



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4102049/2017

Held in Glasgow on 27 May 2021

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Employment Judge M Kearns

Mr AD Bratu

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**Claimant
Represented by:
Mr M Carlin
Solicitor**

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Unifique Limited

**Respondent
Not present and
not represented**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Rule 21 of the Employment Tribunal Rules of Procedure 2013

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The Judgment of the Employment Tribunal was that:

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- (1) The claimant was employed by OMI Management Ltd until 2 May 2017. On or about that date the claimant's employment transferred to the respondent under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE").
- (2) No response has been presented by the respondent to this claim and an Employment Judge has decided to issue the following judgment on the available material under rule 21:]

- (3) The claim succeeds. The respondent is ordered to pay the claimant the sum of **£11,731 (Eleven Thousand, Seven Hundred and Thirty- One Pounds)** in compensation for unfair dismissal.

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REASONS

1. The claimant was employed by OMI Management Services Ltd from 2008 until shortly after 2 May 2017 when the contract he was assigned to as Head of Cleaning at the Lorne Hotel, in Sauchiehall Street was abruptly brought to an end. Shortly after 2 May 2017 the cleaning contract at the Lorne Hotel transferred to Unifique Limited, now the only remaining respondent in this case. No ET3 has been lodged by them.

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2. A possible preliminary issue arose relating to TUPE and this morning's hearing was fixed to determine this and thereafter, if appropriate to hold a Rule 21 hearing. Today's proceedings took place by Cloud Video Platform, following the restoration of the respondent to the Register of Companies.

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Issues

3. The issues for the Tribunal were:

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(i) Whether the claimant's employment transferred to the respondent by operation of law under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

(ii) If so, whether determination of the claim can properly be made under Rule 21 of the Employment Tribunal Rules; and if so,

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(iii) The remedy to which the claimant is entitled.

Findings in Fact

4. The following facts were admitted or found to be proved:

5. The claimant's date of birth is 7 April 1978.
6. The claimant was employed by OMI Management Ltd ("OMI") from 2008 as a cleaner. The Managing Director of OMI is Mr Rajinder Bains. With effect from 2009 the claimant worked for OMI at the Lorne Hotel, Sauchiehall Street Glasgow. The Lorne Hotel was owned and operated by Belshill Limited ("Belshill"), whose managing director is Mr Sohan Singh.
7. On 1 January 2014 the claimant was promoted by OMI to Head Housekeeper and from that point he was in charge of around ten cleaners at the hotel under the main terms and conditions set out in a statement signed by him on that date (C19 – 22).
8. The claimant and his team cleaned the rooms of the hotel, changed the linen and looked after all the cleaning and housekeeping requirements of the hotel's guests. The claimant continued in the exclusive employment of OMI until approximately 2 May 2017. Neither the claimant nor any of his team at the Lorne Hotel worked for anyone else, nor did they normally work at any other premises than the Lorne Hotel. The hotel provided them with meals, linen and some cleaning equipment.
9. On 2 May 2017 the claimant started work at 9am with his team as usual. At around 9.30 he received a call from Tom Murphy, the hotel's General Manager. Mr Murphy asked him to come downstairs and bring his staff with him. The claimant gathered his staff and they all went down to the office apart from Lisa Hannin who they could not find at that point as she was cleaning at the front of house. Ms Hannin was later located.
10. As soon as the housekeeping team were assembled, Mr Murphy told them they were to leave the building immediately and they were not to come back into the hotel or they would be forcibly removed. They were escorted to get their belongings from the lockers and then escorted outside the building with

Mr Murphy watching. The claimant ended up on the street outside the hotel. The claimant telephoned his boss, Mr Rajinder Bains, Managing Director of OMI and told him what was happening. Mr Bains said he would come over and see the manager and find out what was going on.

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11. Mr Bains arrived half an hour later and he went into the building. Unbeknown to the claimant, OMI had not been paid in respect of a number of invoices by Belshill and had issued court proceedings against Belshill seeking payment. When Mr Bains emerged from the hotel, he told the claimant and his staff to go home and not to come back unless he told them to as he did not know what was going to happen. Subsequently, Mr Bains told the claimant that a new company was taking over the cleaning at the Lorne hotel and that the claimant would be transferred to them under TUPE. Mr Bains said he had lost the contract at the hotel and would work to get the staff transferred to the new company.

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12. The company that took over the housekeeping contract at the hotel from OMI was the respondent, Unifique Limited. Their cleaners were already cleaning for another of the hotels run by Mr Singh. The respondent took over the cleaning at the hotel shortly after 2 May 2017. The activities carried out in respect of cleaning the hotel were the same before and after 2 May 2017. The claimant and his staff were not taken on by the respondent.

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13. The claimant did his best to find replacement work. He has a young family and he was unable to work outside Glasgow. OMI did not have any work for him in Glasgow at that time. After the termination of his employment at the Lorne hotel, the claimant was out of work for approximately two months, sustaining a loss for that period of £1,848.

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14. At the end of July 2017 OMI offered him a contract working 16 hours (two shifts) per week, but it involved travelling to Edinburgh at a cost of £50 per week. The claimant started the new contract on 27 July 2017.

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15. The claimant's salary at the Lorne Hotel at the time his contract ended was £12,895 per annum or £1,074 per month. His gross weekly pay was accordingly £248. In his new job he received £235 for the month of August 2017 and £480 per month for September and October 2017. From November 2017, his salary was £520 per month rising to £541.92 with effect from May 2018.

Applicable Law

“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) *a service provision change, that is a situation in which—*

(i) *activities cease to be carried out by a person (“a client”) on his own behalf and are carried out instead by another person on the client's behalf (“a contractor”);*

(ii) *activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person (“a subsequent contractor”) on the client's behalf; or*

(iii) *activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf,*

and in which the conditions set out in paragraph (3) are satisfied.

(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.*

5 [(2A) *References in paragraph (1)(b) to activities being carried out instead by another person (including the client) are to activities which are fundamentally the same as the activities carried out by the person who has ceased to carry them out.*]

(3) *The conditions referred to in paragraph (1)(b) are that—*

(a) *immediately before the service provision change—*

10 (i) *there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client;*

(ii) *the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and*

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(b) *the activities concerned do not consist wholly or mainly of the supply of goods for the client's use.*

20 **Discussion and Decision**

16. The claimant in this case claims that he was unfairly dismissed by the respondent following the transfer of his employment to them under TUPE on or about 2 May 2017. The respondent has failed to lodge an ET3 in this case.

25 The respondent was properly served with the ET1 and Mr Carlin submitted that it was clear that they knew about the action as he had been contacted by solicitors on the respondent's behalf asking for information which he had given them. However, they had chosen not to lodge an ET3.

17. In these circumstances, Rule 21 of the Tribunal Rules of Procedure applies subject to the preliminary determination of the TUPE issue.

5 18. On the basis of the material before the Tribunal, the claimant was employed by OMI Management Limited. He started work with them in 2008 and he worked for them exclusively at the Lorne hotel with effect from 2009. He headed up a team of around 10 people which was effectively a unit. The claimant and his team cleaned the rooms of the hotel, changed the linen and looked after all the cleaning and housekeeping requirements of the hotel's
10 guests. Neither the claimant nor any of his team at the Lorne Hotel worked for anyone else, nor did they normally work at any other premises than the Lorne Hotel. The hotel provided them with meals, linen and some cleaning equipment. The activities involved in the cleaning of the hotel were inferred to be the same before and after the change of contractor.

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19. Mr. Carlin submitted that under Regulations 3 and 4 of the TUPE Regulations 2006, the claimant was assigned to an economic entity which had retained its identity. The dismissal was the result of a TUPE transfer. The claimant was not taken on by the transferee, Unifique Limited and the unit that had been
20 cleaning the hotel was dismissed.

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20. Mr. Carlin submitted that under Regulation 3(2) there had been an organised grouping of resources pursued as an economic activity. Under Regulation 4(7) and section 218 of the Employment Rights Act 1996 there had been continuity of employment. I accepted Mr Carlin's submission on this. The facts found in my view clearly met the definition of a service provision change under Regulation 3(1)(b)(ii). Activities had ceased to be carried out by OMI on behalf of Belshill and after 2 May 2017 those same activities were carried out on behalf of Belshill by the respondent. The conditions referred to in Regulation 3(3) were met. On the facts before me the claimant and his team were an organised grouping of employees situated in Great Britain which had as its principal purpose the carrying out of cleaning activities on behalf of a client, Belshill. Furthermore, Belshill intended that following the service provision

change, those same activities would be henceforth carried out by the respondent.

21. In all the circumstances of this case and on the basis of Mr Carlin's
5 submissions set out above, I am satisfied that TUPE applied and that the claimant transferred to the present respondent by operation of law. It follows that the respondent is liable to him for his losses arising from his transfer related dismissal.

10 22. Having determined the preliminary issue, in the absence of an ET3 from the only remaining respondent, the case proceeds under Rule 21. Under that rule, my task is to decide whether on the available material a determination can properly be made of the claim. I conclude that it can be and that the claimant's unfair dismissal claim succeeds against the remaining respondent. I am
15 therefore required to issue a judgment accordingly.

23. With regard to the claimant's losses, Mr Carlin submitted that the claimant had been dismissed by reason of a relevant transfer. He was entitled to a basic award reflecting continuous employment from 2008 to 2 May 2017, a period
20 of 9 years. His weekly pay at termination was £248. His date of birth is 7 April 1978. He was dismissed at the age of 39, so there is no age factor. The claimant was also entitled to a compensatory award of his losses. Mr Carlin submitted that a reasonable assessment of the claimant's losses arising from his unfair dismissal would be to award them for one year. He also submitted
25 that the claimant was entitled to loss of statutory rights which he valued at £350. The claimant had testified that he had occasioned expenses of around £50 per week in his new job. The claimant's losses as claimed are set out below.

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Basic Award	£2,232
9 x £248 = £2,232	

Compensatory Award	
<u>Loss from 2 May 2017 to 27 July 2017</u>	£1,848
<u>Losses from 27 July 2017 to 2 May 2018</u>	
August 2017 - £1,074 - £235 = £839	
September 2017 - £1,074 - £480 = £594	
October 2017 - £1,074 - £480 = £594	
November 2017 - £1,074 - £520 = £554	
Then monthly losses of £554 thereafter until the end of April 2018 (5 months x £554 = £2,770).	£5,351
<u>Expenses incurred in travelling from 27 July 2017 to end April 2018</u>	
39 weeks x £50 per week = £1,950.	£1,950
<u>Loss of statutory rights</u>	£350
<u>Total compensatory award</u>	£9,499

24. The claimant's total loss arising from his dismissal comes to £11,731 (the sum of the basic and compensatory awards).

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Employment Judge: Mary Kearns
Date of Judgment: 15 July 2021
Entered in register: 23 July 2021
and copied to parties

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