



# EMPLOYMENT TRIBUNALS

**Between:**

**Mr C Gama**                      **and**                      **R1: Guardian Security Group Limited**  
**R2: Impact Services (Northern) Limited trading as**  
**Impact Security Solutions**

**Heard at:**     Leeds

**Before:**        Employment Judge Cox

**On:**             6 March 2019

**Representation:**

Claimant:                      Did not attend and was not represented  
First Respondent:            Did not attend and was not represented  
Second Respondent:        Miss Lea, Human Resources Manager

## JUDGMENT

1. The Second Respondent's name is amended to Impact Services (Northern) Limited trading as Impact Security Solutions.
2. The claim of unauthorised deduction from wages against the First Respondent fails and is dismissed.
3. The claim of unauthorised deduction from wages against the Second Respondent succeeds.
4. The Second Respondent shall pay the Claimant £1,890 in respect of that unauthorised deduction.

## REASONS

1. Mr Gama presented a claim to the Tribunal alleging that the First Respondent had not paid him for 22 days' work at 12 hours a day. From the monthly wage figure he supplied on his claim form, it appeared that his hourly rate of pay was £7.50.
2. The First Respondent defended the claim on the basis that it had never been Mr Gama's employer and there had in any event been a transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to Impact Security. The Second Respondent was joined as a Respondent to the claim on that basis. In its response, the Second Respondent said that it had become Mr Gama's employer after winning a new contract for the provision of security services with effect from 1 April 2018 and that it had then found out that the First Respondent had not paid the staff that were transferred their March 2018 wages.
3. The First Respondent did not attend the Hearing or submit any evidence. Mr Gama did not attend the Hearing either, but he did send in some documents for the Tribunal to consider, including his rota for March 2018. This confirmed that he was scheduled to work on 21 days in March. The Tribunal accepted that evidence as confirming that he worked 21 days in March. Neither Respondent challenged his assertions in his claim form that he worked 12-hour days for a wage of £7.50 an hour and that he had not been paid. The Tribunal therefore accepted that Mr Gama was owed  $21 \times 12 \times £7.50 = £1,890$  for his work in March and that an unauthorised deduction of that amount had been made from his wages.
4. The Second Respondent did attend the Hearing. The Tribunal accepted the oral evidence it heard from Miss Lea, the Second Respondent's Human Resources Manager, and Mr Burrow, its Operations Manager, that until 31 March 2018 the First Respondent had held a contract to provide security services for Brakes, a food supplier and distributor, at warehouses in Warrington, Hemsworth and Grantham. Mr Gama worked at the Grantham site. He had initially been employed by Safeguard Group Services Limited. The Tribunal accepted, however, that by March the First Respondent had become the contractor providing security services at these Brakes sites and Mr Gama's employer. The Tribunal based this conclusion on documentary evidence supplied by the Second Respondent. A letter from Mr Lynn, Operations Director of Safeguard Group Services Limited dated 21 February 2018, which appeared to have been sent to Safeguard's employees, confirmed that Safeguard Group Services had sold its customer base to the First Respondent. Sales invoices addressed to Brakes for security services at the Grantham site were issued by Safeguard Group Services in January 2018 but by the First Respondent in February and March.

5. Brakes terminated its contract with the First Respondent with effect from 31 March and on 1 April the Second Respondent took it over. The First Respondent's employees who had worked at the sites covered by the contract, including Mr Gama, continued to work for the Second Respondent without interruption. The Tribunal was satisfied that this amounted to a relevant transfer by way of a service provision change under Regulation 3(1)(b)(ii) TUPE from the First Respondent to the Second Respondent on 1 April 2018. The Tribunal accepted that Mr Gama was one of the employees who was assigned to the organised grouping of employees that was subject to that transfer, as he was assigned to work at the Grantham site and was included in the employee liability information provided to the Second Respondent under Regulation 11 TUPE prior to the transfer. As a result of Regulation 4(2)(a) TUPE, the First Respondent's liabilities towards Mr Gama, including its liability for his unpaid wages for March, transferred to the Second Respondent on the date of the transfer, 1 April 2018.
6. In summary, the Tribunal concluded that the First Respondent had made an unauthorised deduction from Mr Gama's wages for March. Liability for those wages had, however, transferred to the Second Respondent under TUPE. Mr Gama's claim against the First Respondent was therefore dismissed and his claim against the Second Respondent was upheld.

Employment Judge Cox

Date: 6 March 2019