THE EMPLOYMENT TRIBUNALS

Claimant: Mr K Mitchell

First Respondent: Toyon Investments Limited

Second Respondent: Transponda Corporation Pty Limited

HELD AT: North Shields **ON:** 4 November 2019

BEFORE: Employment Judge Aspden

REPRESENTATION:

Claimant: Mr Collins, counsel
Respondents: No attendance

JUDGMENT having been sent to the parties and written reasons having been requested by the claimant 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 claims that he was dismissed on 1 April 2019 and that his dismissal:
   (1) was unfair;
   (2) breached his contract of employment, being a dismissal without notice or payment in lieu of notice;
   (3) entitled him to a statutory redundancy payment.

2. He also contends that he is owed pay for work done in January, February and March 2019.

3. The first respondent was a private company limited by shares, which was incorporated in England and Wales under the Companies Act 2006 on 10 January 2017. It was dissolved and struck off the register of companies on 26 February 2019. Public documents show that was a striking off under section 1000 of the Companies Act 2006. The claimant has not made an application to have the company restored to the register.

4. The claimant's case, as set out in his claim form, is that is that he was employed by the first respondent from January 2017 and was dismissed by reason of redundancy on 1 April 2019. He says in his claim form that he believes that the terms and conditions of his employment transferred to the second respondent by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) at some point between those dates.

5. At the outset of the hearing I asked Mr Collins, the claimant's representative, what the claimant's position is as to the effect of the first respondent having been dissolved, given that I cannot make an order against a company that no longer exists, and whether the claimant is suggesting that his employment had transferred to the second respondent before the company was dissolved. Mr Collins' initial response was that it was difficult to answer as there appeared not to have been a formal transfer of the business between the two companies although there had been a change in the way payments of salary were made. I asked Mr Collins whether or not the claimant was putting forward a positive case that his employment was transferred to the second respondent under TUPE. Mr Collins asked for some time to consult with his client. He suggested that his client may wish to ask for this hearing to be converted to a preliminary hearing with a view to making an application to join another party as a respondent ie possibly a parent company or the directors of one or more of the existing respondent companies. I allowed Mr Collins time to consult with the claimant. Following the adjournment Mr Collins confirmed that the claimant was putting forward a positive case that his employment had been transferred under TUPE to the second respondent and that no adjournment was being sought and no application being made to add further parties as respondents.

Evidence and facts

6. I heard evidence from the claimant and was referred to certain documents.

7. I make the following findings of fact.

8. The second respondent is an Australian proprietary company, limited by shares, which was registered in Australia on 2 August 2018. Upon registration the company's director was a Mr Charles Wantrup, with whom the claimant has not had any dealings. A Mr Halstead was appointed as a director on 9 August 2018. The claimant believes Mr Halstead is a lawyer who has done work for Mr Bruce Pilley. On 1 March 2019 a Ms Lanier-Arnold was appointed as a director of the second respondent. She is married to Mr Bruce Pilley. Mr Halstead and Mr Wantrup resigned as directors of the second respondent on 1 April 2019.

9. The claimant was employed by a company called Creslow Ltd from 1 September 2010. The undertaking to which the claimant was assigned was subsequently

transferred to other companies on a number of occasions, with the claimant becoming employed by those other companies in turn by virtue of the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006. In this way, the claimant became employed by the first respondent in or around January 2017. From around that time, the sole director of the first respondent was Ms C Parker. The day-to-day management of the company was dealt with, however, by Mr Nick Parr and Mr Bruce Pilley, who both held themselves out to be the decision-makers of the company.

10. During the period of his employment by the first respondent the claimant carried out work for two separate enterprises: the first referred to as 'TVCatchup' and the second referred to as the 'Transponda website.' Both of these enterprises operated TV streaming services but they operated in different ways. TVCatchup made its revenue through selling advertising. In contrast, the Transponda website was a subscription service; so those who wanted to view channels paid to do so. The claimant worked for both enterprises from, at the latest, May or June 2018. At this time (May/June 2018), the claimant accepts that he was employed only by the first respondent. Based on the evidence before me, I find it more likely than not that the Transponda website was being operated by the first respondent at that time.

11. In May/June 2018, around 60% of the claimant's time was spent working on the TVCatchup side of the business and around 40% of his time was spent working on the Transponda website. By around the end of November 2018 the balance had shifted. The Transponda work had increased to take up around 80% of his time, whilst the work he did on the TVCatchup side of the business had decreased to around 20%. This approximate 80/20 split continued until the claimant was told he was being made redundant in April 2019.

12. The claimant was paid by the first respondent monthly in arrears on around the 30th of each month. He had not received any payslips since 30 May 2014. However, he did not raise this as he continued to be paid a regular monthly salary. Although deductions were made from his salary for income tax and national insurance, they were not paid over to HMRC. The claimant's pay was paid directly into his bank account. Up to and including 1 November 2018, the payer was shown on his bank statements as "UKPS T/AS". From 30 November 2018, the payer was shown as "F/Flow Transponda". The claimant said, in answer to questions at this hearing, that he queried the first of these payments from "F/Flow Transponda" with Mr Parr but that Mr Parr did not give any explanation for the change in payer. So far as "UKPS T/AS" is concerned, the claimant's evidence was somewhat contradictory. On the one hand, he said at paragraph 9 of his witness statement that he was paid by the first respondent. However, at paragraph 10 of his witness statement he said that since January 2017 (when he became employed by the first respondent) that salaries were being paid out of Mr Parr's personal bank account. In answer to questions at this hearing, the claimant said "UKPS T/AS" was the name of a bank account used by the first respondent. The claimant said it had been set up and controlled by Mr Parr but that he had only ever known it to be used for the first respondent's business.

13. The claimant's salary for January 2019 was not paid on time. Nor had other staff in the business been paid. On 4 February 2019 the claimant and his colleagues

received an email from Mr Ben Pilley, Bruce Pilley's son. He acknowledged that they had not been paid and blamed this on some difficulties with a different business. He apologised for the lack of communication and lateness of pay and said he hoped funds would be available "shortly". He said "I don't expect anyone to work unpaid, so if you would like to take some time off until it is rectified, you are welcome to. When it is rectified, it will be business as usual and no problems from me."

14. On 12 February 2019 one of the claimant's colleagues emailed Mr Pilley pointing out that they had still not been paid and had not had any further communication and asking for an update. Mr Pilley replied "Half the pays are done and the rest of the pays will be done this week. I'm not sure it's a fair crack about the lack of communication given I am not a director, shareholder, paid employee or have any other part of the business except for the fact that I am the moron that keeps pumping money to pay wages and bills, and keeps the business going by dealing with the commercial aspects nobody else can or will deal with.…"

15. The claimant was aware that there were cash flow concerns within the business at this time as he had been instructed to chase up outstanding payments owed by clients to the first respondent. Those instructions continued through February and March 2019 and came from Mr Bruce Pilley, Mr Ben Pilley and Ms Jacqui Parr, Mr Parr's wife.

16. On 20 February 2019 the claimant emailed Mr Parr. He pointed out that he had still not been paid for January. The claimant received a reply to that email from Jacqui Parr. She said Mr Parr had just had an operation and that they had believed Mr Bruce Pilley and Mr Ben Pilley were dealing with the issues. She said she would be "calling Bruce constantly trying to get answers hopefully you will get paid soon".

17. On 20 February 2019 the claimant received a payment of £2,409.48 which he took to be part payment of his salary for January 2019. He believes he should have been paid £2,532.24.

18. The first respondent was dissolved and struck off the register on 26 February 2019. Public documents show that was a striking off under section 1000 of the Companies Act 2006. The claimant was unaware, at the time, that the first respondent had been dissolved – nobody told him that was the case.

19. The claimant continued to carry out work after 26 February 2019 as he had before. He was still spending about 80% of his time on Transponda work and 20% on the TVCatchup side of the business. Notwithstanding the dissolution of the company, invoices continued to be issued in the name of the first respondent to advertisers who signed up to advertise on TVCatchup.

20. The claimant did not receive his February salary nor his March salary.

21. On 1 April 2019, the claimant received a telephone call from Mr Bruce Pilley who was, at this time, living in Australia. Mr Pilley talked about the financial situation of the business. He blamed Mr Parr for the non-payment of salaries and said that he had been trying to secure finance to pay salaries but that at the present time he was unable to do so. He also said "we're going to close TVCatchup down and just run

Transponda, quite possibly as early as this week. I'm not sure of the exact timing yet." Later in the conversation he implied that a decision had not yet been made to close down TVCatchup but that it was "probably" going to happen and that a decision was imminent. He told the claimant that he was making him redundant with immediate effect. He said he was hoping that he would get things "sorted out" for the claimant in a day or two. Mr Pilley did not tell the claimant that the first respondent had been dissolved. Nor did he suggest to the claimant that the first respondent's business had been – or would be - transferred to another company or individual.

22. The following day, the claimant sent an email to Mr Pilley asking him to confirm that he would be paid the salary owing to him and a payment in lieu of notice and redundancy payment. He also asked to be provided with payslips and P60s for the period June 2014 to date, along with his P45. Mr Pilley sent an email on 16th April suggesting the claimant contact somebody at a company called ELAS who were to be dealing with payroll and employment issues. However, when the claimant contacted the company he was told that they were not dealing with historical payroll issues. The claimant subsequently attempted to contact Mr Pilley and Mr Parr but they did not respond to him.

23. At no time during his employment did anybody tell the claimant that the first respondent had been dissolved. The claimant only became aware of this fact at some point after conversation with Mr Pilley on 1 April 2019.

24. On 9 April 2019 the claimant received a payment of £500 directly into his bank account. He received a subsequent payment of £500 on 24 April 2019. He assumes this was part payment of salary arrears although has not received any wage slip or the clarification to confirm this.

25. The claimant said in his witness statement "it has been brought to my attention from my colleagues who continue to work at Toyon that Toyon had transferred their business to the second respondent's business". When I asked the claimant when and how this matter had been brought to his attention he said he could not recall when it was but that he had had met up with two of his former colleagues. I asked the claimant what his colleagues had said to him. The claimant's response was "they had been employed by Transponda." The claimant could not say which one of his two colleagues had said this. He said "it could be either; they would have confirmed between themselves they were still employed and paid by Transponda." The claimant then conceded that he could not recall what either of his colleagues had actually said to him about the business of Transponda. I am not persuaded that any of the claimant's former colleagues told the claimant that the first respondent transferred its business to the second respondent. When probed, the claimant's evidence simply does not support such a finding.

Legal framework

26. To bring a claim for a redundancy payment or a claim of unfair dismissal under the Employment Rights Act 1996 the claimant must establish that he was:
    (1) an 'employee' of the respondent at the material time;
    (2) had two years' continuous employment; and
    (3) was dismissed.

27. The term ‘employee’ is defined, for redundancy pay and unfair dismissal purposes, in the Employment Rights Act 1996 s230(1) as ‘an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.’ ‘Contract of employment’ is defined, at s230(2) as ‘a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.’

28. The claimant must also establish that he was an employee of the respondent, as so defined, to bring a claim in the Employment Tribunal for breach of contract.

29. To bring a claim under section 23 of the Employment Rights Act 1996 in respect of an unlawful deduction from wages, the claimant must prove that he was, at the material time, a ‘worker’ in relation to the respondent.

30. The term ‘worker’ is defined in the Employment Rights Act 1996 s230(3) as ‘an individual who has entered into or works under (or, where the employment has ceased, worked under): a contract of employment, or any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.’

31. It follows from these definitions that, if the claimant is to establish that he was either an employee of either respondent or a worker in relation to either respondent he must prove that there was a contract in existence between the claimant and the respondent at the material time, whether express or implied.

32. The question of whether a contract has come into existence is decided by applying normal common law principles. There must be:
    (1) an agreement between the parties on essentials with sufficient certainty to be enforced; agreement usually entails the process of offer and acceptance, the law requiring that there be an offer on ascertainable terms which is accepted by the person to whom it is made.
    (2) an intention to create legal relations; and
    (3) consideration.

33. At common law, the employment of an employee cannot be transferred from one employer to another without the consent of the employee: Nokes v Doncaster Amalgamated Collieries Ltd [1940] AC 1014, [1940] 3 All ER 549.

34. An exception to that general rule is created by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Where there is a ‘relevant transfer’ as defined in the TUPE regulations, the contract of employment of anyone employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, is transferred to the transferee and deemed to have been made by the employee with the transferee, unless the employee objects to the transfer: reg 4. Similarly, any liabilities of the transferor to the employee are

transferred to the transferee. This is the case regardless of whether or not the employee is aware of the transfer.

35. Regulation 3 of TUPE identifies two kinds of 'relevant transfer' to which the regulations apply. The first is the transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom 'where there is a transfer of an economic entity which retains its identity'. The second is a 'service provision change', ie a situation where where (a) activities undertaken by one party are contracted out to another; (b) activities cease to be carried on by one contractor on behalf of a client and are subsequently carried out by another contractor or (c) contracted out activities are resumed by the client.

36. As noted above, to bring a claim of unfair dismissal or for a statutory redundancy payment, an employee must show they have been dismissed.

37. For unfair dismissal purposes, the definition of dismissal is contained in Employment Rights Act 1996 s 95, which provides as follows:

> (1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) . . , only if)—
> (a) the contract under which he is employed is terminated by the employer (whether with or without notice),
> (b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or]
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

38. For redundancy pay purposes, the definition of dismissal is contained in Employment Rights Act 1996 s 136. Subsection (1) replicates the definition at s95(1). In addition, an employee is taken to be dismissed in certain circumstances. In particular, section 136(5) provides as follows:

> (5) Where in accordance with any enactment or rule of law—
> (a) an act on the part of an employer, or
> (b) an event affecting an employer (including, in the case of an individual, his death),
> operates to terminate a contract under which an employee is employed by him, the act or event shall be taken for the purposes of this Part to be a termination of the contract by the employer.

39. Employment Rights Act 1996 s 139 provides as follows:

> (1) For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—
> (a) the fact that his employer has ceased or intends to cease—
> (i) to carry on the business for the purposes of which the employee was employed by him, or
> (ii) to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business—
(i) for employees to carry out work of a particular kind, or
(ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer,
have ceased or diminished or are expected to cease or diminish.
…
(4) Where—
(a) the contract under which a person is employed is treated by section 136(5) as terminated by his employer by reason of an act or event, and
(b) the employee's contract is not renewed and he is not re-engaged under a new contract of employment,
he shall be taken for the purposes of this Act to be dismissed by reason of redundancy if the circumstances in which his contract is not renewed, and he is not re-engaged, are wholly or mainly attributable to either of the facts stated in paragraphs (a) and (b) of subsection (1).
(5) In its application to a case within subsection (4), paragraph (a)(i) of subsection (1) has effect as if the reference in that subsection to the employer included a reference to any person to whom, in consequence of the act or event, power to dispose of the business has passed.

40. The Companies Act 2006 provides as follows:

1000 Power to strike off company not carrying on business or in operation
(1) If the registrar has reasonable cause to believe that a company is not carrying on business or in operation, the registrar may send to the company a communication inquiring whether the company is carrying on business or in operation.

(2) If the registrar does not within 14 days of sending the communication receive any answer to it, the registrar must within 14 days after the expiration of that period send to the company a second communication referring to the first communication, and stating—
(a) that no answer to it has been received, and
(b) that if an answer is not received to the second [communication] within [14 days] from its date, a notice will be published in the Gazette with a view to striking the company's name off the register.

(3) If the registrar—
(a) receives an answer to the effect that the company is not carrying on business or in operation, or
(b) does not within [14 days] after sending the second [communication] receive any answer,
the registrar may publish in the Gazette, and send to the company . . ., a notice that at the expiration of [2 months] from the date of the notice the name of the company mentioned in it will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register.

(5) The registrar must publish notice in the Gazette of the company's name having been struck off the register.

(6) On the publication of the notice in the Gazette the company is dissolved.

(7) However—
(a) the liability (if any) of every director, managing officer and member of the company continues and may be enforced as if the company had not been dissolved, and
(b) nothing in this section affects the power of the court to wind up a company the name of which has been struck off the register.
…

1012 Property of dissolved company to be bona vacantia

(1) When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for another person) are deemed to be bona vacantia and—

(a) accordingly belong to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall for the time being (as the case may be), and

(b) vest and may be dealt with in the same manner as other bona vacantia accruing to the Crown, to the Duchy of Lancaster or to the Duke of Cornwall.

(2) Subsection (1) has effect subject to the possible restoration of the company to the register under Chapter 3 (see section 1034).

Conclusions

41. The claimant became an employee of the first respondent in January 2017. In that capacity he originally worked solely on the business of TVCatchup. By May or June 2018 he was also carrying out work for a different undertaking ie the business of the Transponda website. At that time both of those undertakings, TVCatchup and Transponda, were operated by the first respondent. The claimant continued carrying out work for both undertakings until he was told he was being made redundant with immediate effect on 1 April 2019.

42. The claimant's case is that his employment was transferred to the second respondent by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 at some point before 1 April 2019 and that he was dismissed by the second respondent on that date.

43. Mr Collins submitted that even if there are no "official" documents documenting a transfer it is "very clear" that the second respondent took over the running of the TVCatchup and Transponda website businesses previously operated by the first respondent. Mr Collins appeared to rely primarily on the fact that, despite the dissolution of the first respondent in February 2019, the businesses of TVCatchup and the Transponda website continued and the claimant was required to, and did,

work in both of those businesses by those Mr Collins described as “directors” who had involvement in both respondent companies.

44. In his claim form the claimant also referred to the following as supporting his case that his employment had transferred to the second respondent:

    (1) the fact that the second respondent has the word ‘Transponda’ in its name;
    (2) the timing of the incorporation of that company;
    (3) the involvement of Mr Pilley’s wife as a director of the company;
    (4) being paid by the second respondent from November 2018; and
    (5) his former colleagues telling him the business of the first respondent had been transferred to the second respondent.

45. With regard to the last of these claims, I have rejected the claimant’s contention that former colleagues told him that the first respondent transferred its business to the second respondent. The claimant candidly accepted that he could not really recall what had been said to him. I accept that the claimant’s former colleagues may well have said they were still doing Transponda website work but that in itself is not evidence that there was a TUPE transfer or that, if there was a TUPE transfer, the transferor was the second respondent.

46. So far as payments are concerned, there was no evidence before me that the accounts from which payments were made to the claimant from the end of November 2018 was an account operated by the second respondent rather than the first respondent. The only connection the claimant has identified between the second respondent and that account is that both contain the name “Transponda”. However, what is clear is that “Transponda” was the name of a business that was operated by the first respondent from May 2018. There is no reason to conclude that the account was an account belonging to the second respondent rather than the first respondent. In any event, even if the second respondent had been involved in making payments to the claimant, it does not follow that this was because that company was the claimant’s employer.

47. Similarly, it does not follow from the fact that individuals who operated the first respondent company established a new company with the word “Transponda” in its title that they intended to, and did, transfer the business of the first respondent, including the Transponda website business, to that company. Even if it were possible to infer that such was the intention, there is no evidence that such a transfer occurred prior to the first respondent being dissolved on 26 February 2019.

48. Nothing changed in the way the business was operated in the months leading up to the dissolution of the first respondent other than that, by November 2018, the claimant was doing more work on the Transponda website than for the UKCatchup side of the business and was being paid out of a different account. Nor, ostensibly, did anything change in the way the business was run after the dissolution of the first respondent. Significantly, advertisers and potential advertisers were still led to believe they were contracting with the first respondent notwithstanding its dissolution: terms of business were not changed to show that customers were contracting with the second respondent or – for that matter – with some other person or entity.

49. The strongest evidence in support of the claimant's case that there was a TUPE transfer of the first respondent's business to the second respondent is the fact that those running the company are likely to have known the first respondent company was going to be dissolved – Companies House will have sent out notices to the company to that effect. It might be said that it could be inferred from that those running the business would have put in place contingency plans ahead of the dissolution of the company, to enable the business to continue running, and that those plans might have included a transfer of the business to a different company. However, the evidence before me suggests that those who ran the first respondent business did so without conscientious regard to their legal obligations. For example, the claimant's evidence, which I have no reason to doubt, was that they did not account for income tax on the claimant's income; furthermore, the claimant was not paid wages owing to him and, notwithstanding that the first respondent had been dissolved, nobody told the claimant that he was no longer employed by the company and Mr Parry and Mr Parr continued to operate the business in the name of the first respondent, making no adjustments to the terms and conditions on which they contracted with advertisers; and the dissolution of the first respondent in itself is evidence that those operating the business did not comply with their legal obligations under the Companies Act 2006. In all the circumstances, I do not infer that those running the business in which the claimant worked transferred it to a third party, ie the second respondent, ahead of the first respondent's dissolution so as to ensure the business could continue to operate after the first respondent was dissolved.

50. The burden of proof is on the claimant. The claimant has not discharged the burden of showing that the second respondent became his employer, by way of TUPE transfer or otherwise, before the first respondent was dissolved.

51. Under section 1012 of the Companies Act 2006, when the first respondent was dissolved, its property became bona vacantia. That means it vested in the Crown. The first respondent company ceased to exist as an entity when it was dissolved. That being the case the company could not possibly continue to be a party to the contract of employment as the first respondent could no longer discharge its obligations under the contract of employment with the claimant. I conclude that the effect of the dissolution was to frustrate the contract between the claimant and the first respondent.

52. It is clear the claimant was doing some work for somebody after the dissolution of the first respondent. However, there cannot have been a transfer of the business of the first respondent to the second respondent after the dissolution of the first respondent because the first respondent's undertaking vested in the Crown: only the Crown (including those acting on its behalf) could have transferred the business at that point and there is no evidence at all that this is what happened.

53. The claimant did carry out work after the dissolution of the first respondent. He was no longer employed by the first respondent at that time: he cannot have been as the first respondent was a non-entity at that point and did not exist.

54. For the claimant to have been an employee of (or worker in relation to) the second respondent after his employment with the first respondent terminated, the claimant

would have either had to consent to the transfer of his employment or have entered into a new contractual agreement. Clearly there was no express agreement by the claimant to become employed by the second respondent. As for whether there was an implied transfer of the claimant's employment to the second respondent or an implied contractual relationship between the claimant and the second respondent, the evidence before me suggests, and I find, that the claimant was not even aware of the second respondent as a corporate entity until some time after 1 April 2019. Furthermore, there was no evidence before me that the business in which the claimant had worked was being operated by that particular company after the dissolution of the first respondent. Whatever the claimant's status after 26 February, I am not persuaded that the claimant entered into a contract of employment or worker contract with the second respondent after the first respondent was dissolved nor that he impliedly agreed to his employment being transferred to the second respondent. If there was an implied employment or worker contract or implied transfer of employment, it is more likely, it seems to me, that the claimant was employed by one or more of the individuals with whom he had personal dealings ie those who were running the company or had been running the company. But it seems to me most likely that the claimant was not engaged under a contract of any description after 26 February 2019 given that, in light of his ignorance of the dissolution of the first respondent, it cannot be said that he intended to enter into a contract of employment with any other party or agreed to his employment being transferred. That might have left him with an equitable remedy for pay for the work he did on a quantum meruit basis, but that is not something that I am concerned with in these proceedings.

55. In light of those conclusions, the claim against the second respondent is not made out.

56. So far as the claim against the first respondent is concerned, it appears to me that, for redundancy pay purposes, the dissolution of the first respondent was a dismissal by reason of redundancy by virtue of sections 136(5) and 139 of the Employment Rights Act 1996. That is because the dissolution of the company was 'an event affecting' the respondent which frustrated the contract of employment and thereby operated to terminate a contract under which the claimant was employed. It, therefore, constituted a dismissal within section 136. What is more, the claimant's contract was not renewed and he was not re-engaged under a new contract of employment and the reason for that was that the first respondent had been dissolved and therefore ceased trading and had no more need for employees to do any kind of work. Therefore, the dismissal was by reason of redundancy, applying section 139.

57. However, the first respondent has been dissolved and no application has been made to restore it to the register. I asked Mr Collins if the claimant was contending that it was open to me to conclude that, notwithstanding the fact that the company ceased to exist when dissolved, it remained liable to pay to the claimant a redundancy payment under section 135 of the Employment Rights Act 1996. Mr Collins' position was that, unless the first respondent were to be restored to the register, it had no such liability.

58. Mr Collins also accepted that I could not uphold the claimant's claims against the first respondent for unfair dismissal, wrongful dismissal and unlawful deduction from wages unless the company were to be restored to the register.

59. In light of my conclusions above, Mr Collins applied for, and I granted, an order in the following terms:

    (1) The claimant's claims against the first respondent are stayed for 14 days.
    (2) The claimant must tell the Tribunal by no later than 18 November 2019 whether he intends to make an application to have the first respondent restored to the register of companies.
    (3) The claimant agrees that unless he tells the Tribunal by 18 November 2019 that he intends to make an application to have the first respondent restored to the register of companies then his claims against the first respondent shall be dismissed without further notice.

60. In the mean-time I did not finally determine whether the dissolution of the first respondent constituted a dismissal for unfair dismissal purposes or a wrongful termination of the contract of employment and nor have I determined what amount, if anything, remained owing by the first respondent to the claimant in wages.

61. By 18 November 2019 the claimant had not told the Tribunal that he intends to make an application to have the first respondent restored to the register of companies. Therefore, his claims against the first respondent were dismissed in accordance with the order.

EMPLOYMENT JUDGE ASPDEN

REASONS SIGNED BY EMPLOYMENT JUDGE ON: 2 January 2020