



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: S/4111026/2018**

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**Held in Glasgow on 20 September 2018**

**Employment Judge: Mary Kearns**

10 **Mr James Hood**

**Claimant  
In Person**

**Tedesco Tiling and Terrazzo Contractors  
Scotland Limited (SC521571)**

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**Respondent  
Represented by:  
Mr D Teseco -  
Solicitor**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgement of the Employment Tribunal was to dismiss the claims.

**REASONS**

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1. This case came before me for a final hearing on 20 September 2018. The claimant was claiming a redundancy payment and holiday pay. With regard to the latter claim, the respondent produced holiday records showing that the claimant had taken and been paid for all the holidays to which he was entitled in the holiday year to the date of termination. On sight of the holiday records the claimant conceded that this was probably correct and undertook to consult his pay slips, which he had at home and to inform the Tribunal within 7 days if he took issue with it. No further communication was received from the claimant regarding holiday pay. I accepted the respondent's record and concluded that the claimant had no holidays accrued but untaken when his employment terminated. The claim for holiday pay is dismissed.

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2. With regard to the claim for a redundancy payment, the respondent's argument was that the claimant had just under two years' employment with them and was therefore not entitled to a redundancy payment. On the facts set out below, it appeared to me that the employees of company SC446768 would have transferred to the respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE) unless the insolvency provisions applied.

**Findings in Fact**

The following facts were admitted or found to be proved:

3. For a number of years prior to 5 July 2014 the claimant worked for D Tedesco Tiling Contractors (Scotland) Limited (SC77752). The business had been started by Mr I D Tedesco (senior) in 1975. After trading successfully for 39 years, the company unfortunately went into liquidation on 4 July 2014 and the claimant's employment terminated on that date. He received a redundancy payment on termination.
4. In or about September 2014 Mr I D Tedesco junior began Tedesco Tiling and Terrazzo Contractors Limited ("company SC446768"), employing 8 of the employees formerly employed by his father's company, including the claimant, who was employed as a labourer. That company went into liquidation on 5 July 2016. Yvonne Quinn, Insolvency Practitioner, of Grayson Corporate Limited, Clyde Offices, 2nd Floor, 48 West George Street, Glasgow, G2 1BP was appointed Provisional Liquidator by order of Glasgow Sheriff Court dated 5 July 2016. She was subsequently appointed Interim Liquidator by Winding Up Order dated 9 May 2017. The purpose of the insolvency of company SC446768 was the realisation and distribution of its assets.
5. The main assets used by the company (SC446768) – its vans, stock and equipment - were either already owned personally by Mr Tedesco senior or purchased from the liquidator by him. The respondent had been acquired as

an off the shelf company around the end of 2015. Around ten days after SC446768 went into liquidation the respondent started trading under the direction of Mr Tedesco senior. The directors of the respondent were Mr I D Tedesco senior and Mr I D Tedesco junior. The respondent's business involved the supply and fitting of tiles. Most of the staff who had worked for SC446768 went to work for the respondent, including the claimant. The respondent used the same vans, stock and equipment as before. The signage on the vans was similar subject to a change of address and telephone number. The respondent traded from a different address and premises than company SC446768. The website also changed. The claimant began working for the respondent on or about 20 July 2016.

6. On or about 1 June 2018 the claimant was working on a job in Dundee when he received a message to get back to the respondent's yard. On his return, he and the respondent's other employees were told that they were going to be paid off. They were given a week's notice and told their employment would cease on 8 June 2018 when the respondent would cease trading. It was explained that Mr and Mrs Tedesco senior would be retiring and that their son, Mr Ignatius Tedesco did not wish to continue the business.

7. The claimant was dismissed on 8 June 2018 date by reason of redundancy. He had no holidays accrued but untaken at the date of termination, having taken and been paid for them all.

**Applicable Law**

8. Regulation 3 of the TUPE Regulations provides, so far as relevant as follows:-

**"3 A relevant transfer**

*(1) These Regulations apply to –*

*(a) A transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity.*

*(b) .....*

(2) *In this regulation “economic entity” means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.*

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9. Regulation 4 provides so far as relevant:-

**“4 Effect of relevant transfer on contracts of employment**

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(1) *Except where objection is made under paragraph (7), a relevant transfer shall not operate so as to terminate the contract of employment of any person 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, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.*

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(2) *Without prejudice to paragraph (1), but subject to paragraph (6), and regulations 8 and 15(9), on the completion of a relevant transfer –*

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a) *all the transferor’s rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and*

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b) *any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.*

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(3) *Any reference in paragraph (1) to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1), including, where the transfer is effected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions.”*

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40 10. Regulation 8 of TUPE provides so far as relevant:

**“8 Insolvency**

“ .....

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*“(7) Regulations 4 to 7 do not apply to any relevant transfer where the transferor is the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the*

*liquidation of the assets of the transferor and are under the supervision of an insolvency practitioner.”*

**Discussion and decision**

5 11. It seems fairly clear in this case that there would have been a relevant transfer  
for the purposes of Regulation 3(1)(a) of TUPE had the insolvency provisions  
in Regulation 8 not applied to company SC446768. However, Regulation 8(7)  
10 of TUPE provides that “Regulations 4 to 7 do not apply to any relevant transfer  
where the transferor is the subject of bankruptcy proceedings or any  
analogous insolvency proceedings which have been instituted with a view to  
the liquidation of the assets of the transferor and are under the supervision of  
an insolvency practitioner.” In this case, the public records show that  
insolvency proceedings were instituted with a view to the liquidation of the  
assets of company 446768 on 5 July 2016 under the supervision of Yvonne  
15 Quinn, insolvency practitioner. It follows that the claimant’s employment did  
not transfer to the respondent from that company in 2016. His employment  
with the respondent therefore began on his first day of work with them – 20  
July 2016. Accordingly, he did not have two years’ continuous employment  
and is not entitled to a redundancy payment.

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Employment Judge: Mary Kearns  
Date of Judgement: 17 October 2018

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Entered in Register,  
Copied to Parties: 19 October 2018