



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4122740/2018

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Held in Glasgow on 23 January 2019

Employment Judge: Lucy Wiseman

10 **Mr Jim McPhail**

Claimant
Represented by:
Mr D Hutchison -
Solicitor

15 **Murchland Construction Ltd**

Respondent
No appearance

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is:

- 20 (a) the employment of the claimant transferred from William Murchland & Co Ltd to the respondent Murchland Construction Ltd in terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006, on or about the 1st June 2017;
- 25 (b) the claimant has continuous service with the respondent since 1975;
- (c) the complaint of unauthorised deduction from wages is well founded and the respondent is ordered to pay to the claimant the sum of £693.23 and
- 30 (d) the complaint in respect of holiday pay was withdrawn and is dismissed.

REASONS

1. The claimant presented a claim to the Employment Tribunal on the 12 November 2018 alleging there had been an unauthorised deduction from

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wages and that he had not been paid all of the holiday pay to which he was entitled.

2. The respondent did not enter a response. The claim today proceeded as
5 undefended.
3. Mr Hutchison informed the tribunal that he had previously represented three
employees (who were members of a trade union) at a Hearing involving the
same respondent. The issue in that case was whether there had been a TUPE
10 transfer between William Murchland & Co Ltd and Murchland Construction
Ltd. The respondents had been represented at that hearing.
4. Mr Hutchison produced a copy of the Judgment issued following that case,
where the Employment Judge decided there was a relevant transfer from
15 William Murchland Co Ltd to Murchland Construction Ltd on or about the 1st
June 2017, and that those employees employed immediately prior to the
transfer, transferred to the employment of Murchland Construction Ltd.
5. Mr Hutchison, relying on the previous Judgment, invited me to make a
20 declaration of a relevant transfer in respect of the claimant. Further, the
claimant would have qualifying continuous service from 1975.
6. I accepted the claimant's circumstances were the same as Mr Kerr and Mr
Stewart, who had been claimants in the previous case, and I decided the
25 claimant's employment transferred from William Murchland & Co Ltd to
Murchland Construction Ltd on or about 1st June 2017.
7. I further accepted the claimant commenced employment with William
Murchland & Co Ltd in 1975, and accordingly has a period of qualifying and
30 continuous service from 1975 onwards.
8. The claimant had, prior to the transfer, worked 40 hours per week at an hourly
rate of £14.85. The claimant's hours reduced to 37.5 per week following the
transfer, and his hourly rate of pay also reduced to £13.68. The claimant did
35 not agree to either the reduction to his hours or his rate of pay.

9. I decided there had been an unauthorised deduction from pay in respect of the hours worked post-transfer, and that this has occurred on an ongoing basis. I accepted Mr Hutchison's calculation that the deduction amounted to
5 £693.23.

10. Mr Hutchison confirmed the second aspect of the unauthorised deduction from wages claim (a claim in respect of three days pay) was no longer being pursued. He also confirmed the claim in respect of holiday pay was withdrawn.
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Employment Judge: Lucy Wiseman
Date of Judgment: 24 January 2019
15 **Entered in register: 24 January 2019**
and copied to parties