

Case Numbers: 1403554/2018
1403560/2018
1403586/2018
1403587/2018
1403625/2018
1403630/2018



EMPLOYMENT TRIBUNALS

Claimants

- (1) Mr R Cooper
- (2) Mr J Taviner
- (3) Mr S Collinson
- (4) Mr R Day
- (5) Mr AL Voysey
- (6) Mr M Williams

v

Respondent

Secretary of State for Business,
Energy and Industrial Strategy

OPEN PRELIMINARY HEARING

Heard at: Bristol (by telephone)

On: 9 April 2019

Before: Employment Judge Livesey

Appearances

For the Claimants: All in person save Mr Taviner who was represented by his son

For the Respondent: Did not attend

JUDGMENT

1. All remaining claims are struck out as they have no reasonable prospects of success under rule 37 (1)(a).

REASONS

The claims

1. By claim forms presented on 2, 4 and 5 October 2018 the Claimants brought various complaints of breach of contract (relating to notice), redundancy payments, unlawful deductions from wages, accrued but unpaid holiday pay and, in two cases, compensation for worry and stress which the Respondent has defended.

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Background

2. These claims concern the balance of judgment sums secured by the Claimants in earlier proceedings (Case No. 1400510/2017 and others).
3. In summary, the Claimants were all employed by Suprema Concepts Ltd in 2008. Suprema manufactured furniture, primarily for the dental healthcare sector. It operated from industrial units in Erdington, Somerset. In February 2012, their employment transferred to Class Creations Ltd.
4. In July 2016, Mrs Peebles Brown, the Managing Director of Class Creations, entered into an agreement with LCG Ltd with a view to it purchasing the business. In August, Mrs Peebles Brown informed the Claimants that she had sold the company's *name* only and that it was then debt free. The same month, Class Creations was sold to new owners and a Ms Ortega became a director. Mrs Peebles Brown resigned. The 12 August was then the last date upon which the Claimants were paid by Class Creations and, on the 16th, an agreement was signed between LCG and Class Creations for the purchase of its assets for £196,000.
5. On 17 August, the Claimant's employment transferred from Class Creations to Suprema Group Ltd. Class Creations then changed its name to Professional Design Works Ltd in September and, a few days later, the Secretary of State sought to wind up LCG. On 26 October, the Claimants were ordered to leave the premises by representatives of LCG and Professional Design Works. What followed was a complicated mess but, in essence, the Claimants were dismissed on 30 January 2017 on the basis that they were redundant.
6. The Claimants then brought proceedings against LCG, Professional Design Works and Suprema Group. There was a hearing on 4 and 5 December 2017 before Employment Judge Pirani at which he determined that the Claimants' employment had transferred from LCG to Suprema Group on about 26 October 2016.
7. At a further hearing on 8 February 2018, the same Judge determined that LCG had unfairly dismissed the Claimants by reason of redundancy, had wrongfully dismissed them, had unlawfully deducted wages from them and had failed to pay them holiday pay and redundancy payments ('the Judgment'). He made a number of awards in respect of each of the six Claimants.
8. The Claimants then attempted to enforce their judgments but, on 17 May 2018, LCG was wound up in the Birmingham District Registry. Some payments were made by the Redundancy Payments Office but the Claimants were unhappy with the amount of the payments and brought these proceedings in October 2018.
9. A summary of the claims, in relation to the previous proceedings, is as follows;

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Claimant	Current case No.	Date of issue	Claims	Respondents	Previous case No.
Mr R Cooper	1403554 /2018	2.10.18	Holiday pay; Wages; Compensation for worry/stress	1. Secretary of State; 2. LCG International Ltd;	1400510 /2017
Mr M Taviner	1403560	2.10.18	Holiday pay; Wages; Compensation for worry/stress	1. Secretary of State; 2. LCG International Ltd;	1400613
Mr S Collinson	1403586	5.10.18	Holiday pay; Notice pay	S. of State	1400596
Mr R Day	1403587	5.10.18	Holiday pay; Notice pay	S. of State	1400595
Mr A Voysey	1403625	4.10.18	Wages; Notice; Redundancy payment	S. of State	1400510
Mr M Williams	1403630	4.10.18	Holiday pay; Notice pay	S. of State	1400594

10. The payments which have been made against the Judgment have been as follows (the figures shown in brackets are the sums which have been paid by the RPO);

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Claimant	Redundancy payment (£)	Holiday pay (£)	Notice pay (£)	Wages (£)
Cooper	5,748 (5,748)	841.10 (Nil)	4,153.60 (1,636.64)	4,298.24 (2,919.04)
Taviner	5,748 (5,748)	623.04 (Nil)	4,153.60 (1,907.52)	5,240.41 (2,919.04)
Collinson	3,692.80 (3,692.80)	1,726.38 (Nil)	3,692.80 (398.24)	3,692.80 (2,666.64)
Day	5,748 (5,748)	3,792.33 (Nil)	5,230.80 (1,636.64)	5,912.80 (2,919.04)
Voysey	5,748 (5,748)	Nil	5,461.52 (500.96)	5,951.61 (2,919.04)
Williams	5,748 (5,748)	726.88 (Nil)	4,153.60 (Nil)	4,140.20 (2,919.40)

11. Upon receipt of the claims, Employment Judge Ford QC wrote out to the Claimants (see the Tribunal's letter of 8 October). He pointed out that a claim against the Secretary of State, where an employer was insolvent, was limited to 6 weeks of unpaid holiday pay in the 12 months prior to the 'appropriate date' and 8 weeks of unpaid wages. He pointed out that there was no power to award compensation for 'stress and worry'. Further, since two of the Claimants had brought claims against LCG International Ltd which was in compulsory liquidation, those claims were stayed. With that information in mind, the Claimants were given 21 days in which to indicate how they wanted to proceed.
12. The Claimants then indicated that they all wanted to proceed to recover the underpayments which they considered had been made by the RPO.
13. On 27 November 2018, the Secretary of State filed its Response. Unsurprisingly, it echoed much of what Employment Judge Ford QC had previously indicated. It also

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helpfully set out those sums which had been paid, but it did not explain the calculations which fell short of the sums in the Judgment.

14. Following receipt of the Response, Mr Cooper and Mr Taviner both withdrew their claims against LCG, leaving the Secretary of State as the only Respondent. Nevertheless, in light of the contents of the Response, the Claimants were asked how they wished to proceed. They variously indicated that they wished to continue to recover the outstanding sums in the Judgment against the RPO.
15. On 21 March, having reviewed the file, I caused this Preliminary Hearing to be listed. I considered that the Secretary of State may have met its liabilities under Part XII of the Act. I was also concerned that these claims were an attempt to enforce a judgment debt. On reflection, s. 188 (1)(b) enabled the claims to have been brought in the way that they had.

The Secretary of State's liability under Part XII

16. Under s. 184 of the Employment Rights Act, the enforceable debts against the Secretary of State include;
 - (a) Arrears of pay, up to 8 weeks (s. 184 (1)(a)), with a limit on a week's pay off £508 where 'the appropriate date' (the insolvency) fell after 6 April 2018 (ss. 182 and 186). The limit was £479 in the period before the Claimants' employment ended;
 - (b) Notice pay (s. 184 (1)(b));
 - (c) Holiday pay not exceeding 6 weeks, earned in the 12 months prior to the 'appropriate date' (s. 184 (1)(c)), where the 'appropriate date' is the later of either the employer's insolvency or the date of termination of employment.

Mr Cooper

17. The Claimant accepted that the notice pay claim had been met because the Secretary of State had taken into account earnings from the new job which he obtained in late February 2017, albeit at a lower wage. He also accepted that the payment of £2,919.04 represented his full entitlement under s. 184 (1)(a), being 8 weeks capped at £479, less tax and national insurance.
18. In relation to the claim for holiday pay, the Secretary of State had not met any of the claim and stated that no holiday was accrued in the 12 months prior to 17 May 2018, the date of the insolvency of LCG. Since the Claimant was dismissed with effect from 1 February 2017, that must be right.
19. There was no basis for the claim for compensation for worry and/or stress. Such a claim was not covered by ss. 184 and/or 188 of the Act.

Mr Taviner

20. The same points were applicable in respect of the claims for holiday pay and worry and/or stress as in paragraphs 18 and 19 above.
21. Mr Taviner accepted that all other claims had been met, subject to the statutory cap and, in the case of notice pay, earnings that he received in mitigation of his loss.

Mr Collinson

22. His claim of unpaid holiday pay fell to be dealt with in the same way as those set out above.
23. His was satisfied that his other claims had been met in accordance with statute and/or as a result of his mitigation.

Mr Day

24. His claim of unpaid holiday pay was doomed to failure for the same reasons as those set out above.
25. Mr Day did not pursue other claims beyond the sums which had been paid by the Secretary of State, but he was particularly vocal about the manner in which he felt to have been misled by the process. He had understood that the figures awarded by Employment Judge Pirani were those which would have been met by the RPO. Despite several explanations as to the manner in which the approach under s. 184 differed from that which would have applied when compensation had been calculated against the original active Respondent company, the Claimant nevertheless aired his concern that he had been the victim of unfairness within the process. The Judge noted that he was represented by solicitors and counsel at the hearing, but he was nevertheless convinced that it was the Judge who assured him that he would receive payment of the Judgment sums from the RPO.

Mr Voysey

26. This Claimant was in the same position as the others; all payments had been met in accordance with the law.

Mr Williams

27. Mr Williams' claim for unpaid holiday pay failed for the same reasons as those set out above. No other or novel issues were raised in any other respect.

Conclusion

28. For the reasons set out above, the remaining claims relating to worry and/or stress in respect of Mr Cooper and Mr Taviner and all claims of unpaid holiday pay was struck out since was no reasonable prospect of them succeeding.

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Employment Judge Livesey

Date: 9 April 2019

Judgment sent to parties: 10 April 2019

FOR THE TRIBUNAL OFFICE