



EMPLOYMENT TRIBUNALS

Claimant

Mr MO Al Awad

v

Respondent

(1) Embassy of the Kingdom of Bahrain

(2) Close Circuit Security Organisation Ltd

PRELIMINARY HEARING

Heard at: London Central Employment Tribunal

On: 24 January 2019

Before: Employment Judge JL Wade

Appearances:

For the Claimant: Ms Aly (Counsel)

For the First Respondent: Not present or represented

For the Second Respondent: Not present or represented

JUDGMENT

1. There was a relevant transfer of a service provision from the first to the second respondents on 1 May 2013 as defined by rule 3 of the TUPE regulations 2006 and the claimant was assigned to the organized grouping of employees that was subject to the relevant transfer (regulations 4(1) & (3)).

2. The claimant's claim that he was automatically unfairly dismissed by reason of regulation 7 may proceed to a hearing.

3. The claim that there was a failure to inform and consult under regulations 13 and 15 may also proceed to a hearing.

REASONS

1. Neither respondent attended the hearing. It had been listed following a telephone preliminary hearing on 2 October 2018 and the notice of hearing was sent to the parties on 9 October 2018.
2. The second respondent was sent an order to disclose information on 10 January 2019 but did not comply and did not contact the tribunal or the claimant with an explanation.
3. This failure to engage is part of a pattern as nothing has been heard from the second respondent since 2016, and their solicitors are no longer instructed.
4. I am satisfied that the second respondent was served at its registered office and had notice of the hearing, which it could have attended had it chosen to do so.

The facts

5. The facts relevant to this preliminary issue are as follows:
 - 5.1 The claimant worked for the first respondent from 2008 and signed a contract in 2009. It was not a fixed-term contract.
 - 5.2 He worked as a security guard covering 24 hour shifts. He is SIA trained and his duties included all the normal security guard duties.
 - 5.3 He was not subject to any disciplinary proceedings and his performance was satisfactory.
 - 5.4 On 1 March 2013 he was told that he was being dismissed, and on 13 March. He received a letter from the first respondent, saying that “we hereby inform you that we have terminated your contract as of the 1 May 2013. We thank you for your efforts and your dedication during the years of service at the cultural office”.
 - 5.5 The claimant’s last day at work was 30 April 2013 and on 1 May contractors supplied by the second respondent started work.
 - 5.6 The second respondent resists the claim on the basis that there was a change in activity from 1 May 2013, and therefore no TUPE transfer, but that was not correct. A professional service was operated in-house by SIA trained security professionals on a 24-hour basis, both before and after 1 May 2013

Conclusions

6. The claimant was part of a service provision, which was the security guards at the cultural office. This was an organised grouping and their activity was the same both before and after the transfer. Therefore, the TUPE regulations apply.

7. His employment did not transfer to the second respondent because he was dismissed at the point of transfer, but under regulation for the second respondent acquires liability for the first respondent's infringements of TUPE.

8. This judgement entitles the claimant to progress his claim of unfair dismissal. His primary argument is that the only or principal reason for his dismissal was the transfer which would mean that he was automatically unfairly dismissed under regulation 7. This claim is not defended on the basis that there was an economic, technical or organisational reason for the dismissal.

9. The claimant argues in the alternative that the dismissal was "ordinarily" unfair or a redundancy for which she did not receive redundancy pay.

10. These claims are all set out in the amended ET1 of 30 September 2015. The issues are:

1. Was the transfer the only or principal reason for his dismissal?
2. If so does the liability of the first respondent transfer to the second respondent by reason of Regulation 4(2)(a)?
3. Was there a failure to inform and consult under regulation 13 for which, by reason of regulation 15(9) the second respondent is jointly and severally liable.

11. I would ordinarily list a hearing to determine these issues, but since the respondent has declined to participate in the proceedings for such a long time, I have issued a strike out warning which may result in the response being struck out and judgement entered without a further hearing.

ORDERS

1. **By 8 February** the claimant is to serve upon the respondents a revised and updated schedule of loss.

Employment Judge Wade

4 February 2019

Sent to the parties on:

6 February 2019

For the Tribunal: