



# EMPLOYMENT TRIBUNALS

**Claimant**  
Ms Gillian Ferguson

**Respondent**  
KC Property Management UK Ltd

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at Newcastle (by Telephone)

On 2 November 2020

EMPLOYMENT JUDGE GARNON (sitting alone)

Attendances: Claimant in person      Respondent      no attendance

## REMEDY JUDGMENT FOLLOWING A JUDGMENT ON LIABILITY ONLY

On the claim of unfair dismissal, I order the respondent to pay to the claimant compensation of (i) a basic award of £282.22 (ii) a compensatory award of £ 827.34 and (iii) an increase of 4 weeks pay under section 38 of the Employment Act 2002 of £451. 56. The Recoupment Regulations do not apply. The total payable is £1561.12.

## REASONS

1. The claimant was employed as a cleaner by a business she named as “Spotless Commercial Cleaning” (“Spotless”), latterly at a school. Spotless lost that cleaning contract effective on 11 November 2019, prior to which the claimant was told her employment would transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to “Focus Cleaning” (Focus) which was to take over cleaning the school.

2. The claim was presented on 1 January 2020 following Early Conciliation (EC) from 28 November 2019 to 28 December 2019 against a respondent described on the claim form and EC Certificate as “Focus Cleaning”. The address given for it was “The Angel Guest House, Newcastle-upon-Tyne NE16 3DW”. The claim was served by post to that address on 17 January. A response was due by 14 February. None were received. The claim papers were never returned by Royal Mail. I call this “Contact 1”.

3. The file was referred to Employment Judge Aspden who noticed the claimant had not given the date she started work for Spotless and, as a claim for unfair dismissal requires two years continuous employment, a letter was sent to the claimant asking for such date and whether the address she had given, with no street name, was complete. This letter was copied to the respondent. I call this “Contact 2”.

4. The claimant emailed her start date as 1 February 2017 and the full address as Focus Cleaning, 6 Front Street, Swalwell, Newcastle NE16 3DW. The file was referred to Employment Judge Johnson who directed a letter to the claimant saying Focus Cleaning appeared to be only a trading name. This was copied to the respondent. I call this "Contact 3".

5. The claimant emailed to say she had no more information or knowledge of who traded as "Focus Cleaning". Limited Companies may use trade names and such names are often the only ones people dealing with it knows. The file was referred to me and I found the Angel Guest House is at 6 Front Street, Swalwell, Newcastle NE16 3DW which is also the registered office shown at Companies House for KC Property Management UK Ltd, a company of which the register shows Ms Kim Moore to be a person with significant control. I directed a letter to the claimant, which was sent on 3 March copied to the respondent. I call this "Contact 4".

6. The hearing was listed for 5 May but due to the Covid 19 Pandemic was converted by the Regional Employment Judge to a telephone hearing notice of which was sent to the claimant and respondent on 28 April. I call this "Contact 5".

7. That hearing was conducted by Employment Judge Aspden. The respondent did not dial in to it but the claimant did. Employment Judge Aspden amended the name of the respondent to that shown above and a three page case management summary detailing all her reasoning was sent to it at 6 Front Street, Swalwell, Newcastle NE16 3DW on 14 May. I call this "Contact 6".

8. On reading it, the respondent would easily have seen what it had to do if it wanted to defend. It made no contact. When no response has been entered an Employment Judge is required by rule 21 to decide on the available material whether a determination can be made and, if so, obliged to issue a judgment. On 27 May Employment Judge Aspden gave judgment on liability only. This was sent to the parties on 15 June. In a covering letter the respondent was told it could still be heard at the remedy hearing to the extent permitted by the Judge. I call this "Contact 7".

9. The claimant answered some questions put to her by email from her mobile phone on 16 June 2020 saying ( I have changed only the way she sets out dates) *"I started to work for Spotless on 1 February 2017 working at Tanfield Metal Spinners in Washington and in November I started at Hadrian Air Con in Washington. I was working 12 and a half hours a week and I was coming out with £410 every 4 weeks but I also was working at a hotel but not with Spotless. I worked for them for 2 years so Spotless offered me another site Holly Park Academy in Washington. So I packed the hotel in and I was working at all sites. I left the hotel on 9 September 2019. I was working for a while at the school then Spotless lost the contract and they said Focus will keep me on as it is under TUPE and that would happen on 11 November and on 11 November I got a phone call from Kim and she said can I meet up with her on 12 November. So I met up with her and she said I was not allowed on site as I have not received my DBS and she has got another site I can start. She said she will get back to me but she didn't."*

10. Ms Kim Moore on behalf of the respondent emailed the Tribunal on 17 June saying she had received the letter of 15 June *"This is the first letter I have received so I am confused as to how a judgment could be made without me as respondent having the opportunity to provide information"*. Letters occasionally go astray but rarely are they not returned by the Royal Mail as each

envelope shows a return address. For Contacts 1,2,3,4,5 and 6 not to have reached the registered office and come to Ms Moore's attention, but the one enclosing a judgment, contact 7 to have arrived the day after posting is not credible. Anyway this claim would be deemed to have been validly served on the respondent by posting to its registered office.

11. Employment Judge Johnson directed a letter to the respondent saying it must complete a draft response form a copy of which was enclosed now wished to run a defence on liability and explain why no response had been entered in time . Ms Moore did so on 25 June repeating what she had said in her letter of 17 June that the claimant was dismissed because she could not produce a DRB check. Even if that were the reason, it was hard to see how she could argue she followed any fair procedure. On liability her argument was weak. She also said the claimant refused an offer from her to work elsewhere and found another job quickly. Those points would go to how much compensation the claimant should be awarded by way of remedy and on those points the respondent could still be heard.

12. The respondent applied for an extension of time to file a response and reconsideration of the judgment, on liability. On 4 August I dealt with those applications. Most of paragraphs 2-10 above are taken from the reasons I gave in writing for rejecting both. I also set out the procedural law and the relevant parts of TUPE. The main point for today's purposes is Reg 4 which includes

*(1) ... 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 .. 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.*

*(2) Without prejudice to paragraph (1), ...on the completion of a relevant transfer—*

*(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*

*(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.*

13. The claimant was born on 4 January 1977. She still cleaned for Spotless at Tanfield Metal Spinners and Hadrian Air Con in Washington. The contract of employment which transferred to the respondent was in respect of the school where she cleaned for 13.75 hours per week at the National Minimum Wage at the time £8.21. Her income from the school was £112.89 per week. She accepts "Kim" mentioned her not having a CRB, now called DBS (Disclosure and Barring Service) check but that was a problem which could easily have been addressed. She had cleaned the school from September to mid November with no issue being raised She also accepts "Kim" mentioned another job but did not get back to her to say what it was or when it would start. The claimant would have cleaned the school, had she not been dismissed, for six weeks until it broke up for the Christmas holidays . She obtained hours working for another cleaner bringing her loss to an end on 28 December 2019

14. The law relating to unfair dismissal is in Part 10 of the Employment Rights Act 1996. Section 118 says compensation consists of a basic award and a compensatory award . The basic award

is 1 week's pay for every year of continuous employment during the whole of which she was under 41 years old and 1.5 weeks pay for each year after that £112.89 x 2.5. = **£282.22**

15. The compensatory award is explained in s 123 which includes

(1) ... the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

(4) In ascertaining the loss referred to in subsection (1) the tribunal shall apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law of England and Wales .

Scope-v-Thornett held though speculation is involved, a Tribunal should try to predict what may have happened. Her loss of pay for the 2 week notice period she was not given will be taxed so I award it gross **£225.78**. Her loss of income between then and the date on which the school broke up for Christmas spanned 4 weeks = **£451. 56**. She claimed no benefits so recoupment does not apply. Added to that is an award for Loss of Statutory Rights I assess at **£150.00**. The total compensatory award is **£ 827.34**.

16. Section 38 of the Employment Act 2002 applies in unfair dismissal claims and says:

*(3) If in the case of proceedings to which this section applies—*

*(a) the employment tribunal makes an award to the employee in respect of the claim to which the proceedings relate, and*

*(b) when the proceedings were begun the employer was in breach of his duty to the employee under section 1(1) or 4(1) of the Employment Rights Act 1996,*

*the tribunal must, subject to subsection (5), increase the award by the minimum amount and may, if it considers it just and equitable in all the circumstances, increase the award by the higher amount instead.*

*(4) In subsections (2) and (3)—*

*(a) references to the minimum amount are to an amount equal to two weeks' pay, and*

*(b) references to the higher amount are to an amount equal to four weeks' pay.*

17. Section 1 of the Act requires:

*(1) Where an employee begins employment with an employer, the employer shall give to the employee a written statement of particulars of employment.*

18. Spotless never gave her a statement. The liability for that passes to the respondent who never gave her anything. No claim is brought for failure to inform and consult under TUPE and one certainly could have been. TUPE has been part of UK law for nearly 40 years and some of the earliest cases in the UK and EU concern cleaning contracts. One of the reasons I have repeated much of what I decided in August is to show what a burden it has been for the claimant and the Tribunal to have to trace the proper identity of the respondent, none of which would have been necessary had the respondent, and Spotless done what the law requires of them. I believe a four week award is merited

19. The respondent, while still shown on the Companies House website as active, last filed accounts to June 2019 from which it can be seen it owes money to many creditors and is technically insolvent. If it enters liquidation, receivership, company voluntary arrangement or administration her basic award and notice pay may be payable by the Secretary of State. The Tribunal has no powers to enforce its award but this judgment can be enforced by the claimant through her local County Court.

**EMPLOYMENT JUDGE T M GARNON**  
**JUDGMENT AUTHORISED BY EMPLOYMENT JUDGE ON 2 NOVEMBER 2020**