



EMPLOYMENT TRIBUNALS

Claimants: Ms J Steel & others (see attached schedule)
Respondents: (1) Munford Haulage Ltd. (in compulsory liquidation)
(2) Munford & Sons Ltd (in creditor's voluntary liquidation)

AT A PRELIMINARY HEARING

Heard at: Leeds by CVP video conferencing **On:** 21st May 2021
Before: Employment Judge Lancaster

Representation

Claimants: Ms J Steel and Mr C Winn in person
Respondents: Did not attend

JUDGMENT

1. The employer at the date of termination in respect of all Claimants, and therefore the correct party to these proceedings, was the Second Respondent (Munford & Sons Ltd.)
2. The First Respondent (Munford Haulage Ltd) is removed from these proceedings under rule 34 of the Employment Tribunals Rules of Procedure 2013 as a party apparently now wrongly included.
3. With her consent Ms J Steel is appointed under sections 206 (4) and (5) (a) of the Employment Rights Act 1996 as the personal representative for the purposes of those statutory provisions, who may continue these proceedings claiming a redundancy payment on behalf of Mr J Wilkinson (deceased) in claim number 1807376/2019 as a person who was authorised by him before his death to act in connection with these proceedings.
4. Upon the finding that the Second Respondent was the employer, and there now being no defence to the claims, and where the liquidator is not actively pursuing these proceedings:

Under rule 21 of the Employment Tribunals Rules of Procedure 2013 it is declared that

- (1) Each Claimant was dismissed by reason of redundancy and is (with the exceptions of Mr Messruther claim 1807382/2019 and Mr Fry claim number 1807385/2019 who do not have 2 years' continuous employment) entitled to a statutory redundancy payment to be calculated in accordance with the

Cases: 1807373/2019 & others
(see attached schedule)

provisions of Part XI of the Employment Rights Act 1996, which, in the case of Mr Wilkinson, shall be made in favour of his estate pursuant to the Employment Tribunals Awards (Enforcement in Case of Death) Regulations 1976 SI 1976/663

- (2) Each Claimant (apart from Mr Wilkinson) was wrongfully dismissed in breach of contract and is entitled to damages in compensation for the period of notice which s/he ought to have received.
- (3) Each Claimant (apart from Mr Wilkinson) is entitled to be paid for any accrued but untaken holiday outstanding at the date of termination.
- (4) The claims of Mr Wilkinson for either notice pay or holiday pay are stayed for a period of 6 months pending confirmation of whether any person has authority to continue such proceedings in respect of these causes of action on behalf of his estate pursuant to section 1 of the Law Reform (Miscellaneous Provisions) Act 1934
- (5) Because the Respondent is insolvent and the Claimants may therefore be able to claim from the Redundancy Payments Office any further determinations in this case are postponed, and no arrangement shall be made for the relisting of any part of the claim, until **3 months** from the date of sending this decision, by which date the Claimants must confirm whether or they have or intend to make application to the Redundancy Payments Office and, if applicable, what was the outcome.

REASONS

1. I have heard evidence on oath, unchallenged, from the two Claimants who attended.
2. I am satisfied that the reality of the situation was that all employees were at the date of termination in fact employed by the Second Respondent which was the company that paid the wages and administered the pension provisions. That accords with the view of the official receiver who administers the affairs of the First Respondent.
3. As the First Respondent is in compulsory liquidation, as acknowledged at the earlier preliminary hearing on 6th March 2020, the consent of the court is required if proceedings are to continue. There has not, however, been a formal stay of the claims against Munford Haulage Ltd. and no such consent has ever been obtained. Given my finding as to the correct identity of the employer, that is no longer material and this Respondent may now simply be removed from the case.
4. Unfortunately the Tribunal made an error in suggesting that Ms Wailes, the long-time partner of Mr Wilkinson, could simply agree to act as his personal representative for the purposes of continuing these proceedings after his death. She is not, notwithstanding their long and close relationship, the widow (or surviving civil partner) of Mr Wilkinson. She does not therefore fall within the category of persons who, under sections 206 (4) and (5) (b) of the Employment Rights Act 1996 might be appointed by the Tribunal in the absence of an actual personal representative.

Cases: 1807373/2019 & others
(see attached schedule)

5. However I find that Ms Steel does come within sections 206 (4) and (5) (a) as a person who was authorised by him before his death to act in connection with these proceedings. I have a letter from Mr Wilkinson written to the Tribunal on 16th December 2020 in which he expressly confirmed that it had indeed been agreed that Ms Steel was authorised to act for all Claimants on whose behalf she had submitted the original multiple claim in 16th December 2019.
6. With her consent Ms Steel is therefore appointed to continue the claim on behalf of Mr Wilkinson's estate, and Ms Wailes will need to make the necessary arrangements to ensure that the appropriate person benefits in due course. This appointment can only, however, apply to the claim for a redundancy payment and not any other potential complaint under the Employment Rights Act nor any breach of contract claim (section 206 (2)): those types of claim can only be continued by someone who is actually the personal representative, the Tribunal has no power to appoint somebody to act in these circumstances.
7. The claims as presented are in each case for redundancy payments, notice pay and any outstanding holiday pay. As these are no longer actively defended, the appointed liquidator, Mr J Bleazard, having confirmed on 19th May 2021 that he would not be attending the Tribunal, and because the submitted Response forms do not raise any substantive defence if the Second Respondent is held to have been the employer, I can now issue judgment. The case was listed today however only for determination of who was the correct employer, and not to decide any other issues. I do therefore adjourn any determination of questions related to remedy (such as, for instance the total period of continuous employment where there may have been movement – as in Mr Winn's case – between the connected Munford companies but with no apparent break in continuity) or final quantification of the sums owed. Also in some cases at least (again including that of Mr Winn) the matter is already with the Redundancy Payment Office and may well therefore be resolved without any need for any further decision.

EMPLOYMENT JUDGE LANCASTER
DATE 21st May 2021
JUDGMENT SENT TO THE PARTIES ON
24/05/2021
AND ENTERED IN THE REGISTER
24/05/2021.
Olivia Vaughan
FOR SECRETARY OF THE TRIBUNALS

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