



THE EMPLOYMENT TRIBUNALS

Claimants: Mr K Carter & Others

Respondent: BM Logistics Management Limited

Heard at: Newcastle Hearing Centre **On:** 6 March 2020

Before: Employment Judge Morris (sitting alone)

Representation:

Claimants: Messrs Carter, Hopper, and Littlemore: Mr F Ferguson, Welfare Rights Adviser

Mr Todd: In Person

Respondent: Neither present nor represented

JUDGMENT

The Judgment of the Employment Tribunal is as follows:

Redundancy payment

1. Mr Carter, Mr Hopper and Mr Todd were each dismissed by the respondent by reason of redundancy. In accordance with section 135 of the Employment Rights Act 1996, the respondent must therefore pay a redundancy payment to each of those three claimants.
2. The redundancy payments to which they are respectively entitled are as follows: Mr Carter £9,144; Mr Hopper £6,600; Mr Todd £1,650.
3. Mr Littlemore had withdrawn his claim to be entitled to receive a redundancy payment, which is dismissed.

Notice pay

4. The respondent breached the contract of employment of Mr Carter, Mr Hopper and Mr Todd when it terminated those respective contracts without giving them the notice of that termination to which they were respectively entitled.

5. As compensation for that breach of contract, those claimants are respectively entitled to the following payments: Mr Carter £6,270; Mr Hopper £1,955; Mr Todd £1,250.
6. Mr Littlemore had withdrawn his contract claim but, in any event, that claim was presented 'out of time' and, on either basis, it is dismissed

Unfair dismissal

7. With reference to Regulation 7 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 and sections 98 and 135 of the Employment Rights Act 1996, each of the claimants (other than Mr Littlemore's claim had been presented out of time) was unfairly dismissed by the respondent contrary to Section 94 of that Act.
8. The basic award for unfair dismissal has been subsumed within the redundancy payments referred to above. The claimants (other than Mr Littlemore) are respectively entitled to receive a compensatory award for unfair dismissal as follows: Mr Carter £300; Mr Hopper £300; Mr Todd £4,300.

Recoupment Regulations

9. The Recoupment Regulations apply to the awards in favour of Mr Hopper and Mr Todd. At the hearing I explained the operation of the Regulations the details of which are set out in the Annexure to this Judgment. The required particulars are as follows:

Mr Hopper:

Monetary award: £300

Prescribed element: nil

Period to which prescribed element relates: 7 December 2018 to 6 March 2020

Excess of monetary award over prescribed element: £300

Mr Todd:

Monetary award: £4,300

Prescribed element: £4,000

Period to which prescribed element relates: 7 December 2018 to 6 March 2020

Excess of monetary award over prescribed element: £300

[Note: there are elements of the above Judgment that are not as was announced orally at the conclusion of the hearing: for example, relating to Mr Littlemore's claims for redundancy pay and his contract claim, and the calculations of the awards to the other claimants. The reasons for this are explained below.]

REASONS

Representation & evidence

1. The claimants other than Mr Todd were represented by Mr F Ferguson, Welfare Rights Adviser. Mr Todd appeared in person. The respondent was neither present nor represented (which I note was the position at the Preliminary Hearing held on 27 November 2019 (“the November Hearing”), nor had any communication been received from the respondent or on its behalf in respect of this hearing today. In the circumstances having considered the overriding objective I decided it was appropriate to proceed with these claims.
2. I heard evidence from each of the claimants. I had the benefit of witness statements from Mr Carter and Mr Hopper and took oral evidence from the other two claimants. I had before me a small bundle of documents prepared by Mr Ferguson.

The history of these claims

3. The history of these claims is set out in paragraph 1 of the Case Management Summary arising from the November Hearing.
4. A matter of importance to me is that it had been determined at a Preliminary Hearing on 4 September 2019 that the employment of the claimants had transferred to the respondent. In that regard I record that at that time the name of the respondent was Alpha Security Group Limited but, according to a search undertaken at Companies House, that name changed to BM Logistics Management Limited (Company Number 10327055) on 12 August 2019. As such, it is that name that is given above for the respondent in these cases.
5. While other claims had been and have been made arising from the circumstances of the claims before me, at this hearing those that appeared to be outstanding for my determination are set out at paragraph 5 of the Case Management Summary of the November Hearing. In short, all four claimants claimed redundancy pay and notice pay. The claimants other than Mr Littlemore claimed unfair dismissal. Mr Littlemore had claimed unfair dismissal but, as is recorded in paragraph 1 of that Case Management Summary, at a Preliminary Hearing held on 3 September 2019 Mr Littlemore’s claim of unfair dismissal had been found to be out of time.
6. Although the above summary is what is recorded in that paragraph 5, that record is not accurate in respect of Mr Littlemore in two material respects as follows:

6.1 *Redundancy pay*

At the outset of the hearing I invited Mr Ferguson to clarify the complaints that were being pursued by each of the claimants. In so doing he stated, amongst other things, that Mr Littlemore was claiming a redundancy payment. That accorded with what I had noted in paragraph 5 of the Case Management Summary of the November Hearing that the outstanding

claims of Mr Littlemore were “Redundancy payment; notice pay” and, there being nothing apparent on the case file to suggest to the contrary, I accepted that at face value. I subsequently found, however, that by letter of 18 October 2019 Mr Ferguson had withdrawn Mr Littlemore’s claims against the respondent albeit then known as Alpha Security Group.

I also identified that on 4 December 2019 Mr Ferguson had applied to amend Mr Littlemore’s claim so as to claim an entitlement to a redundancy payment. At the direction of Employment Judge Sweeney, on 18 December 2019 the Tribunal responded to that application to the effect that the withdrawal of Mr Littlemore’s claim had been sent to the Tribunal on 18 October 2019 and as his claims were therefore at an end, Mr Littlemore’s claim could not be amended; as such the application was refused.

In these circumstances, despite the reference in paragraph 5 of the Case Management Summary at the November Hearing to Mr Littlemore claiming a redundancy payment, it is now apparent that when these cases came before me there was not an outstanding claim by Mr Littlemore in respect of entitlement to a redundancy payment which I was required or had jurisdiction to determine. On the contrary, pursuant to Rule 51 of the Employment Tribunals Rules of Procedure 2013 Mr Littlemore’s claim to be entitled to a redundancy payment came to an end when it was withdrawn on 18 October 2019.

Hence, my Judgment recorded above that Mr Littlemore had withdrawn his claim to be entitled to receive a redundancy payment and, that being so, pursuant to Rule 52 of the above Rules, that claim is dismissed.

6.2 *Notice pay*

At the hearing, Mr Ferguson rightly identified that as Mr Littlemore’s claim of unfair dismissal had previously been found to be out of time, it followed that his claim for notice pay (which he had made at the same time) was also probably out of time.

Article 7 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides that an employment tribunal shall not entertain a complaint in respect of an employee’s contract claim unless it is presented within the period of three months beginning with the effective date of termination of the contract giving rise to the claim. There are provisos that can be applicable to that provision but it is apparent that at the Preliminary Hearing of 3 September 2019 it was found that none of those provisos were applicable. At the hearing before me, Mr Ferguson did not seek to argue to the contrary.

Hence I agree with Mr Ferguson that (again notwithstanding the reference in paragraph 5 of the Case Management Summary at the November Hearing to Mr Littlemore claiming notice pay) Mr Littlemore’s contract

claim in respect of notice pay was presented out of time and, as such, this Tribunal has no jurisdiction to entertain it.

In any event, as explained above, Mr Littlemore's claims had been withdrawn on 18 October 2019 and, therefore, once more by reference to Rules 51 and 52 respectively, Mr Littlemore's contract claim against the respondent came to an end on that withdrawal and is dismissed.

7. I acknowledge that in each of the above two respects the above was not the position I took at the hearing before me but I was led astray by the fact that in the above paragraph 5 of the Case Management Summary at the November Hearing it is clearly stated that Mr Littlemore is pursuing claims in respect of both redundancy pay and notice pay. That notwithstanding, as both the withdrawal of Mr Littlemore's claims against the respondent and the three-month time limit in respect of a contract claim are matters of jurisdiction they are not something in respect of which I have any discretion, as such, I am precluded from considering these two claims of Mr Littlemore.
8. For completeness I record that there is also in that paragraph 5 a reference to Mr Long claiming notice pay but all the claims of Mr Long were against Steadfast Security Solutions Limited ("Steadfast"), which had been the first respondent to these proceedings at an earlier stage, and those claims of Mr Long were withdrawn in a letter from Mr Ferguson to the Tribunal dated 4 December 2019.

The issues

9. The issues for my determination are set out in paragraphs 7 to 9 of the Case Management Summary from the November Hearing to which I shall return below.

Findings of fact

10. Having taken into consideration all the relevant evidence before me (documentary and oral), the submissions made by Mr Todd and on behalf of the other claimants at the hearing and the relevant statutory and case law (notwithstanding the fact that, in the pursuit of some conciseness, every aspect might not be specifically mentioned below), I find the following facts that are relevant to the above claims and issues.

All claimants

- 10.1 Prior to 7 December 2018 all four claimants were employed by Steadfast and they each had continuity of employment before that, which had been preserved from previous employments by the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").
- 10.2 On that date of 7 December 2018 their employments transferred to the respondent, albeit then known as Alpha Security Limited ("Alpha"). Also on that date Mr Bob Hackworth of Steadfast telephoned at least Mr Carter and Mr Todd to say that the contract Steadfast had at Sunderland Football Club had been lost.

- 10.3 In the response (ET3) submitted on behalf of the respondent it is explained, amongst other things, that the respondent has continued to provide a security service to that Football Club “on a much-reduced capacity of three manned guards” and that the number of manned guards provided is set to be reduced even further.
- 10.4 On 20 December 2018 Steadfast wrote to the claimants to the effect that they were no longer employed by Steadfast and that their employments had transferred to Alpha. The claimants heard nothing formal from Alpha despite writing to that Company requesting information regarding their employments. That said Mr Carter did receive a telephone call from Alpha on 21 December stating that he was not employed by that Company. Alpha never provided any work or pay to the claimants.
- 10.5 As noted above, Alpha was the previous name of the respondent.

Mr Carter

- 10.6 The effective date of termination (“EDT”) of Mr Carter’s employment was 7 December 2018. He had been continuously employed since 8 June 2006. At his EDT he was aged 57 years, his gross pay was £519 per week and his net pay was £418. He secured equally remunerative employment on 6 November 2019. He only seeks compensation for unfair dismissal calculated up to 6 March 2019, that being the end date to be used in the calculation of his payment in lieu of notice.
- 10.7 On 21 December 2018 Mr Carter submitted a formal grievance to the HR Department of Steadfast who replied on 8 January 2019 stating that his grievance should be taken up with Alpha.

Mr Hopper

- 10.8 Mr Hopper’s EDT was 7 December 2018. He had been continuously employed since 2 January 2003. At his EDT he was aged 54 years, his gross pay was £378 per week and his net pay was £322 per week. He secured alternative equally remunerated employment on 10 January 2019.

Mr Todd

- 10.9 Mr Todd’s EDT was 7 December 2018. He had been continuously employed since 2 August 2013. At his EDT he was aged 57 years, his gross pay was £220 and his net pay was £200. He secured alternative, better remunerated employment on 30 May 2019.

Consideration and decision

11. For the reasons set out above, there are no outstanding claims by Mr Littlemore before me for determination. In this section of these Reasons, therefore,

references to “the claimants” are references to Mr Carter, Mr Hopper and Mr Todd alone to the exclusion of Mr Littlemore.

12. Referring to the issues contained in paragraphs 7 to 9 inclusive of the Case Management Summary at the November Hearing my findings are as follows:

Unfair dismissal

13. The claimants were dismissed by the respondent.
14. The claimants were dismissed by the respondent before or after a relevant transfer as is referred to in Regulation 7(1) TUPE. Given what is set out above as taken from the response submitted on behalf of the respondent and the evidence of the claimants, I am satisfied that the sole or principal reason for the dismissals of each of the claimants was an economic, technical or organisational reason entailing changes in the workforce of the respondent in accordance with Regulation 7(2) of TUPE.
15. The reason for the dismissals was that the claimants were redundant in accordance with Section 98(2)(c) of the Employment Rights Act 1996 with reference to Section 139 of that Act.
16. Thus the dismissals were not automatically unfair. By reference to the considerations contained in Section 98(4) of that Act (including that I find that the respondent acted unreasonably in treating redundancy as a sufficient reason for dismissing the claimants), however, each of the dismissals was unfair. Thus each of the claimants was unfairly dismissed by the respondent.

Redundancy payment

17. Each of the claimants is entitled to a redundancy payment in accordance with Section 139 of the Act.

Notice pay

18. Each of the claimants was dismissed without notice. Mr Carter and Mr Hopper were each entitled to the minimum statutory period of twelve weeks’ notice. Mr Todd was entitled to the minimum statutory period of five weeks’ notice.
19. The respondent neither gave to those claimants any notice nor made any payment to them in lieu of the notice to which they were respectively entitled.

Awards

20. In light of the above findings and decisions, the awards payable to the claimants are as set out below. I first make a preliminary point, however, that in the Schedules of Loss that Mr Ferguson had prepared on behalf of the claimants whom he represented he had claimed a 25% increase in the compensatory awards for unfair dismissal that he had calculated in respect of Mr Carter and Mr Hopper on account of the respondent’s failure to follow the Acas Code of

Practice due to what he described as being its wilful refusal to carry out any grievance procedure. Although I accept that I did not make this point at the hearing, it is expressly stated in the Acas Code of Practice on Disciplinary and Grievance Procedures (2015) that it only applies in two sets of circumstances: first, to disciplinary situations and not where, as in these cases, the reason for the dismissal is redundancy; secondly, to grievance situations. Only Mr Carter gave evidence that he had submitted a formal grievance. None of the other claimants stated that he had similarly raised a grievance. The difficulty with the grievance raised by Mr Carter, however is that he had submitted it to Steadfast on 21 December 2018. As the transfer of the undertaking between Steadfast and Alpha occurred on 7 December 2018, Steadfast was no longer his employer when he submitted the grievance and although his evidence was that Steadfast had replied on 8 January 2019 stating that his grievance should be taken up with Alpha it appears that he did not do that. As such, even Mr Carter did not raise a grievance with his employer. The combination of these various factors that none of the claimants other than Mr Carter raised a grievance and he did not raise a grievance with his employer is that I am unable to apply an increase to any of the awards that I have made pursuant to Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992.

21. The awards to the claimants are as follows:

Redundancy payment

22. Mr Carter: Mr Carter is entitled to a redundancy payment of £9,144
Mr Hopper: Mr Hopper is entitled to a redundancy payment of £6,600
Mr Todd: Mr Todd is entitled to a redundancy payment of £1,650

Compensation for wrongful dismissal – notice pay

23. Mr Carter: The compensatory payment due to Mr Carter is £6,270.
Mr Hopper: The compensatory payment due to Mr Hopper is £1,955.
Mr Todd: The compensatory payment due to Mr Todd is £1,250.

Compensation for unfair dismissal

24. The basic award to which each of the claimants would have been entitled has been subsumed within the redundancy payment referred to above.

25. As to the compensatory award:

25.1 Neither Mr Carter nor Mr Hopper made any claim for loss of earnings but did claim a payment in respect of loss of statutory rights in respect of which I award £300. The compensatory award in their cases is therefore £300.

25.2 Mr Todd is entitled to a compensatory award comprising compensation for loss of income of £4,000 (that being calculated by reference to the period of 20 weeks commencing with the expiry of his notional notice period of 11 January 2019 until he secured alternative, better remunerated employment

on 30 May 2019) to which is added £300 for loss of statutory rights. Thus a total compensatory award of £4,300.

Recoupment Regulations

26. The Recoupment Regulations do not apply to the award made to Mr Carter referred to above. Those Regulations do apply, however, to the awards made to Mr Hopper and Mr Todd. At the hearing I explained the operation of the Regulations the details of which are set out in the Annexure to this Judgment.

27. Mr Hopper received Universal Credit/Jobseekers Allowance (that is what he thought the award was called) for a period of one month. In respect of Mr Hopper, therefore, the required particulars are as follows:

Monetary award: £300

Prescribed element: nil

Period to which prescribed element relates: 7 December 2018 to 6 March 2020

Excess of monetary award over prescribed element: £300

28. Mr Todd received Jobseekers Allowance. In his case he claimed in January 2019 and received Jobseekers Allowance in February 2019. In respect of Mr Todd, therefore, the required particulars are as follows:

Monetary award: £4,300

Prescribed element: £4,000

Period to which prescribed element relates: 7 December 2018 to 6 March 2020

Excess of monetary award over prescribed element: £300

EMPLOYMENT JUDGE MORRIS

**JUDGMENT SIGNED BY EMPLOYMENT JUDGE
ON 13 May 2020**

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Schedule of claimants

2500065/2019 Mr K Carter

2500094/2019 Mr WB Long

2500253/2019 Mr D Hopper

2500285/2019 Mr T Todd

2501043/2019 Mr S Littlemore