



EMPLOYMENT TRIBUNALS

Claimant: Miss D Flawn

Respondents:

Cycle Specific Limited (In Creditors Voluntary Liquidation) (R1)

Tri-Specific Limited (R2)

Dylan Morris trading as Tri-Specific (R3)

AT AN ATTENDED HEARING

Heard at: Nottingham **On:** Thursday 29 November 2018

Before: Employment Judge Hutchinson (Sitting alone)

Representatives

Claimant: In person

Respondent: R1 No appearance

R2 No appearance

R3 Mr W Haines (Croner Consulting)

JUDGMENT

The Employment Judge gave judgment as follows;

The Judgment issued on 15 October 2018 is hereby revoked.

REASONS

Background and issues

1. The Claimant presented her claim to the Tribunal on 27 June 2018. She said that she had been employed as a Manager and Cycle Coach between 29 March 2016 and 29 June 2018. She claimed; -

- Unfair dismissal
- Arrears of wages
- Failure to consult on TUPE transfer

2. There were originally only 2 Respondents being Cycle Specific Limited and Tri-Specific Limited and in respect of Cycle Specific Limited, she provided 2

addresses of that company, one in Chesterfield and one in Cross Hands, Dyfed. These claims were acknowledged and served on the Respondents on 16 July 2018. The hearing was set for Monday 19 November 2018 and case management orders were made.

3. By an email of 18 July 2018, the Claimant said that she would like to add a further Respondent being Dylan Morris, trading as Cycle Specific.

4. Cycle Specific Limited had commenced proceedings for a creditors voluntary liquidation on 3 May 2018 and Dylan Morris was a Director of both that company and Tri-Specific Ltd.

5. The proceedings were re-served on the insolvency practitioner who had been appointed to deal with the creditors voluntary liquidation on Cycle Specific Limited and on Mr Morris. This was done on 10 August 2018. Further case management orders were made in respect thereof.

6. The date for filing an ET3 by Mr Morris was 7 September 2018.

7. In a letter from the Claimant dated 19 July 2018, the Claimant explained the basis of her claim for unfair dismissal, failure to consult re a TUPE transfer and lost wages.

8. On 10 August 2018 my colleague, Employment Judge Britton, caused an administrator to write to the Claimant with copies to the Respondents about a possible transfer of the case to Cardiff because it appeared that all the parties were based in Wales.

9. Miss Flawn wrote to the Tribunal 15 August 2018 to say that she agreed to the transfer of the claim to Cardiff but we heard nothing at all from the Respondents.

10. As no ET3 had been filed by the due date, I issued a Judgment in respect of the claim. In particular; -

10.1 I gave Judgment that all the Respondents should be liable to pay compensation to the Claimant in the sum of £4,252.04 because they had failed to consult in accordance with their obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE")

10.2 The Claimant had been dismissed in breach of contract in respect of notice and the second Respondent, namely Tri-Specific Limited should pay compensation of £567.68

10.3 That the Claimant had been unfairly dismissed and the second Respondent should pay the Claimant compensation totalling £3,101.68.

11. That Judgment was sent out on that day and on 17 October 2018 we received a letter from Croner who said that they were acting for, what they described as the third Respondent. Attached to that letter was an ET3 filed in the name of Tri-Specific Limited. The ET3 said that the correct name of the Claimant's employer was in fact Dylan Morris who traded under the name of Tri-Specific.

12. They said that the Claimant had been dismissed by reason of redundancy

and denied that the dismissal was unfair or that they had failed to inform and consult in accordance with their obligations under the TUPE regulations.

13. With that letter was also evidence that the Respondents had filed a response to the allegations at Cardiff on 28 August 2018. The Respondents had heard nothing from Cardiff and believed that their ET3 had been accepted.

14. The application was made under Rule 70 of the Employment Tribunal Rules. It said that it would be in the interests of justice to reconsider the Judgment and would be in accordance with the overriding objective. The Claimant could still pursue her claim and the impact on her would be proportionately far less than upon the Respondent if the Respondent were not able to contest the case at all.

15. It was also said in that letter that if the Judgment was to be reconsidered then the Respondent would like to further apply for the claim to be struck out under Rule 37 1B of the Employment Tribunal Rules. They said that they believed that the Claimant had deliberately tried to mislead the Respondent, making a mockery of the Tribunal process and as such, had acted scandalously and completely unreasonably in her conduct of these proceedings. After discussion with Mr Haines he agreed not to pursue his application for a strike out of the Claimant's claims.

16. At the hearing today, I discussed this matter with the Claimant and with Mr Haines, Consultant for Croner's. Upon further reflection, the Claimant agreed that in fact after Cycle Specific Limited went into creditors voluntary liquidation, her employment continued with Dylan Morris trading as Tri-Specific and that the name of the third Respondent should be amended accordingly.

17. She also confirmed that she had been paid both her redundancy pay and her notice pay.

18. We all agreed there should in fact be three named Respondents, namely; -

18.1 Cycle Specific Limited (In creditors voluntary liquidation)

18.2 Tri-Specific Limited

18.3 Dylan Morris trading as Tri-Specific

My conclusion

19. In view of all the above, I was satisfied that it would be in the interests of justice to reconsider the Judgment I gave on 15 October 2018. The Judgment is made against the wrong Respondent in respect of the claim of unfair dismissal and breach of contract. The breach of contract claim is withdrawn and the Claimant has received redundancy pay and so she is not entitled to a basic award.

20. I am satisfied that there should be a hearing to determine; -

20.1 Whether the Claimant was consulted in accordance with the Respondents obligations under the TUPE Regulations

20.2 Whether the Claimant was unfairly dismissed

20.3 If she is successful with these claims, I will need to determine what compensation she is entitled to.

Listing the hearing

21. The claim will be heard by an Employment Judge sitting alone (preferably myself) at the **Tribunal Hearing Centre, 50 Carrington Street, Nottingham, NG1 7FG on Wednesday 23 January 2019 at 10:00 am** or as soon thereafter on that day the Tribunal can hear it. One day has been allocated to hear the evidence and decide the claim. Unless there are exceptional circumstances a request for postponement or an extension to the hearing length will not be considered.

Case management orders

Made pursuant to the Employment Tribunals 2013

1. The names of the Respondents to the proceedings are amended as follows;

First Respondent - Cycle Specific Ltd (In Creditors Voluntary Liquidation)
Second Respondent- Tri-Specific Ltd
Third Respondent- Dylan Morris T/A Tri-Specific

2.. The Claimant and the Respondent shall send each other a list of any documents they wish to rely on at the hearing or which are relevant to the case by **14 December 2018**.

3. The Claimant shall send to the Respondent a copy of any of her documents if requested to do so by **21 December 2018**.

4. The Respondent shall prepare an agreed bundle of documents that will be tagged, indexed and paginated. The documents will be in a logical order. The Respondent will send a copy of the bundle to the Claimant by **4 January 2019**.

5. The Claimant and the Respondent shall prepare full written statements of the evidence they and their witnesses intend to give at the hearing. No additional witness evidence may be allowed at the hearing without permission of the Tribunal. The witness statements shall have numbered paragraphs. The Claimant and the Respondent shall send the written statements of their witnesses to each other by **18 January 2019**.

6. The parties will bring with them to the hearing 2 copies of each of their witness statements and the Respondent will also bring 2 copies of the agreed bundle of documents for use at the Tribunal hearing by **9:30 am** on the morning of the hearing.

NOTES

(i) **The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.**

- (ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.
- (iii) The Tribunal may also make a further order (an “unless order”) providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.
- (iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on ‘General Case Management’:
<https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf>
- (v) The parties are reminded of rule 92: “*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of “cc” or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*” If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

Employment Judge Hutchinson

Date 30 November 2018

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE