



# EMPLOYMENT TRIBUNALS

**First Claimant:** Mr J Newton

**Second Claimant:** Mr M Hosford

**First Respondent:** AIS Vanguard Limited

**Second Respondent:** Ainscough Industrial Services Limited

**HELD AT:** Manchester (by CVP)      **ON:** 9 August 2021

**BEFORE:** Employment Judge Peck (sitting alone)

**REPRESENTATION:**

**Claimants:** Mr Morgan (barrister)

**Respondents:** Miss Roberts (barrister)

## JUDGMENT

1. The claimants' claims against the second respondent, Ainscough Industrial Services Limited are dismissed upon withdrawal by the claimants.
2. The claimants' breach of contract claims against the first respondent, AIS Vanguard Limited is not well founded and is dismissed.

# REASONS

## Claims and issues

1. This was a final hearing conducted as a remote hearing by CVP on 9 August 2021. The parties did not object to the case being heard remotely, with both parties being professionally represented.
2. At the outset of the hearing, it was confirmed that the claimants were only pursuing their claims against the first respondent, AIS Vanguard Limited (hereafter referred to as **the respondent**) and it was agreed that their claims against the second respondent, Ainscough Industrial Services Limited were to be dismissed upon withdrawal.
3. By a claim form presented on 18 December 2020, the first claimant, Mr Newton brings a breach of contract claim against the respondent. He alleges that, on being made redundant on 22 October 2020, he should have received an enhanced redundancy payment calculated in accordance with a collective agreement entered into between Pickfords Removals Limited (incorporating Pickfords Industrial), the Transport & General Workers Union and the United Road Transport Union (the **Collective Agreement**). He says that the terms of the Collective Agreement were incorporated into his contract of employment with the respondent. He alleges that, in paying him a statutory redundancy payment only, the respondents acted in breach of contract. The shortfall amount claimed by Mr Newton is £11,680.80.
4. Mr Hosford, the second claimant, pursues a claim on the same basis also presenting his claim on 18 December 2020. The shortfall amount claimed by Mr Hosford is £14,222.85.
5. The respondent denies that the first claimant and the second claimant (hereafter referred to as **the claimants**) had a contractual entitlement to an enhanced redundancy payment. Its position is that the Collective Agreement did not apply to the claimants and that its terms were not incorporated into the claimants' contracts of employment.
6. It was agreed that the only issue to be determined in this case is whether the Collective Agreement was incorporated into the claimants' contracts of employment. It is for the claimants to establish, on the balance of probabilities, that it was. The respondent accepts that, if the Collective Agreement was incorporated into the claimants' contracts of employment, they should have each received an enhanced redundancy payment calculated in accordance with its terms, in the amount claimed.

## Procedure, documents and evidence heard

7. The claimants were represented by Mr Morgan (counsel) and the respondent was represented by Miss Roberts (counsel).

8. Witness statements had been exchanged in advance. I heard oral evidence from both claimants and from Mr Hemstock (trade union representative at the relevant time) on their behalf. For the respondent, I heard oral evidence from Mr McLemon (the respondent's Group Commercial Director). Cross examination of Mr Hosford was less extensive than that of Mr Newton to avoid repetition of evidence, with it being acknowledged that the evidence of the claimants was largely the same. Mr Hosford was afforded an opportunity to add to and/or clarify the evidence of Mr Newton.
9. I had sight of an agreed bundle of documents running to 138 pages.
10. I heard oral submissions from both Mr Morgan and Miss Roberts.

### **Findings of Fact**

11. In making my findings of fact, I have taken account of the witness statements, the oral evidence and the documents that I have been provided with. Where there was a conflict of evidence, I have determined it on the balance of probabilities.

#### Collective agreement

12. A collective agreement was entered into between Pickfords Removals Limited (incorporating Pickfords Industrial), the Transport and General Workers' Union and the United Road Transport Union, described as a "*memorandum of agreement covering operating and other wages grades*" (the **Collective Agreement**). The document included in the bundle was undated, but it is not in dispute that this was entered into at some point prior to 1992.
13. Pickfords Removals Limited was the registered name of company number 00428138 for the period 2 October 1987 to 26 November 1997 (having previously been registered as Pickfords Limited from 7 April 1982 to 2 October 1987).
14. The main body of the Collective Agreement ran to 23 headed paragraphs and it was stated (at paragraph 22(a)) that "*the appropriate rates of pay and conditions of service in this Agreement will apply to all existing staff and to full-time staff recruited in future, except as provided below*". Several appendices followed, including appendix I, covering redundancy arrangements (at appendix I(i) – I(iv)). This appendix included a provision that "*redundant staff with at least two years' service will be granted severance payments on the basis set out on the chart shown on pages 28 and 29*". Although page numbers were missing from the Collective Agreement included in the bundle, two charts were included at appendix I, setting out relevant multipliers against age and length of service and described as being applicable to "*A, P, T, S & C and Wages Grade Staff*".

#### The claimants' employment

15. On 12 June 1989, Mr Newton commenced employment, entering a contract of employment on 20 June 1989, with Pickfords Engineering Services being described as part of the National Freight Consortium Home Services Division. The contract described Mr Newton as an Engineering Operative and his job title was Electrician.
16. A contract of employment was not available for Ms Hosford, but he commenced employment in 1993 and he worked alongside Mr Newton. Based on his witness evidence, I find that he was employed on the same terms as Mr Newton and was therefore also employed by Pickfords Engineering Services. Mr Hosford was also employed as an Electrician.
17. Based on the uncontested evidence of Mr Newton and supported by a letter dated 7 May 2002, with effect from 10 May 2002 his employment transferred to Pickfords Vanguard Industrial Engineering. Mr Hosford's employment also transferred at this time.
18. Pickfords Vanguard Industrial Engineering is described in correspondence as "*Pickfords Vanguard, a division of Pickfords Limited*". Pickfords Limited was the registered name of company number 02378287 from 25 June 1999 to 29 April 2005. I note as a finding of fact that Pickfords Limited with company number 02378287 was a different entity to Pickfords Limited with company number 00428138 (the former name of Pickfords Removals Limited).
19. Pickfords Vanguard Industrial Engineering was not, of itself, a limited company but I find that from 2002 - 2005 the claimants were employed by Vanguard Industrial Limited, a company trading as Pickfords Vanguard. It is not in dispute that the employment of the claimants transferred to the respondent in 2005, when the respondent purchased the assets of Vanguard Industrial Limited (trading as Pickfords Vanguard), which supports this finding.
20. During this period, in December 2002, a letter was sent to Mr Newton enclosing a copy of an employment agreement applicable to him. In his witness statement, Mr Newton indicated with certainty that the Collective Agreement was enclosed with this letter. During this hearing, however, his evidence was that he could not recall what was enclosed and both he and Mr Hosford could not say with certainty what was enclosed.
21. From 2005 until the termination of their employment in October 2020, the claimants were employed by the respondent.

Terms and conditions of employment applicable to the claimants

22. On behalf of claimants, Mr Morgan submitted that at the time of their redundancies, their terms and conditions of employment were governed by the Collective Agreement, which was incorporated into the contracts of employment that transferred with them to the respondent.
23. On behalf of the respondent, Miss Roberts submitted that the claimants' terms and conditions were governed by an undated document headed "*Pickfords*

*Vanguard terms and conditions of employment for operational staff industrial'* (the **Vanguard Terms**).

24. Whilst I accept Mr Morgan's submission that the Collective Agreement could be interpreted to cover all employees of the company to whom it applied (as opposed to not applying to staff in the claimants' roles as submitted by Miss Roberts) it is my finding that, on the balance of probabilities, Pickfords Engineering Services was not part of Pickfords Industrial and was not a party to (or an entity intended to be covered by) the Collective Agreement. The Collective Agreement was therefore not incorporated into the claimants' terms and conditions of employment. I make this finding, taking into account the following:
- a. The Collective Agreement was entered into by Pickfords Removals Limited (incorporating Pickfords Industrial). The claimants were not at any time employed by Pickfords Removal Limited, company number 00428138.
  - b. The claimants' contracts of employment made no reference to Pickfords Industrial, whether as their employer or otherwise.
  - c. The claimants' case is that the Collective Agreement applied to them because there was not any difference between Pickfords Industrial and Pickfords Engineering Services. The witness evidence of both claimants and of Mr Hemstock was that they considered themselves to be working under the Pickfords Industrial "banner". However, other than making a statement to this effect, they did not articulate further why they considered this to be the case. This was not addressed in their witness statements and not expanded upon during oral evidence. It is, of course, possible to reach the view that something did or did not happen on the balance of probabilities based on witness evidence alone. However, in this instance the witness evidence alone was insufficient to persuade me that Pickfords Engineering Services fell within the Pickfords Industrial "banner". Understandably, the witness evidence of the claimants and Mr Hemstock was, at times, vague and inconsistent. They were seeking to recall information from many years ago; information which may not have been of particular significance to them at the relevant time. However, I accept the submission of Miss Roberts that, where it is very difficult to remember exactly what took place, there is the potential for such recollection to support the case being pleaded and so the evidence has to be treated with care.
  - d. In any event, other than the witness evidence that there was no difference between Pickfords Engineering Services and Pickfords Industrial, there was no further evidence before me to substantiate such a finding. Mr Newton's contract of employment refers to Pickfords Engineering Services as being part of the National Freight Consortium Home Services Division. Nowhere in this document is reference made to Pickfords Industrial. Mr Newton's contract of employment also makes no reference to a collective agreement, whether the Collective Agreement or otherwise.

- e. The Collective Agreement makes no reference to Pickfords Engineering Services at all.
  - f. The claimants were not (or could not recall being) in possession of a copy of the Collective Agreement, prior to the dispute arising regarding their redundancy payments in 2020. They were not familiar with the Collective Agreement document. In witness evidence Mr Newton accepted that he had not gone through it in detail until this hearing, having been provided with a copy by Mr Hemstock.
25. For completeness, in making the finding at 24 above, I have also considered what terms and conditions applied to the claimants at the time of their redundancy dismissals, on the balance of probabilities.
26. It is my finding that it is more probable than not that the Vanguard Terms (appearing at page 69 of the agreed bundle) applied to the claimants' employment.
27. Whilst the claimants were not familiar with this document. They were also unfamiliar with the Collective Agreement. As noted above, they could not say for sure what was included with a letter dated 3 December 2002, when (prior to the transfer of their employment to the respondent but following their transfer to the company trading as Pickfords Vanguard) copy terms were provided to address concerns about holiday pay and sick pay.
28. On balance, I believe that the Vanguard Terms accompanied this letter. In support of his finding, as per Miss Roberts' submission, is the fact the letter refers to an agreement with "*the company*", sent on headed notepaper of Pickfords Vanguard a division of Pickfords Limited.
29. In addition, whilst the claimants' position is that they received holiday pay and sick pay in line with the Collective Agreement, it was also not disputed by the claimants that the basis upon which they received holiday pay and sick pay aligned with the Vanguard Terms.

### **The Law**

30. Employment tribunals in England and Wales are given power to deal with breach of contract claims by the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994. This applies only to employees bringing claims against their employer (i.e. not "workers" who are not employees") and it only applies to breaches of contract outstanding on termination.
31. The normal time limits for bringing a breach of contract claim is within 3 months beginning with the effective date of termination (subject to any extension because of the effect of early conciliation).

32. Section 178(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 defines a collective agreement as “*any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations and relating to one or more of the matters specified [in section 178(2)]*”.
33. Where the terms of a collective agreement are incorporated into a contract of employment, which is a question of law, those terms become part of that contract and have the same legal force as any other contractual term, provided that such terms are “apt” for incorporation. In effect, the employee has agreed, by entering into the contract, to be bound by terms settled between the employer and the union.

### **Decision and reasons**

34. My finding of fact is that the Collective Agreement did not apply to the claimants as employees of Pickfords Engineering Services and it was not incorporated into the claimants’ contracts of employment.
35. As such, it is my decision that they did not have a contractual entitlement to receive an enhanced redundancy payment when their employment was terminated by reason of redundancy in October 2002.

Employment Judge Peck  
3 September 2021

JUDGMENT SENT TO THE PARTIES ON  
3 September 2021

FOR THE TRIBUNAL OFFICE

### Notes

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