tribunal on 16<sup>th</sup> July that it was no longer acting for R1. It turns out that R1 is now in compulsory liquidation via the Official Receiver at Chatham. The OR petitioned for the compulsory liquidation on 30 October 2017 and the winding up commenced on 27 June 2018.

8. When Croner Group Ltd came off the record as acting for SGS on 16 July 2018, it did not say this had happened, hence why this Judge was unaware until he undertook his final research this morning. Mr Hussain of course has had a wasted trip because he did not know either. I can only say that I find it regrettable that Croner Group Ltd could not at least inform the tribunal of that fact if they knew of it and I now require a written explanation from it. If it fails to do so then I will consider making a wasted costs order in terms of today.

9. Be that as it may, what it means is that as a matter of law I cannot proceed today as the Claimant first needs leave of the court that made the winding up order. Thus what he will have to do is to make contact with the Official Receiver at Chatham, obtain a copy of the court order and then make application to the relevant court for leave to continue and an adjudication then be given in that respect. In the circumstances, I have no choice but to stay these proceedings for 6 months in order for that to happen.

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Employment Judge P Britton

Date: 19 July 2018

JUDGMENT SENT TO THE PARTIES ON

23 July 2018

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