



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms SC Moldovan  
**Respondents:** (1) Secretary of State for Business Energy and Industrial Strategy  
(2) TLC Home Care Services

**Heard at:** Ashford **On:** 16 September 2019

**Before:** EMPLOYMENT JUDGE CORRIGAN  
Sitting Alone

## Representation

**Claimant:** No appearance  
**First Respondent:** Mr P Soni  
**Second Respondent:** Mr I Ahmed, Counsel

## JUDGMENT

1. The Claimant did not attend and the Claimant's claim is dismissed in its entirety.

## REASONS

1. The Claimant did not come to the hearing. The clerk telephoned the Claimant. The Claimant said she was not coming to the hearing because she now works as a private carer and could not take the day off work.
2. I was shown an email that the Claimant had sent that morning to Mr Soni.  
She said: "...with all my respect and all my desire to finish this fight and be [paid] and with all my regrets I can't be there today I hope God see how we been treated and help us how we deserve I want to thank all of you for all these years putting all your efforts to help me I will try to phone today [sic]".
3. The Respondents said this means the Claimant withdrew her claim. They applied to strike it out. I did not agree. I understand she still wants the Tribunal to make a decision but that she will not attend any more hearings.
4. Mr and Mrs Davidson of TLC Home Care Services know where the Claimant works now. They say she can take a day off and she has just had two weeks' holiday. She was told about this hearing in April 2019. This means she has had time to organize a day off but has decided not to come to the hearing.

5. This claim, dated 17 July 2018, is about claims for notice pay, unpaid wages, and redundancy pay which have already been decided by Employment Judge Ford QC in the Bristol Employment Tribunal in a claim against Cleavelink Limited. The Secretary of State for Business Energy and Industrial Strategy and TLC Home Care Services were not involved in that case.
6. Employment Judge Ford's decision was sent to the Claimant on 5 June 2018. It is complicated. Cleavelink Limited was in liquidation and did not respond to the claim or attend the hearing. Employment Judge Ford decided the claims for notice pay and unpaid wages were out of time.
7. He decided that there had been a TUPE transfer from Cleavelink Limited to TLC Home Care Services on about 6 March 2017. The Claimant started working for TLC Home Care Services on 7 March 2017. He decided, based on a letter to the Claimant on about 7 March 2017, that Cleavelink was subject to insolvency proceedings at the time of the transfer. He decided the Claimant's employment therefore did not transfer, despite the TUPE transfer. Instead she was dismissed by Cleavelink Limited on 6 March 2017 and was entitled to redundancy pay from Cleavelink Limited. He explains that this is because of the law in regulation 8(7) TUPE about how insolvency affects TUPE transfers.
8. The claim for redundancy pay was in time. The Claimant is Romanian and English is not her first language. Employment Judge Ford says she was bewildered by the complex situation. He said the Claimant had already applied to the Secretary of State for her redundancy pay and this was not paid. He told the Claimant to send his Judgment to the Secretary of State and ask for the redundancy pay to be paid. He said that if they did not pay the Claimant could bring another claim against the Secretary of State.
9. The Claimant did send the Judgment to the Secretary of State. The redundancy pay was not paid. The Secretary of State said the correct date of Cleavelink's insolvency was 17 March 2017 and not 7 March 2017. This does make a difference. If the date of insolvency was 17 March 2017 then the Claimant was not dismissed by Cleavelink Limited and her employment did transfer to TLC Home Care Services upon the TUPE transfer. If so, she was not redundant and not entitled to redundancy pay.
10. The Claimant did then bring this claim on 17 July 2018. She did bring it against the Secretary of State and TLC Home Care Services. It looks like she sent the claim to Bristol Tribunal again. However, she put a Kent address (the address of Cleavelink's liquidator) as her place of work. This is probably why this case was forwarded to this Tribunal. I therefore understand her claim to be for her redundancy pay to be paid by the Secretary of State. I think she has brought the new claim that Employment Judge Ford told her to bring.
11. During the hearing before me both the Secretary of State and TLC Home Care Services agreed there had been a TUPE transfer on 6 March 2017. They agreed that Cleavelink was not actually in insolvency proceedings then. The date the liquidator was appointed was 17 March 2017. The Claimant was not dismissed. Her employment TUPE transferred to TLC Home Care Services. TLC Home Care Services also say the Claimant was given an ex gratia payment from the Council of about £1700. This was to compensate for the unpaid wages due to Cleavelink's insolvency. The Claimant agrees she received this payment in her email to Mr Soni on 16 September 2019.
12. There remains an existing Judgment from Bristol Tribunal in favour of the Claimant for the redundancy pay. In normal circumstances that should be enough for me to find in favour of the Claimant on a reference under s170 Employment Rights Act 1996 about her application to the Secretary of State for her redundancy pay. Mr Soni agreed

that in most cases a Tribunal Judgment ordering a redundancy payment would be paid by the Secretary of State if not paid by the employer. However, the Respondents do raise valid arguments that the date of the insolvency was not 7 March 2017 but 17 March 2017 and the Claimant was not therefore redundant.

13. I do not think I have the power to reconsider another Judge's Judgment from another Tribunal region. The Respondents' should have applied to participate in the Bristol proceedings, on the basis that they had an interest in those proceedings. The Secretary of State wrote to the Claimant on 22 June 2018 about the Judgment. So the Secretary of State was aware of the Judgment within 28 days of it being sent to the parties. The Secretary of State could have asked for a reconsideration of Employment Judge Ford's decision. Mr Soni says that he has tried to do this in other cases without success. However he did not try in these proceedings.
14. It would also have been better if the parties had asked that this case transfer back to Bristol so that the same Tribunal region dealt with both cases.
15. I would still have been willing to stay or adjourn this matter to allow the Respondents to make the above applications, because they have a good argument that the Claimant was not redundant. However, this would mean the proceedings continue. I decided the Claimant's email to Mr Soni shows she does not want to pursue the case further after today. I also took account of the fact that the Claimant has received the ex gratia payment which exceeds her redundancy payment, albeit that it was for the lost wages not redundancy pay. In these circumstances I find it appropriate to dismiss the matter on the basis that the Claimant has not attended, and is unlikely to attend in future.

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**Employment Judge Corrigan**  
Ashford  
17 September 2019