



EMPLOYMENT TRIBUNALS

Claimants: Mrs T White
Miss J Holmes
Miss J Weaver
Mr D Wilkinson

First Respondent: The Animal Ark Pet Store Limited (in liquidation)

Second Respondent: Secretary of State for Business Energy and Industrial Strategy

Third Respondent: Paw Prints Pet Supplies Ltd

Heard at: Sheffield **On:** 27 September 2019

Before: Employment Judge Little

Representation

Claimants: In person
Respondent 1 & 2: No attendance or appearance
Respondent 3: Mr I Clay, solicitor (Walker & Co)

JUDGMENT

My Judgment is that:-

1. The claim of Mrs T White is dismissed upon withdrawal.
2. The sums which are due to the remaining three claimants are as follows:

Miss J Weaver – a payment in respect of statutory redundancy pay in the amount of £4143.13. Holiday pay £284.10. Unauthorised deduction from wages £94.70. Notice pay £2841.

Miss J Holmes – statutory redundancy payment £8384.19. Notice pay £3469.32.

Mr Wilkinson – statutory redundancy pay £5138.82. Notice pay £3425.88. Holiday pay £285.49.

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3. Consequent upon the Judgment of Employment Judge Brain given at a hearing on 16 April 2019 the liability for making payment to the claimants of the sums set out above is that of the third respondent, Paw Prints Pet Supplies Limited. These sums are to be paid by that respondent to the remaining claimants no later than 23 October 2019.

REASONS

1. At a hearing before Employment Judge Brain on 16 April 2019 it was adjudged that there had been a relevant transfer under the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006 of the undertaking formerly carried on by the first respondent to the third respondent. It was found that that had occurred on or about 21 August 2018.
2. At the same hearing the Employment Judge made various case management orders in respect of determining the question of remedy. In short the claimants were to liaise with the solicitor for the third respondent, Mr Clay, as to the amounts they considered they were entitled to and that solicitor was then to report to the Tribunal by way of a position statement. I think that the implication was that at the same time the solicitor would convey to the Tribunal the amounts which were being claimed. The consent order also spoke of the possibility of a draft consent Judgment if agreement could be reached.
3. A position statement was filed with the Tribunal under the cover of Mr Clay's letter of 24 May 2019. This was a brief statement. Whilst it referred to the claimants having been in correspondence with the solicitor it did not explain what they had said about the sums they were due. The statement went on to note that the third respondent had sought written reasons for the 16 April Judgment "with a view to an appeal of the decision".
4. During the course of today's hearing it became apparent that the third respondent had sent a document to the Tribunal entitled Third Respondent's Response to Claims. I was told that this had been sent to the Tribunal on 23 September 2019 but unfortunately it had not found its way on to the Tribunal's file.
5. Although they are of course separate legal entities, the third respondent Paw Prints Pet Supplies Limited is a company which, I understand, was set up and is now run by Mrs T White. In these circumstances Mr Clay confirmed that Mrs White was no longer pursuing claims which would now have to be met by her own company.
6. The status of the recent "Response" document cannot be that it is a response or an amended response to the claims within the meaning of Rule 16. There was no witness statement prepared by Mrs White or anybody else on behalf of the third respondent. I have therefore taken the response document as in effect a skeleton argument. It raises three reasons why it is said the third

respondent should not make payments to the remaining claimants. One of those reasons applies only to the case of Miss Holmes.

7. The two matters which apply to all the continuing claims are as follows:

7.1. Employment Rights Act 1996 section 166

This section applies where an employee claims that his employer is liable to make certain payments including a redundancy payment and where the employee has taken all reasonable steps to recover the payment from the employer but the employer has refused or failed to pay it. In those circumstances the employee may apply to the Secretary of State for a payment. I considered that this was not a good defence. It is clear that under the statutory scheme the Secretary of State will not make a payment if he considers that somebody else is liable. It is for that reason that the Secretary of State had been joined to these proceedings to contend, successfully as it turned out, that there had been a relevant transfer to the third respondent. I felt that this contention had to be viewed in the context in which this case finds itself, not least that today was a hearing established to determine the extent of the third respondent's liability. Whilst in due course it may be that the claimants may have to have recourse to this section, I did not consider that it was appropriate for the third respondent to defend on this basis. It would in any event have been unfair to the Secretary of State who has to all intents and purposes been discharged from these proceedings and who, as far as I am aware, would have been unaware that a further attempt was being made, by the back door, to fix him with liability.

7.2. That there were "economic and operational reasons entailing a change in the work force"

My understanding is that this could be a potential defence if any of the claimants were complaining that they had been automatically unfairly dismissed by reason of a relevant transfer. However they are not and I cannot see that this is a relevant consideration for the complaints which are before the Tribunal. In the same paragraph of the response document (paragraph 9) there is a reference to "Regulation 4(4)(b)" which Mr Clay confirmed was a reference to the Transfer of Undertakings Regulations. Whilst that precise paragraph does not exist in the current form of the TUPE Regulations, Regulation 4(4) of those Regulations deals with purported variations of a contract of employment in the context of transfers. I did not see how that could be relevant to these cases.

8. The matter specifically referable to Miss Holmes is the third respondent's contention in paragraph 8 of the response document that whilst Miss Holmes' employment had been found to transfer to the third respondent, the fact that she was currently employed by the third respondent should mean that she was not entitled to remedies flowing from a dismissal. However, paragraph 8 fails to refer to the fact that it is common ground Miss Holmes was, along with the other claimants, dismissed by the first respondent with effect from 21 August 2018. Mr Wilkinson showed me a copy of the letter that he received

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from a director of the first respondent, a letter dated 20 August 2018 and it was confirmed that Miss Holmes had received the same letter. On 30 September 2018 Miss Holmes commenced what I find to be fresh employment with the third respondent. That employment began some six weeks after the dismissal which gives rise to Miss Weaver's complaints. In these circumstances I considered that the fact that she is now in employment with the third respondent was not a relevant factor and did not defeat her claim for notice pay and a statutory redundancy payment.

9. I should confirm that apart from the matters referred to above the third respondent raised no objection to the quantum of the complaints.

Employment Judge Little

Date 4th October 2019