



THE EMPLOYMENT TRIBUNALS

Claimant: Mr A Hope

Respondent: Interserve FS (UK) Limited

Heard at: North Shields Hearing Centre **On:** Friday 18th October 2019

Before: Employment Judge Aspden

Appearances

For the Claimant: In Person

For the Respondent: Miss I Ferber (Counsel)

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Claims and issues

1. The claimant brought a claim under article 3 of the Employment Tribunal's Extension of Jurisdiction (England and Wales) Order 1994 for the recovery of an enhanced redundancy payment, which the claimant claimed was due under his contract of employment on the termination of his employment.
2. It was common ground that the claimant was dismissed by reason of redundancy and that, at the time of his dismissal, he was employed by the respondent. In his claim form the claimant said that when he was first employed in 2010 he was engaged by a different company in the same group as the respondent, Insitu Services Ltd, but that his employment was subsequently transferred to the respondent by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). The respondent did not accept this was the case. Its position was that the claimant had been employed by it from the outset. Both parties

agreed, however, that the claimant's employer at the date of termination was the respondent.

3. The claimant's case was that his contractual right to an enhanced redundancy payment arose by virtue of a provision set out in a staff handbook issued by Insitu Cleaning Company Limited, which he said was incorporated as an express term of his contract of employment. In its response the respondent said "the respondent makes no admission in relation to the claimant's claim for an enhanced redundancy payment. The claimant received payment for statutory redundancy payment on termination in December 2018, based on his salary and in line with the respondent's policy and practice. The respondent does not believe that the claimant is entitled to an enhanced redundancy payment. Whilst the claimant has provided some evidence, it is insufficient to determine whether the claimant had and/or retained an entitlement to an enhanced redundancy payment which allegedly operated in January 2010."
4. The primary case presented by the respondent at this hearing was that the provisions of the Insitu Cleaning Company Limited staff handbook never formed part of the claimant's contract of employment. Its secondary case was that even if the terms of the handbook had formed part of the claimant's terms of employment at some point, they did not do so at the time the claimant's employment was terminated.
5. The issues for me to determine were whether the provision in the staff handbook relied on by the claimant was incorporated as a term of his contract of employment and, if so, whether that remained the case at the date of termination.

Evidence and facts

6. I heard evidence from the claimant and, for the respondent, from Mrs Ward, who is currently an Employment Paralegal in the respondent's legal team. Both witnesses had produced witness statements, although that of Mrs Ward was not confined to evidence of facts but rather included, inappropriately, a good deal of commentary, statements of opinion and submissions (not all of which were adopted by Miss Ferber).
7. I was also referred to a number of documents in a bundle prepared for this hearing by the respondent.
8. In addition, I was asked by the claimant to take into account written statements purportedly signed by former colleagues of the claimant, including his former line manager Rachel Williamson.
9. This case was heavily dependent on evidence based on people's recollection of events that happened several years ago. In assessing that evidence I bore in mind the guidance given in the case of Gestmin SGPS -v- Credit Suisse (UK) Ltd [2013] EWHC 3560. In that case, Mr Justice Leggatt observed that it is well established, through a century of psychological research, that human memories are fallible. They are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable, and believe

our memories to be more faithful than they are. In the Gestmin case, Mr Justice Leggatt described how memories are fluid and changeable: they are constantly re-written. Furthermore, external information can intrude into a witness' memory as can their own thoughts and beliefs. This means that people can sometimes recall things as memories which did not actually happen at all. In addition, the process of going through Tribunal proceedings itself can create biases in memories. Witnesses may have a stake in a particular version of events, especially parties or those with ties of loyalty to parties, including employees and family members. It was said in that case: 'Above all it is important to avoid the fallacy of supposing that because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.' It is worth observing from the outset that simply because I did not accept one or other witness' version of events in relation to a particular issue did not mean I considered that witness to be dishonest.

10. I make the following findings of fact.

11. In late 2009, the claimant was recruited to a business operating in Washington. He was recruited as an accountant. His recruitment was via a recruitment agency, Hays.

12. The documents I was referred to show that Rachel Williamson, who described herself as 'Management Accountant Insitu Services', e-mailed the recruitment consultant at Hays on 10 December 2009. In that e-mail, Rachel Williamson referred to a conversation the previous evening and said 'I'm so pleased Alan [the claimant] has verbally accepted the role of Accountant with Insitu Services.' I infer that the claimant had been offered the role by that time, verbally, and had, as the e-mail suggests, verbally confirmed his acceptance. The e-mail from Rachel Williamson went on to say 'see attached contract of employment including terms. As mentioned in our call could you send him my contact details.' The recruitment consultant at Hays forwarded that e-mail to the claimant the same day. In that e-mail she said 'I am delighted you have accepted the position at Insitu Services Limited based in Washington. See attached contract and terms for the position of accountant at Insitu Services to review prior to your start date in January.' I infer from the content of these emails that there was a document attached to Rachel Williamson's email to the recruitment consultant, which document contained terms of employment and was forwarded by the recruitment consultant to the claimant. Further support for that appears in the form of the icon that appeared on the copy email at page 146a of the bundle, indicating that there was a single document in Word format attached to that e-mail. The claimant's evidence was that there was just one document attached to that e-mail, which is consistent with the wording of Rachel Williamson's email. The claimant said the attachment was an offer letter in terms that were the same as a letter that was subsequently provided to the claimant after his employment began. Miss Ferber made the point during cross-examination that that the icon I have referred to above suggests that if there was an attachment it must have been a small file and that this would be inconsistent with the attachment being a contract running to a number of pages. It would not, however, be consistent with the document being the offer letter as suggested by the claimant and I accept the claimant's evidence on that point and find that there was a single document attached to the email sent to the claimant, which document was an offer letter setting out terms of employment that were the same as those which were later confirmed in the letter at page 147-8 of the bundle.

13. The claimant started work on 1 January 2010 and on 12 January he was given the letter dated 12 January 2010 which appeared at page 147-148 of the bundle. I accept the claimant's evidence that he was given that letter by Rachel Williamson who had recruited him and who was now his line manager. I make the following observations about that letter:
- 13.1. The letter was written on headed paper. In the top right-hand corner of that paper appeared the name 'Insitu Services'. Directly underneath that appeared the name and address of a company: Insitu Cleaning Company Limited. At the bottom of the page in the corner was that Company's registered number and registered office address and above that were the words 'A Rentokil Initial Company.' I infer that Insitu Cleaning Company Limited was trading as Insitu Services and operating under the Rentokil Initial brand (and I note that one of the shareholders of Insitu Cleaning Company Limited was Rentokil Initial Facilities Services (UK) Limited).
- 13.2. The letter began 'I am pleased to confirm you have been offered the position of Accountant. Your start date with the Company is 1st January at 10am'. The letter also referred to 'the Company' in a number of other places.
- 13.3. The letter purported to set out certain terms and conditions of the claimant's employment and contained the following paragraph: 'I enclose a copy of the Employee Handbook and our Health and Safety Policy, an additional copy of this letter and two copies of the conditions of employment, which together form your contract of employment with Insitu Services.' The letter contained a request for the claimant to sign a copy of the letter and a copy of the terms and conditions of employment and return them to HR.
- 13.4. The letter ended: 'Finally I would like to take this opportunity of welcoming you to Insitu Services and to wish you every success in your time with us.'
- 13.5. The sender of the letter was Sean Devoy who was described in the letter as 'Finance Director Insitu Services.' It appears that somebody else signed the letter on his behalf.
- 13.6. Immediately underneath that signature was a space for the claimant to sign and date and a statement saying 'This is to confirm that I accept the terms and conditions of employment as detailed in your letter of Tuesday 12 January 2010.'
14. The claimant signed a copy of the letter on 18 January 2010 and returned it.
15. The main issue in dispute in this case concerned the reference to the employee handbook in that letter. The claimant's case was that the letter was accompanied by the Insitu Cleaning Company Limited staff handbook (extracts from which were included in the bundle and a complete copy of which was produced by the claimant part way through this hearing). The case presented by the respondent at this hearing was that the letter was accompanied by a different handbook ie the Rentokil Initial employee handbook included at pages 66a onwards of the bundle. That issue was critical because the Insitu Cleaning Company Limited staff handbook contained a section which dealt with redundancy payments. It is that provision on which the

claimant relied as giving him a contractual entitlement to be paid an enhanced redundancy payment in excess of his statutory entitlement. In contrast, the Rentokil Initial handbook did not contain any provision for enhanced redundancy pay.

16. There was, or at least initially appeared to be, a dispute between the parties as to whether or not the letter of 12 January 2010 was accompanied by the document which began on page 149 of the bundle ie a service agreement bearing the date 12 January 2010, in which the employer was stated to be Rentokil Initial Facilities Services (UK) Limited. The respondent's case was that this document was given to the claimant at the same time as the letter of 12 January 2010 and that, for reasons referred to in more detail below, this supported the respondent's case that the claimant had been given the Rentokil Initial handbook rather than the Insitu handbook. The 12 January letter expressly said that 'two copies of the conditions of employment' were enclosed and asked the claimant to sign and return one of those copies. In his witness statement, which stood as his evidence in chief, the claimant did not mention having been provided with a separate document containing conditions of employment at the time he was given the 12 January letter. He simply referred to having been provided with the letter, the Insitu handbook and a health and safety policy. I asked the claimant whether he was also provided with a copy of the document at page 149 of the bundle at the same time. The claimant's initial response was 'not that I recall.' The claimant then pointed out that the document in the bundle did not bear his signature, implying that if it had been the document enclosed with the 12 January letter he would have signed it. When I referred the claimant to the wording of that letter which referred to 'copies of the conditions of employment' being enclosed he said 'I don't have any record of those conditions of employment.'
17. Miss Ferber opened her cross examination of the claimant by saying she was giving him an opportunity to think about the answers he had given when asked about the service agreement. She then asked the claimant if he was absolutely certain that he did not receive the service agreement at page 149 with the letter of 12 January 2010. The claimant's response was that he 'could not wholly be sure', adding 'I know at the beginning I wasn't given it but it may have been provided to me after I started'. Miss Ferber then asked the claimant whether he had been provided with a copy of the service agreement at page 149 when he had started. The claimant's response was "not to my recollection; I didn't get it the week I started". He also said it was not attached to the e-mail he'd been sent by the recruitment consultant in December 2009. Miss Ferber returned to this point a little later in her cross examination asking the claimant if he was quite certain he did not receive the Rentokil Initial service agreement at the time of the offer letter. The claimant replied "not at the time of appointment; it may have been a few weeks later when I received it." Miss Ferber drew the claimant's attention to his claim form in which she said "I commenced employment with Insitu services Ltd/Rentokil Initial on 1 January 2010 as an accountant and was issued with an Insitu contract and Rentokil Initial agreement, and an in situ handbook." The claimant said he was not disputing that he was given a copy of the document at p149, adding that he was not given it before his employment began but that it 'could have been a few weeks later.' On further questioning the claimant accepted that the document it page 149 had been disclosed during these proceedings by the claimant himself and he conceded that in all likelihood he was given a copy of that document at the time he was given the

letter of 12 January 2010 and that the 'conditions of employment' referred to in the first page of that letter was a reference to the service agreement in the bundle.

18. The written statement of Rachel Williamson referred to the claimant having been provided with an 'Insitu contract'. What she meant by that is not clear. Nor did she explain how it was that she could recall, many years on, what documents she gave to the claimant. Ms Williamson was not here to be cross-examined and I am not prepared to accord any weight to that part of her evidence.
19. I consider the overwhelming likelihood is that the claimant was provided with a document containing terms and conditions of employment with the letter of 12 January 2010 given that that document said there was such an enclosure.
20. The fact that the service agreement named the employer as Rentokil Initial Facility Services UK Limited might tend to suggest that this document was not the one enclosed with the letter of 12 January 2010, given that there was no mention of that company in the letter of 12 January 2010 and nor was there any mention of that company in either of the emails dated December 2009 referred to above. Indeed, the emails referred to the claimant having accepted a role with, variously, "Insitu Services" and "Insitu Services Ltd" and the letter of 12 January 2010 referred to the claimant's "contract of employment with Insitu Services" and contained the name and address of Insitu Cleaning Company Limited, which traded as Insitu Services. There was, however, compelling evidence that the service agreement at p149 of the bundle was indeed enclosed with the letter of 12 January: the claimant had that document in his possession before these proceedings began and had no explanation for why that might be the case if it was not enclosed with the letter; the document bears the same date as the letter (12 January 2010); the signature on the service agreement appears to be the same as the signature on the letter of 12 January; the claimant has not produced any other document containing terms and conditions of employment dating from that date; and the claimant conceded under cross examination that in all likelihood he was given a copy of that document at the time he was given the letter of 12 January 2010. Looking at the evidence as a whole, I consider it more likely than not that the document containing terms and conditions of employment was that which appeared at page 149 of the bundle (i.e. the service agreement described above). I also find it more likely than not, and find as a fact, that the claimant signed and returned a copy of that document, as he had been asked to do, on 18 January 2010 along with the counter-signed copy of the letter of 13 January 2010.
21. As for the content of the service agreement, it is unnecessary to go into detail about every clause but I note in particular the following:
 - 21.1. The document purported to set out the terms of an agreement between Rentokil Initial Facilities Services (UK) Limited, referred to in the agreement as 'the Company', and the claimant. Rentokil Initial Facilities Services (UK) Limited is the respondent in these proceedings, having changed its name to Interserve FS (UK) Limited.
 - 21.2. Paragraph 1 began 'From January 1st 2010 the Company shall employ you in the capacity ... specified in the Schedule and:...you will serve the Company in the Service and Territory set out in the Schedule...'

- 21.3. The Schedule to the agreement provided at paragraph 1 'The Business of the Service for the purposes of this Agreement are cleaning services on behalf of Rentokil Initial Facilities Services (UK) Limited or any of its trading divisions.
- 21.4. The agreement said the claimant could 'save for retirement by joining the Prudential Stakeholder Scheme for Business Support Services, which is the Company's Stakeholder Pension Scheme.'
- 21.5. At paragraph 17 it said 'You agree to familiarise yourself with and comply with the policies procedures and rules referred to in the Employee Handbook, Company Vehicle Driver Policy and statement of Policy for Health and Safety at work' and 'A copy of the Company policy on Health and Safety is included in the Employee Handbook accompanying this statement.'
- 21.6. The contract said 'These conditions supersede any and all previous conditions of employment'
- 21.7. Above a space for signature by the Employee the following words appeared: 'I accept the above Conditions of Service and agree to be bound by them. I also acknowledge receipt and accept the provisions of the Employee Handbook and Company Vehicle Driver Policy and statement of Policy for Health and Safety at Work.'
22. That still leaves the question of which handbook the claimant was given with the letter of 12 January.
23. I accept, as submitted by Miss Ferber, that there is evidence to support the respondent's contention that the 12 January letter enclosed the Rentokil Initial Handbook. Most significantly of all in this regard was the service agreement, which was expressed to be an agreement with Rentokil Initial Facilities Services (UK) Limited and which accompanied the letter of 12 January and the handbook. Ms Williamson, who the claimant said, and I find, gave him the letter of 12 January and its enclosures, is likely to have seen that contract (as would whoever collated the documents for her to hand to the claimant). The fact the contracting party was identified as Rentokil Initial Facilities Services (UK) Limited lends support to the respondent's argument that the intention was that the Rentokil Initial handbook would also apply.
24. Furthermore, the terms of the 12 January letter and the accompanying service agreement were inconsistent with the Insitu Services handbook in some respects, for example with regard to payment dates and the holiday year dates. There were also inconsistencies in relation to pension between the service agreement and the Insitu handbook. The terms of the letter and contract in those respects were consistent with the Rentokil Initial handbook, which might tend to suggest that those who prepared the 12 January letter may have done so by reference to the Rentokil handbook rather than the Insitu handbook. I note the point made by Miss Ferber that the claimant accepted that he did not say anything to his employer about those inconsistencies during his employment although I did not consider that fact in itself to be particularly significant.

25. The respondent also relied upon Mrs Ward's evidence that she was employed by the respondent company and when she was recruited in 2007 she was given an almost identical service agreement to that given to the claimant and, alongside it, was given the Rentokil Initial handbook. I accept Mrs Ward's evidence on this point and find as a fact that Mrs Ward was first employed by the respondent in 2007 and, when recruited, she was given an almost identical service agreement to that given to the claimant and, alongside it, was given the Rentokil Initial handbook. I note, however, that, unlike the claimant, Mrs Ward was not based in Washington, and there was no suggestion that she was employed primarily for the purpose of the business of Insitu Services.
26. It was suggested by Mrs Ward in her witness statement that it was significant that the 12 January letter referred to an "Employee Handbook", which is the term used in the Rentokil Initial handbook to describe itself, whereas the Insitu handbook used the term "Staff Handbook" throughout. I did not find this point compelling, however, not least because the cover of the Insitu handbook says "Employee Handbook" and in any event these are not terms of art. Mrs Ward also suggested in her witness statement that the respondent's case was supported by that the fact that the claimant had, during his employment, become a member of the 'Rentokil Initial' pension scheme and participated in the 'Rentokil Initial' bonus scheme. Again, I did not find these points persuasive given that, as recorded above, Insitu Cleaning Company Limited operated under the Rentokil Initial brand and, in any event, those were matters which arose after the terms of the claimant's employment were agreed.
27. The claimant's own evidence was that he was given the Insitu handbook with the letter of 12 January and not the Rentokil Initial handbook. He said that, when he looked through his old paperwork because of the redundancy situation, he found the Insitu handbook with his offer letter in a bag in his loft where he kept old paperwork.
28. Miss Ferber submitted that the claimant's credibility was damaged by the responses he gave when questioned in the hearing, particularly those relating to the service agreement at page 149. Miss Ferber also submitted that the claimant's credibility was damaged by the fact that he did not produce a full copy of the Insitu handbook until part way through this hearing, notwithstanding that he had been asked to do so previously. I do not consider this omission to have been significant, however as, on balance, I do not consider that the claimant deliberately attempted to conceal the existence of elements of the handbook that were not consistent with the 12 January letter and service agreement. However, the way the claimant responded to questions on the service agreement did cause me to have some doubts about the reliability of his evidence. In particular, when I referred the claimant to the service agreement and the wording of the letter of 12 January which referred to 'copies of the conditions of employment' being enclosed, the claimant said 'I don't have any record of those conditions of employment.' The claimant's evidence could be interpreted as an attempt to suggest that the claimant had not seen the service agreement before these proceedings began when that clearly was not the case (as it was he who supplied a copy of the agreement to the respondent in these proceedings). Furthermore, his responses when being cross-examined about this matter could, on one view, be considered somewhat evasive and perhaps contradictory. That having been said, the claimant had said on his claim form that he was given a Rentokil agreement and in cross examination he did not seek to deny that he had been provided with the service agreement at some point. His comments

to the effect that he was not provided with the service agreement “at the beginning” or “when first appointed” are consistent with my finding that the claimant was not provided with a copy of any service agreement when, in December 2009, he was first emailed the letter in the same form as that dated 12 January. Indeed, if the claimant was first provided with the service agreement with the letter of 12 January 2010 then that would be consistent with the claimant’s evidence that he did not receive it the week he started work. The impression I gained of the claimant over the course of the hearing was that he was extremely anxious and nervous, to the extent that there were occasions on which he seemed to find it difficult to take in what was being asked of him. In my judgement any equivocation in the way the claimant answered questions is more likely to be explained by anxiety and nerves rather than a deliberate attempt to mislead.

29. Notwithstanding those observations, I acknowledge that evidence of recall must be treated with circumspection in a case like this, for reasons outlined in the Gestmin case referred to above. That being the case, the contemporaneous documents are of particular importance in determining what happened in this case.

30. I consider that there is a significant amount of contemporaneous documentary evidence that those responsible for recruiting the claimant and engaging him believed he was to be employed by Insitu Services ie Insitu Cleaning Company Limited, notwithstanding that the service agreement they gave to the claimant referred to Rentokil Initial Facilities Services (UK) Limited. In particular:

30.1. As noted above, the letter of 12 January was on the headed paper of Insitu Cleaning Company Limited. It referred to the claimant joining and having a contract of employment with ‘Insitu Services’, which was a trading name for Insitu Cleaning Company Limited and was sent from the finance director of Insitu Services. This suggests that the finance director and/or whoever prepared the letter believed the claimant was to be employed by Insitu Services, whatever that accompanying contract may have said.

30.2. An offer letter in the same terms was originally e-mailed to the claimant before he started employment. It was sent to the recruitment consultant, who forwarded it to the claimant, by the person who was to become the claimant’s line manager, Ms Williamson. She said at the time that the claimant had ‘accepted the role of Accountant with Insitu Services’. Her email signature indicated that she was corresponding on behalf of Insitu Services. This suggests that Ms Williamson believed that the claimant would be employed by Insitu Services. There was no reference to Rentokil Initial Facilities Services (UK) Limited in the correspondence sent to the claimant, or the recruitment consultant, prior to the claimant starting work.

31. In any event, whatever their beliefs as to who the contracting party was, it is clear from the emails that predated the claimant’s start date, the offer letter and the letter of 12 January that followed that the claimant was to be employed for the purpose of the Insitu Services business operating out of Washington. I accept the claimant’s evidence, and find, that the Insitu Cleaning Company Limited was still trading at that time out of Washington and that the work done in Washington at that time all related to the business of Insitu Services. I find that those who recruited the claimant

intended, at the time, that he would be working for Insitu Services, ie Insitu Cleaning Company Limited.

32. I find, based on what Mrs Ward said in her evidence, that that the service agreement was created from a pre-existing template. I accept that it is more likely than not that whoever originally created the template service agreement expected that it would be accompanied by the Rentokil Initial handbook. However, there was no suggestion that those who actually issued the claimant with those documents were the same people who created the original template documents. Indeed, it appears that the offer letter, contract document and handbook which the claimant was in fact provided with were issued locally out of Washington, whereas the likelihood is that any templates were created centrally in the office in which Mrs Ward was based. That being the case, there is no reason to assume that those who prepared the 12 January letter, with its enclosures, shared the expectation that the service agreement would be accompanied by the Rentokil Initial handbook. There was in existence a handbook for employees of Insitu Cleaning Company Limited. Those employees were employed for the purpose of the Insitu Services business that operated out of the Washington site. The claimant was employed for the purpose of that business and that is clearly how he was viewed by those who recruited him, who referred in emails and in the letter of 12 January to the claimant working for Insitu Services. Although it would not have been inconsistent with that belief for the claimant to have been provided with the 'Rentokil Initial' handbook, especially as Insitu Services came within the Rentokil Initial brand, I consider the fact that those who recruited the claimant perceived him as working for Insitu Services, ie Insitu Cleaning Company Limited, lends strong support to the claimant's case that he was given the Insitu Services handbook with the letter of 12 January.
33. Separately, I note the 12 January letter also referred to the claimant being given a separate health and safety policy. The Rentokil Initial handbook contained its own health and safety policy whereas the Insitu handbook did not. The fact that a separate document was provided also lends some support to the claimant's case that he was provided with the Insitu handbook.
34. Looking at the evidence in the round, I consider it more likely than not that those who issued the 12 January letter and contract to the claimant provided him with their 'local' handbook, ie the Insitu Services handbook, rather than the Rentokil Initial handbook, particularly in light of their repeated references to Insitu Services in the pre-employment e-mail and 12 January letter and the fact that they intended and perceived the claimant as working for the business operated by Insitu Cleaning Company Limited. Accordingly, I find the claimant was given the Insitu Services handbook when he was given the 12 January letter.
35. In 2011 or 2012 the respondent replaced the Rentokil Initial employee handbook with a new employee handbook entitled "a Guide for Colleagues". There is no reference to enhanced redundancy payments in that guide. Mrs Ward explained when being cross-examined, and I accept, that the respondent updated its staff handbook regularly. I find that no versions of the Rentokil Initial handbook contained any entitlement to enhanced redundancy pay. Based on Mrs Ward's evidence I find that when the handbook was updated the respondent sent a notification to staff by email. There was no evidence that any of the updated handbooks were sent directly to the claimant but Mrs Ward said her understanding was that such an email would

be sent out across the whole business. Mrs Ward's evidence, which I accept, was that when new handbooks were issued, employees were simply notified in a general circular e-mail that a handbook had changed. I was referred to a document at page 166a of the bundle as an example of such a circular notification. Included in that notification was the following statement: 'I want to reassure you we are not changing your employment contract. So there are no changes to things like your pay, hours, holiday entitlements, etc.'

Legal framework

36. The general principles of the law of contract apply to contracts of employment.
37. In construing the terms of a contract, the Tribunal's task is to ascertain the objective meaning of the language which the parties have chosen in which to express their agreement. The Tribunal must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant, considering the contract as a whole: *Lukoil Asia Pacific Pte Ltd v Ocean Tankers (Pte) Ltd (The "Ocean Neptune")* [2018] EWHC 163 (Comm), [2018] 1 Lloyd's Rep.654.
38. The parties to an employment contract can agree to vary its terms. An employee's agreement to a variation proposed by their employer can, in some circumstances, be inferred by lack of objection, although the inference of acceptance must be unequivocal; it will be inherently more difficult for an employer to establish acceptance by inference where changes are wholly disadvantageous to the employees and/or where they have no immediate effect on employees: *Abrahall v Nottinghamshire County Council* [2018] EWCA Civ 796, [2018] IRLR 628, where the court took the opportunity to review the applicable law generally.

Conclusions

39. The claimant was made an offer of employment in December 2009. Before he started work, the claimant was provided with a letter in the same terms as that later provided to him on 12 January 2010 after he started work. That letter set out certain terms and conditions upon which the claimant was offered employment. The claimant accepted that offer of employment, as evidenced by the fact that he started work in the job offered at the beginning of January 2010. In so doing, the claimant entered into a contract of employment.
40. The offer letter referred to employment by 'the Company' and Insitu Services. The only company referred to in the letter containing that offer of employment was Insitu Cleaning Company Limited, which traded as Insitu Services. The offer letter contained the following paragraph: 'I enclose a copy of the Employee Handbook and our Health and Safety Policy, an additional copy of this letter and two copies of the conditions of employment, which together form your contract of employment with Insitu Services.' There were, however, no other documents emailed to the claimant with the offer letter and nor did he receive any such documents before he started work.

41. I conclude that, in accepting the offer of employment, the claimant entered into a contract of employment with Insitu Cleaning Company Limited.
42. Although the claimant was not given an employee handbook before he started work, the 'employee handbook' was said to form part of the terms of his employment. Given that the offer letter referred to employment with Insitu Services, which was the trading name of Insitu Cleaning Company Limited, and was on the headed notepaper of that company, a reasonable person would have understood the parties to have intended that reference to the employee handbook to be a reference to the employee handbook of Insitu Cleaning Company Limited. I conclude, therefore, that the terms of the handbook that were apt for incorporation formed part of the claimant's contractual terms.
43. On 12 January 2010 the claimant was provided with a further copy of the offer letter. On this occasion, the claimant was also given, with the letter, a copy of the Insitu Services staff handbook as well as two copies of a service agreement. On 18 January 2010 the claimant countersigned and returned to the respondent a copy of the letter and a copy of the service agreement. I conclude that, in counter-signing the letter the claimant agreed to be engaged on terms that included those set out in the letter of 12 January, the service agreement and the Employee Handbook. The only employee handbook with which the claimant was provided at the time was the Insitu Services staff handbook. It is clear that the intention of the claimant and those who were purporting to act on behalf of the claimant's employer, at that time, was that the Insitu Services staff handbook formed part of the claimant's terms and conditions of employment. I consider this to be the case regardless of whether it was intended that the claimant be employed from then on by Rentokil Initial Facilities Services (UK) Limited instead of Insitu Cleaning Company Limited.
44. It follows that, even if the Insitu Services staff handbook had not formed part of the terms of the claimant's employment prior to him having been supplied with a copy, they did form part of those contractual terms and conditions of employment on which he was engaged with effect from the date when the claimant signed to confirm his agreement to those terms (18 January 2010). It is unnecessary for me to decide whether, by signing the service agreement, the claimant entered into a new contract of employment with Rentokil Initial Facilities Services (UK) Limited in place of Insitu Cleaning Company Limited. Whichever company was his employer at that time, I find that the terms and conditions of the contractual agreement between the claimant and his employer incorporated the Insitu Services staff handbook.
45. The Insitu Services staff handbook contained a provision in relation to redundancy payments as set out above. It may well be that some of aspects of the Insitu handbook were not apt for inclusion in that contract of employment. There was, however, no suggestion by Miss Ferber that the redundancy term was not apt for inclusion in the claimant's contract of employment and I find that it was so included. The claimant's case was that this provision meant that, in the event of termination of his employment by reason of redundancy, he would be entitled to be paid a redundancy payment calculated in the same way as a statutory redundancy payment under the Employment Rights Act 1996 but without the application of the statutory limit on a week's pay. The respondent did not challenge that interpretation of the relevant provision in the handbook.

46. From 18 January 2010 at the latest, therefore, the claimant had a contractual right to be paid a redundancy payment in the manner provided for in the Insitu Services staff handbook if he was made redundant.
47. Between that date and the date his employment ended, it is possible that the claimant was included in e-mails circulating different staff handbooks to employees, including handbooks that did not include any provision for enhanced redundancy pay over and above statutory entitlements. However, there was no evidence that the claimant was ever told that his employer was, thereby, purporting to vary his terms and conditions of employment to remove his contractual entitlement to an enhanced redundancy payment. Indeed Mrs Ward's evidence was that when new handbooks were issued, employees were simply notified in a general circular e-mail that a handbook had changed; and the example of such a notification that I was specifically referred to specifically disavowed any intention to change terms and conditions of employment, saying 'I want to reassure you we are not changing your employment contract. So there are no changes to things like your pay, hours, holiday entitlements, etc.'
48. For there to have been an agreed variation, the parties must have intended that to happen. I am not persuaded that, in issuing new handbooks for Rentokil Initial, there was ever an intention by the claimant's employer to propose a variation in the claimant's contract terms by removing his entitlement to an enhanced redundancy payment. Even if that had been the employer's intention, the claimant did not give his express agreement to any such variation. Nor, in my judgement, can his assent properly be inferred from a failure to object given that there is no evidence that the claimant's employer ever drew to his attention that it was seeking to vary the terms of his employment.
49. I conclude that at no time prior to the claimant's employment ending was the claimant's contract of employment varied so as to remove his contractual entitlement to an enhanced redundancy payment.
50. As the claimant's employment was terminated by reason of redundancy, he was entitled under the terms of his contract of employment to a payment calculated in the manner set out in the Insitu Services staff handbook. In breach of those terms, the respondent did not pay the amount that was due to the claimant.
51. The claimant's claim for an enhanced redundancy payment due under his contract of employment is well-founded. In light of that conclusion, the parties agreed that the amount remaining due to the claimant under his contract of employment, and for which judgment should be entered, is £2219.52.

EMPLOYMENT JUDGE ASPDEN

28 November 2019