



THE EMPLOYMENT TRIBUNALS

First Claimant : Mr A. Lachgar
Second Claimant : Mrs N. Pitrelli

Respondent GCS Facility Services, which operates under the umbrella company,
Grosvenor Cleaning Services Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held At: London Central Employment Tribunals

On: Friday, 1st October 2021 (by way of CVP)

Employment Judge: Ms. S. Sharma (Sitting Alone)

Appearances

For the First Claimant: Mr I. Browne of Counsel
Or the Second Claimant: Mr B Evans, Fru Representation Volunteer

For the Respondent: Ms N. Khunkhuna , HR Manager

JUDGMENT

The claims of the First Claimant and the Second Claimant are well-founded.

The First Claimant is awarded the sum of **£11,919.55 (gross)** comprising: -
(a) £9,664.50 in relation to Redundancy Pay; and
(b) £2,255.05 in relation to Notice Pay.

The Second Claimant is awarded the sum of **£6,327.00 (gross)** comprising: -
(a) £4,329 in relation to Redundancy Pay; and
(b) £1,998 in relation to Notice Pay.

**_____Sujata Sharma_ - 10 Oct 2021__
Employment Judge Sharma**

Judgment sent to the Parties on

11/10/2021

For the Secretary of the Tribunals

A: BACKGROUND

1. At the start of the hearing, I reminded the parties that this hearing would be conducted in line with the Overriding Objective. Their cooperation to fulfil this was sought and duly provided.
2. All parties agreed that the two cases would be heard together because of the overlapping issues.
3. The Parties confirmed that the bundle of documents comprising 168 pages was an agreed bundle of documents. I make reference to pages in the bundle.
4. Ms Pitrelli and Mr Lachgar gave oral evidence by affirming and under oath, respectively, and provided a witness statement, which stood as their evidence in chief. Ms Khunghuna also gave oral evidence on behalf of the Respondent and provided an unsigned witness statement which also stood as her evidence in chief.
5. Mr Browne and Mr Evans for Mr Lachgar and Mrs Pitrelli, respectively, made an application to amend each of the Claimants' claim forms to include a breach of contract (wrongful dismissal) claim for failure to provide adequate notice. Ms. Khunghuna for the Respondent did not object to this amendment. Such application was duly granted.
6. In these reasons, reference is made to The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 as a consequence of a service provision change. These will be referred to as "TUPE"

B: THE ISSUES

I agreed with the Parties that the following was the issue for my determination; Whether there was a TUPE transfer (a service provision change) between Interserve's predecessors, Peartree Cleaning Services Limited, ("Peartree") and Interserve. If there was, then:-

- (a) Were the Claimants entitled to a redundancy pay; and
- (b) Was a further notice pay due?

If there was a TUPE transfer, then Mr Lachgar would have continuous employment since 1993 and Ms Pitrelli since 6th October 2010.

In summary, what was at the heart of this case for both Claimants is their continuity of employment. The length of their continuity of employment determines their entitlement to redundancy pay and notice pay

C: FINDINGS OF FACT

1. The Respondent is a cleaning company employing more than 500 people in the UK. Both Mr. Lachgar and Mrs Pitrelli worked at Debenhams where the Respondent took over the cleaning contract at Debenhams. Mr Lachgar worked as a porter and Ms Pitrelli as a housekeeper.

2. Both Mr Lachgar and Ms Pitrelli were dismissed on 17th February 2021.
3. The Respondent's predecessors are Peartree and Interserve. As I set out below, there were a number of transfers which took place prior to 2019 between other companies. At this hearing, Ms Khunkhuna confirmed that the Respondent accepted that prior to the transfer to Peartree, both Claimants had continuous employment. There was just one break in employment, namely, in 2019 in the transfer between Peartree and Interserve. It was the Respondent's position that the previous continuous service with the previous employers including Peartree did not transfer. The only continuous service to take into account therefore was that which the Claimants had with Interserve.
4. Both Claimants were made redundant by the Respondent on 17 February 2021 consequent on Debenhams' administration.
5. The redundancy itself is not challenged, but neither Claimant was deemed entitled to a redundancy payment based on their (apparent) length of service. The Respondent relied on the Employee Liability Information ("ELI") provided by its predecessor, Interserve (B97).

Mr Lachgar's Employment History

6. I set out now in detail the employment history of Mr Lachgar based on the evidence before me: -

6.1 Mr Lachgar began working for OSC Limited on 21 February 1993. His role involved supervising cleaners and porters in Debenhams' head office on 1 Wellbeck Street (off Oxford Street), London. At a later point, Debenhams' head office moved to Brook Street.

6.2 In 2008, the Debenhams contract was taken over by Rentokil-Initial Facilities Services (UK) Limited. Mr Lachgar's employment was transferred by way of TUPE transfer.

6.3 In March 2014, Interserve purchased Rentokil-Initial Facilities Services (UK) Limited. Rentokil-Initial Facilities Services (UK) changed its name to Interserve FS (UK) Limited.

6.4 In August 2015, Interserve informed its relevant employees that it had lost the Debenhams Head Office cleaning contract and that their employment would be transferring to Peartree.

6.5 On 31 August 2015, Mr Lachgar's employment transferred to Peartree. Peartree reduced Mr Lachgar's role to that of a porter. He also helped move furniture, manage deliveries and allocate them to the relevant department. His hours were also reduced from 50 hours to 35 hours per week.

6.6 In 2019, Debenhams underwent reorganisation and relocated their head office from Brock Street to smaller offices on the fourth and fifth floors of their Oxford Street flagship store.

6.7 By letter dated 1 July 2019, Peartree informed Mr Lachgar that their contract to provide cleaning services to Debenhams' head office would end on 31 October 2019. The letter sets out that:

"It may be the case that the existing cleaning contractor in Oxford Street needs more cleaning staff and you can transfer to them under TUPE. If not, then this will mean that we need to find

you an alternative assignment before that date otherwise your employment with Peartree will end on the 31st October 2019 and this letter is formal notice of that outcome. “

In Ms Khunkhuna’s cross examination of Mr Lachgar, she stated that this paragraph was evidence of there being no transfer to Interserve because this letter stated that more cleaning staff “may “be needed; this was a suggestion and not a definitive confirmation. In fact, she stated that this showed there was no TUPE transfer because there was no documentary evidence to support this.

6.8 It was Mr Lachgar’s evidence that in late September 2019, he was approached by the facilities manager at Debenhams, Mr Grant, who oversaw the cleaning contract, who asked him if he would like to continue working at Debenhams. Mr Grant explained that he would be giving Ms Pitrelli the same opportunity but asked that they did not tell the other porters and housekeepers as they were not required due to downsizing.

6.9 It was Mr Grant, who managed Mr Lachgar’s work on a day-to-day basis. The Peartree manager (Ney Guzman) was not usually in the Debenhams Head Office. It was Mr Lachgar’s evidence, however that Ms Guzman had stated that he could transfer to the new Debenhams contractor or stay at Peartree.

6.10 On 22 October 2019, Mr Lachgar met with Edison Revelo, a member of staff from Interserve, who had won the contract to providing cleaning services to the Debenhams’ new head office. It was Mr Lachgar’s evidence that Mr Revelo told him to sign the Interserve contract to continue working at Debenhams as Interserve had taken over the contract. Mr Lachgar did this on 22 October 2019.

The start date for Mr Lachgar’s contract (B84) was blank but his evidence was that he believed he was TUPE’d over on 22 October 2019.

6.11 It was Mr Lachgar’s evidence that he had never stopped working at the Debenham’s Head Office, which was now downsized and located at Oxford Street. When working with Interserve, his duties were exactly the same as his duties at Peartree. His hours remained unchanged.

6.12 It was the Respondent’s case that Mr Lachgar was sent a letter on 14 November 2019 (B88) which terminated his contract with Peartree. Mr Lachgar stated that he had never seen this letter.

The letter stated that:-

” Further to my letter dated 7th November 2019, in which I asked you to contact me to advise of your intentions with regards to your non-attendance at your new work placement. I note that to date you have not reported for work at your new placement, nor have you contacted me as requested to advise of your intentions.

I therefore have no option but to terminate your contract with Peartree Cleaning Services with immediate effect.”

It was the Respondent's case that Mr Lachgar had been re-assigned to a new placement but he did not turn up and thus was dismissed, This, therefore, broke the continuity of employment. In cross examination by Ms Khunikhuna, she asked if he had received the letter from Peartree dated 1st July 2019 informing him that Peartree's contract with Debenhams would terminate on 31 October 2019. He confirmed that he had. She put it to him that the addresses on the letters of 1 July 2019 and 14 November 2019 were exactly the same, yet he had received the July letter but not the November letter .

In giving evidence, Ms Khunikhuna stated that Mr Lachgar had not turned up for work on 18th October (namely, the start date shown in the Interserve contract) and thus was dismissed by Peartree by their letter dated 14 November 2019. He then started work with Interserve on 1 November 2019. There was thus a break in continuity which meant that Mr Lachgar did not TUPE over from Peartree to Interserve.

In cross examination of Ms Khunikhuna by Mr Browne, he questioned her on her position that there was a gap in Mr Lachgar's employment. He asked her when did Mr Lachgar start at Interserve and she responded, 1 Nov 2019. The letter of 14 November terminated his employment with immediate effect i.e. on 14 November. His contract with Interserve was dated 22 October 2019. Thus, it was put to Ms Khunikhuna that there was no gap in employment; he was dismissed by Peartree after he had started with Interserve.

6.13 On 2 July 2020, Interserve informed Mr Lachgar that they would no longer be performing the cleaning contract for Debenhams and that his employment would be transferring to the Respondent with effect from 1 August 2020.

6.14 Mr Lachgar began working for the Respondent on 1 August 2020 and continued his same role and hours.

6.15 On 10 December 2020, the Respondent wrote to Mr Lachgar to inform him of the risk of his redundancy.

6.16 On 14 January 2021, the Respondent wrote to Mr Lachgar giving notice of his dismissal on 21 January 2021 on the basis of redundancy. The letter stated that, as Mr Lachgar had commenced employment on 1 November 2019, it was only required to provide him with one week's statutory notice pay and was not required to provide a redundancy payment.

6.17 On 20 January 2021, the Respondent wrote to Mr Lachgar to inform him that his notice period was being extended to 17 February 2021.

6.18 Mr Lachgar 's employment ended when he was dismissed on 17 February 2021.

6.19 It was Ms Khunikhuna's evidence that based on the ELI TUPE information provided to the Respondent from Interserve (B 97), Mr Lachgar's start date with Interserve was 1st November 2019 and the continuous service date was 1 November 2019.

7. I make the following findings of fact specific to Mr Lachgar: -

There are two important matters in this case: -

(a) Was there a relevant transfer between Peartree and Interserve; and

(b) Did Mr Lachgar transfer over or was there a break in his continuous employment.

I now make findings in relation to such matters.

7.1 A service provision change is a relevant transfer if a number of matters are satisfied. Whether or not there is a relevant transfer depends upon whether or not there is a relevant activity.

7.2 In this case the relevant activity was the provision of a particular service to the Debenhams Head Office, namely that of cleaning facilities and porter services.

7.3: This was a situation in which the cleaning facilities /porter services ceased to be carried out by Peartree on Debenhams' behalf and were carried out instead by Interserve :(3(1)(b)(ii), TUPE).

7.4 What Peartree did as transferor and what Interserve did as transferee was fundamentally the same (Regulation 2A TUPE). They were providing a cleaning and porter service to Debenhams' head office. It was Mr Lachgar's evidence that his duties did not change. There was downsizing and he worked at a different location but otherwise the duties were the same. It was his evidence that he had never stopped working at Debenhams. His hours remained unchanged (35 hours per week, Monday to Friday). Peartree's itself referred to a TUPE transfer in their letter 1 July 2019, when they referred to a TUPE transfer if Debenhams needed more cleaning staff in its new head office. More staff were indeed needed; thus, Mr Grant approached Mr Lachgar.

Indeed, the evidence supports the position that he did not stop working for Debenhams; the letter of 1st July informed Mr Lachgar that the Peartree contract would end on 31 October 2019. Mr Lachgar himself thought he started work with Interserve on 22 October. It was Ms Khunkhuna's evidence that he started on 1 November 2019. Either date would support the position that there was no gap in Mr Lachgar's employment.

7.5 The only factors which changed about the service was that it was provided at a new location, following the move of Debenhams' head office, and that it required a reduced number of staff. I find that neither of these changes prevented the activities from being fundamentally the same.

Mr Browne for Mr Lachgar helpfully drew my attention to the case of Metropolitan Resources Ltd v Churchill Dulwich Ltd UKEAT/0286/08/RN , where the Employment Appeal Tribunal ('EAT') at [37 commented as follows. (I underline the key points):-
As an example, a difference in the location from which the transferee performs the relevant activities instead of the transferor is highly unlikely, of its own, to be determinative against the existence of a service provision change. It is likely that a situation in which a replacement service provider carries out an activity instead of a predecessor but from a different location will frequently arise – as, for example, in the case of building maintenance contracts which have historically been an area in which the existence of a TUPE transfer has had to be considered. Equally, as it seems to me, the addition, in the hands of a replacement contractor, who is performing all of the services carried out by his predecessor, of some additional duty or function is unlikely, unless the addition is of such substance that the activity then being carried on is no longer essentially the same as that carried on by the predecessor, to negate the existence of a

transfer under Regulation 3(1)(b). It is for the Tribunal in each case to assess, on the facts, taking into account any material differences, whether the alleged transferee is performing essentially the same activity as that of the alleged transferor.”

7.6 Thus, applying the rationale in this case, I find that the fact that Mr Lachgar was carrying out the role of porter duties at the fourth and fifth floors of Oxford St instead of Brock St (i.e. a significantly reduced area), did not prevent the activities of porter duties being essentially the same activity as that of Peartree. It was Mr Lachgar’s evidence that his duties were the same. Even if he had to do less porter duties, however, because the size of the building at Oxford St where he worked was smaller than at Brock St, this would not detract from the activities being fundamentally the same .

7.7 Again, Mr Browne helpfully drew my attention to the case of London Borough of Islington v Bannon UKEAT/0221/12/KN where the question of whether reduced duties constituted a fundamental change was considered. In this case, the EAT commented as follows:-
When a canteen changes hands, the work may decline because people may not want to go to the new provider; it does not change the character of the service being provided or of the activities being provided just because on accepting the change not all of the activities can be carried out.

7.8 In applying the same line of reasoning to the present case, not all of the cleaning/porter activities could be carried out because the new office was smaller and required less cleaning/porter duties. That did not, however, mean that the activity of cleaning the office/ carrying out porter duties was fundamentally different. The character of the service was the same.

7.9: Another matter to satisfy for there to be a relevant transfer is the following: immediately before the service provision change, was there an organised grouping of employees situated in Great Britain which had as its principal purpose the carrying out of the activities concern on behalf of the client? Such people who are part of such organised grouping of employees automatically transfer: 3(3) (a) (i), TUPE).

Immediately before the service provision change, Mr Lachgar was one of several porters and housekeepers who provided the relevant services to Debenhams’ head office. There were two other porters beside Mr Lachgar and three other housekeepers beside Ms Pirelli. I find therefore that this group of people comprised an organised grouping of employees, with the principal purpose of carrying out cleaning/porter activities for Debenhams. Mr Lachgar was assigned to this group. Because he was assigned to this grouping, he was automatically transferred to Interserve upon the occurrence of the relevant transfer.

I find that he remained assigned to this group at all times. The dismissal letter did not remove him from this group. He was there either on 22 October or on 1st November. The letter of dismissal sought to dismiss him on 14 November 2019, **after** he had transferred to Interserve and continued to be assigned to the group of porters/cleaners. I find that he had already transferred to Interserve at the date of Peartree’s letter dated 14 November 2019. He was part of the organised group of cleaners/porters whose principal purpose was that of cleaning facilities and porter services. This organised group automatically transferred.

Because he was employed by Peartree immediately before the relevant transfer, the dismissal letter could not prevent him transferring. He remained assigned to the organised grouping of employees at all times. Had he objected (Reg 4 (7), TUPE), then he would not have transferred. As his evidence clearly supports, he wanted to transfer because he wanted to continue working at Debenhams.

7.10: The following is a further matter to satisfy for there to be a relevant transfer: Immediately before the service provision change, did the client intend that the activities would, 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? (3. (3) (a) (i), TUPE).

I find that Mr Lachgar and his colleagues were employed on a permanent basis to provide on-going services to Debenhams. He was not employed for a specific task. He continued to carry out cleaning/porter duties, which he had been doing since 1993; thus, this was not short term.

7.11 Did the activities consist wholly or mainly of the supply of goods for the client's use:(3 (3)(b), TUPE). This would then stop there being a relevant transfer.

I find that the activities consisted of cleaning/housekeeping/porter duties and was not for the supply of goods.

I find therefore that the requirements of regulation 3(1)(b)(ii), TUPE are met to establish that there was a relevant transfer. I find that there was no break in Mr Lachgar's his employment. He transferred either on 22 October or 1 November 2019. As such, Mr Lachgar was continuously employed from 1993 until his dismissal.

7.12 Peartree's letter of 1st July 2019 identified a date of 31 October 2019 for termination of their cleaning services contract with Debenhams; Mr Lachgar signed the Interserve contract on 22 October 2019. It was Ms Khunkhuna's evidence that Mr Lachgar had started work with Interserve on 1st November 2019. It was also her evidence that there had been a break in Mr Lachgar's continuous service. I find that a break is not supported by the evidence presented to me. Mr Lachgar's employment was either transferred on 22 October 2019 (the date he thought it transferred) or 1 November 2019 (the date stated in the ET1). The event which the Respondent relies upon as breaking the continuity of service is as set out in the letter of dismissal of 14 November 2019, where Mr Lachgar is informed of his non- attendance at his new work placement. This is a letter which Mr Lachgar does not recall.

7.13 The assessment of whether or not there was a relevant transfer is a question of fact. Even if the letter of 14 November purported to dismiss Mr Lachgar's contract of employment, I find, based on the facts, that the contract of employment had transferred to Interserve.

Ms Pitrelli's Employment History

8. I set out now in detail the employment history of Ms Pitrelli based on the evidence before me.

8.1 Ms Pitrelli's case is that when employed by the Respondent, the start date of her period of continuous employment was 6th October 2010 (when she became employed by Lancaster Cleaning Company ("Lancaster")) and not 18 October 2019. As alleged by the Respondent.

8.2 In January 2011, Ms Pitrelli was taken into the employment of Rentokil-Initial Facilities Services (UK) Limited ("Rentokil"). Lancaster was a subsidiary of Rentokil. She worked as a supervisor at Rentokil.

8.3. In August 2013, whilst employed at Rentokil, she started working at Debenhams Head Office at Brock Street. The services Rentokil provided to Debenhams Head Office was divided into three teams: porters, housekeepers, and evening cleaners. The porters' duties included collecting and emptying the bins, and distributing post. Ms Pitrelli's job title was housekeeper and the housekeepers' duties included checking the toilets, checking the tea and coffee points, checking the printers, and performing specific cleaning tasks when asked (e.g., cleaning up spills). She worked 40 hours a week.

8.4: In March 2014, Ms Pitrelli was informed that Interserve had purchased Rentokil. She remained working at Debenhams' Head Office at Brock Street. Her hours, pay, duties and payroll remained unchanged. The duties of the porters and evening cleaners remained unchanged.

8.5: In July 2015, Interserve lost the contract for providing cleaning services to Debenhams Head Office. Ms Pitrelli was informed that her employment would be transferred to the new contractor, Peartree, under TUPE. On 31st August 2015, Ms Pitrelli's employment transferred to Peartree. She was employed by Peartree from 1st September 2015. When employed by Peartree her duties, and those of the porters and evening cleaners, remained the same as set out in para 8.3 above. Her job title remained 'housekeeper'. Her hours changed to 35 hours per week, 8:30am to 4:30pm, Monday to Friday. On 10th May 2017, Peartree wrote a letter to the Home Office stating that her original start date was 06/10/2010.

8.6 In a letter dated 1st July 2019, Peartree informed Ms Pitrelli that their contract providing cleaning services to Debenhams Head Office would end on 31st October 2019. In this letter, Peartree suggested that she either transfer under TUPE to the new contractor that would provide cleaning services to Debenhams Head Office in Oxford Street (namely, Interserve), or accept an offer of alternative employment within Peartree at a different location.

8.7 In late September 2019, she was approached by the Debenhams facilities manager, Mr Grant. Mr Grant worked at Debenhams Head Office, He managed her work on a day-to-day basis and her instructions came from him, or his secretary. The Peartree manager (Ney Guzman) was not usually in the Debenhams Head Office. She had a good relationship with Mr Grant. Mr Grant asked her (orally) if she would like to continue working at Debenhams Head Office when it relocated to Oxford Street. She confirmed that she wished to continue to work at Debenhams. Mr Grant told her not to say anything because the rest of the Peartree workers were not required due to the downsizing of Debenhams Head Office. At the time, there were two other porters and three other housekeepers.

8.8 In December 2019, the Debenhams Head Office was relocated and substantially reduced from occupying 5 floors at Brock Street to occupying just the fourth and fifth floors in the Oxford Street building.

8.9 On the 17th October 2019, at Mr Grant's instruction, she went to Oxford Street to sign an Interserve contract, Mr Revelo filled out the contract (B 82-83) and asked her to sign it.

8.10 The contract showed, inter alia, the following: -

(a) A start date of 18 October 2019;

(b) It was signed by Ms Pitrelli on 17 October 2019; and

© The page which showed a continuous start date of 18 October.2019 was not signed by Ms Pitrelli.

On cross examination, Mr Pitrelli stated that this contract was signed at the new Debenhams office and she signed this at around 1.00pm. Mr Grant had to show her around the new building. Once he had done this, she signed the contract. After signing the contract, she returned to Brock St to complete her working day at 4.30pm. The next day she started work at 8.30 am with Interserve, as per the start date shown on the Interserve contract.

8.11: It was the Respondent's case that Ms Pitrelli had written a resignation letter and this had broken her continuity of service. Thus, the period of employment with the Respondent began from when she started work with Interserve (18 October 2019) and did not include any period of employment prior to that.

The email (B I27) which the Respondent relied upon as constituting the letter of resignation and which broke the continuity of employment was dated 17 October 2019, 15.59 and provided as follows: -

Dear Ney

I hope you find this email well.

I would like to hand over my resignation notice from my roll as a day housekeeper with Peartree Cleaning Company at Debenhams Regents Place. My last day of work will be Friday 18th October. I would to thanks for the opportunity I had during my service. I would much appreciate if you can pay my holidays remaining and issue my p45. Natalia Sent from my iPhone Regards

8.12: This email had been sent to Ms Khunhuna by Peartree. She explained that Mr Convoy of Peartree had summarised this email in his own email dated 11 May 2011 to Ms Khunhuna. At the tribunal hearing, it was Ms Pitrelli's case that she did not remember seeing this email.

8.13: It was also Ms Pitrelli's case, and she made this point when giving evidence during cross examination, that she had never stopped working for Debenhams. The only change which had

happened was that she changed from 1 building to another. She said that she did not understand paperwork.

8.14 Whilst working for Interserve, her job title was housekeeper and her duties included checking the toilets, checking the tea and coffee points, checking the printers, and performing specific cleaning tasks (e.g., cleaning up spills). Her hours remained unchanged: 35 hours per week, 8:30am to 4:30pm, Monday to Friday.

8.15 In July 2020 Interserve told Ms Pitrelli that her contract with Debenhams would end and the Respondent would take over provision of cleaning services to Debenhams Head Office. Interserve informed her that her employment would automatically transfer to the Respondent on 1st August 2020.

8.16 She began working for the Respondent on 1st August 2020. Her job title remained housekeeper, and her duties remained the same as set out in para 8.14 as did her hours.

8.17 In relation to the contract she signed with the Respondent, Ms Pitrelli stated that she signed some pages of it but did not fill in the details. The page showing a continuous start date of 18 October 2019 was not signed. She did sign the HM Revenue and Customs form and the Non-Disclosure Agreement.

8.18 It was Ms Khunkhuna's evidence that based on the ELI TUPE information provided to the Respondent from Interserve (B 97), Ms Pitrelli's start date with Interserve and the continuous service date was 18th October 2019.

9. I make the following findings of fact in relation to Ms Pitrelli

9.1 Whether or not there is a relevant transfer depends upon whether or not there is a relevant activity.

In the case of Ms Pitrelli, the relevant activity is the provision of particular services to Debenhams Head Office, including distribution of post, collection and emptying of rubbish bins, checking the toilets, checking tea and coffee stations, checking printers, and performing specific cleaning tasks when asked. This all-formed part of the cleaning services/porter services provided by Peartree which were then carried out by the subsequent contractor, Interserve.

9.2: Relevant Transfer Being a Service Provision Change

For all the reasons I have set out in paragraphs 7.1 to 7.13 in relation to Mr Lachgar, I conclude that there was a relevant transfer by way of a service provision change and that Ms Pitrelli's contract of employment transferred under TUPE from Peartree to Interserve. Thus, there was continuous service from 6th October 2010 until her dismissal on 17 February 2021.

9.3: In relation to her continuous employment being broken by the letter of resignation, I find on the facts that such a letter did not have the effect of breaking her continuous period of employment. She finished with Peartree on 17 October 2019, and started work with Interserve on 18 October 2019. The page in her contract with the Respondent showing a continuous start

date of 18 October 2019 was not signed. I find on this basis that she did not accept such a start date. Even if she did, however, the fact support her starting work the very next day with Interserve. A letter of resignation cannot change the fact that she transferred over.

9.4 The relevant transfer took place on 18 October 2019, when Ms Pitrelli started work with Interserve. Because she was employed by Peartree immediately before the relevant transfer, (indeed she worked until 4.30pm on 17 October 2019), the resignation letter could not prevent her transferring. She remained assigned to the organised grouping of employees at all times. Had she objected (Reg 4 (7), TUPE), then she would not have transferred. As her evidence clearly supports, she wanted to transfer because she wanted to continue working at Debenhams.

D: SUBMISSIONS

D.1 I took account of the following very helpful submissions of Mr Browne for Mr Lachgar which I now summarise: - Continuous service

1. C submits that he has been in ‘continuous employment’ for the purposes of the ERA from 21 February 1993 until his effective date of termination on 17 February 2021.
 - a. C began work for OSC Limited on 21 February 1993.
 - b. His employment was the subject of a relevant transfer for the purposes of regulation 3(b)(ii) TUPE in 2008 when Rentokil-Initial Facilities Services (UK) Limited took over the Debenhams’ head office cleaning.
 - c. C’s employment continued with Rentokil-Initial Facilities Services (UK) Limited as it was purchased by Interserve and then changed name to Interserve FS (UK) Limited (**B68-9**).
 - d. A further TUPE transfer took place on 31 August 2015 when Peartree took over the provision of cleaning services from Interserve FS (UK) Limited (**B72**).
 - e. C’s employment was again subject to a transfer under regulation 3(b)(ii) TUPE on either 22 October or 1 November 2019, when he again working for Interserve because they took over provision of cleaning services at Debenhams’ new head office.
 - f. C’s employment was subject to a final transfer on 1 August 2020, when GCS Facility Services Limited took over from Interserve in providing cleaning services to Debenhams.
2. C understands that R’s position is that the transfer at 35(e) above was not, in fact a relevant transfer for the purposes of TUPE and so interrupted C’s period of continuous service.
3. In resolving this dispute, the Tribunal will consider the following statutory tests in Regulation 3 TUPE.

3(1)(b)(ii): Was this a situation in which activities ceased to be carried out by a contractor on a client’s behalf and are carried out instead by another person on the client’s behalf?

4. Regulation 2A TUPE gives further guidance that the activities should be “fundamentally the same”.
5. In the present case, the activities carried out by Peartree before the transfer and by Interserve after the transfer were fundamentally the same; they were providing a cleaning and facilities service to Debenhams’ head office.

6. Per C's evidence in his witness statement:
 - a. "I never stopped working at Debenhams and my duties did not change" (Paragraph 15)
 - b. "My duties at Interserve were exactly the same as my duties at Peartree. My hours remained unchanged (35 hours per week, Monday to Friday)." (Paragraph 16)
7. This is consistent with Peartree's apparent understanding of the situation as referenced in their letter 1 July 2019, which recognised the possibility of a TUPE transfer if Debenhams needed more cleaning staff in its new head office. That was plainly the case given Debenhams arranged for C to be employed by Interserve in the same role.
8. The only factors which changed about the service was that it was provided at a new location, following the move of Debenhams' head office, and that it required a reduced number of staff. C submits that neither of these changes prevents the activities from being fundamentally the same.
9. In *Metropolitan Resources Ltd v Churchill Dulwich Ltd* UKEAT/0286/08/RN the Employment Appeal Tribunal ('EAT') at [37] pre-empted situations similar to the present case:

As an example, a difference in the location from which the transferee performs the relevant activities instead of the transferor is highly unlikely, of its own, to be determinative against the existence of a service provision change. It is likely that a situation in which a replacement service provider carries out an activity instead of a predecessor but from a different location will frequently arise – as, for example, in the case of building maintenance contracts which have historically been an area in which the existence of a TUPE transfer has had to be considered. Equally, as it seems to me, the addition, in the hands of a replacement contractor, who is performing all of the services carried out by his predecessor, of some additional duty or function is unlikely, unless the addition is of such substance that the activity then being carried on is no longer essentially the same as that carried on by the predecessor, to negate the existence of a transfer under Regulation 3(1)(b). It is for the Tribunal in each case to assess, on the facts, taking into account any material differences, whether the alleged transferee is performing essentially the same activity as that of the alleged transferor. (A93)

10. The question of whether reduced duties constitute a fundamental change has also been considered at appellate level. In *London Borough of Islington v Bannon* UKEAT/0221/12/KN the EAT:

When a canteen changes hands, the work may decline because people may not want to go to the new provider; it does not change the character of the service being provided or of the activities

being provided just because on accepting the change not all of the activities can be carried out.

(A138)

11. In applying the same line of reasoning to the present case, not all of the cleaning activities can be carried out because the new office was smaller and required less cleaning. That did not, however, mean that the activity of cleaning the office was fundamentally different.

12. 3(3)(a)(i): Immediately before the service provision change, was there an organised grouping of employees' situation in Great Britain which had as its principal purpose the carrying out of the activities concern on behalf of the client?

Immediately before the service provision change, C was one of several porters and housekeepers who provided the relevant services to Debenhams' head office (see paragraph 10 of C's witness statement).

13. 3(3)(a)(ii): Immediately before the service provision change, did the client intend that the activities would, 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?

14. C and his colleagues were employed on a permanent basis to provide on-going services to Debenhams.

3(3)(b): Did the activities consist wholly or mainly of the supply of goods for the client's use.

15. No; the activities consisted of cleaning and housekeeping.

D2 I took account of the following very helpful submissions of Mr Evans for Ms Pitrelli, which I summarise as follows: -

1. Following *Kimberley Group Housing Ltd v Hambley & Others* UKEAT/0488/07, the first step in assessing whether there has been a relevant transfer is to identify the relevant activity.

2. Following *Metropolitan Resources Ltd v Churchill Dulwich Ltd* UKEAT/0286/08/RN whether a relevant transfer has occurred is then essentially a question of fact.

3. In this instance, the relevant factual conditions have been met. Peartree ceased carrying out those activities which Interserve thereafter began carrying out. The conditions in TUPE reg 3(3) have been met. The relevant activities remained fundamentally the same: they fulfilled the same need on the client's part (office related services for Debenhams Head Office). The only significant differences were the change in location and a reduction in work force required and these differences do not, singularly or collectively, render the activities fundamentally different.

4. Immediately before the transfer, Ms Pitrelli was assigned to the grouping. Consequently, Ms Pitrelli's contract of employment automatically transferred to Interserve.

5. The 'resignation email' cannot prevent Ms Pitrelli's contract of employment from

automatically transferring to Interserve unless it means that either immediately before the transfer she was not employed by the transferor and assigned to the Grouping, or she objected to the transfer. None of these things happened.

D3: I took account of the very helpful submissions of Ms Khunkhuna made on behalf of the Respondent which I summarise as follows: -

1. In relation to Mr Lachgar, the Respondent has a letter from Peartree and there is nothing to state he was Tupe Transferred.

His employment started on 1st August 2020 and ended on 17 February 2021. The continuous employment date was from 17 Nov 19. When he transferred to Interserve, Mr Lachgar did not highlight any issue with the form.

2. In relation to Ms Pitrelli, her continuous employment date was 18th October 2019. She transferred to the Respondent on 1 Aug 2020 and 17 Feb 21 was her end date. Peartree said she resigned, on 17 October 2019.

3 In relation to Mr Lachgar, his contract with OCS began on 29 November 1993 and not 21 Feb 1993.

4. The Respondent took the Interserve ELI information at face value.

5. Mr Lachgar did not turn up of for work and was then dismissed. So, there was a break in employment. Ms Pitrelli resigned so her employment came to an end and then she was taken as an employee of Interserve.

E: THE LAW

Redundancy payments

Eligibility for redundancy payment

1. Part XI of the Employment Rights Act 1996 ('ERA') sets out the basic principle that an employer must pay a redundancy payment to an employee it dismisses by reason of redundancy, subject to various exceptions and requirements.

2. Section 155 ERA provides that:

An employee does not have any right to a redundancy payment unless he has been continuously employed for a period of not less than two years ending with the relevant date.

3. The relevant date, in a case where a contract of employment is terminated by notice, is the date on which the notice expires (section 145 ERA).

4. Section 218(2) ERA states that:

If a trade or business, or an undertaking (whether or not established by or under an Act), is transferred from one person to another—

- (a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer counts as a period of employment with the transferee, and
(b) the transfer does not break the continuity of the period of employment.

Amount

5. Section 162 ERA sets out the following in relation to the size of a redundancy payment:
- (1) The amount of a redundancy payment shall be calculated by—
- (a) determining the period, ending with the relevant date, during which the employee has been continuously employed,
 - (b) reckoning backwards from the end of that period the number of years of employment falling within that period, and
 - (c) allowing the appropriate amount for each of those years of employment.
- (2) In subsection (1)(c) “the appropriate amount” means—
- (a) one and a half weeks' pay for a year of employment in which the employee was not below the age of forty-one,
 - (b) one week's pay for a year of employment (not within paragraph (a)) in which he was not below the age of twenty-two, and
 - (c) half a week's pay for each year of employment not within paragraph (a) or (b).
- (3) Where twenty years of employment have been reckoned under subsection (1), no account shall be taken under that subsection of any year of employment earlier than those twenty years.

Time limit for redundancy payment references

6. Section 163 ERA states that:
1. Any question arising under this Part as to—
- (a) the right of an employee to a redundancy payment, or
 - (b) the amount of a redundancy payment,
2. shall be referred to and determined by an employment tribunal.
- 1.
7. Section 164 provides the following time limit:
1. An employee does not have any right to a redundancy payment unless, before the end of the period of six months beginning with the relevant date—
- (a) [...]
 - (b) a question as to the employee's right to, or the amount of, the payment has been referred to an employment tribunal.

The Transfer of Undertakings (Protection of Employment) Regulations 2006

8. The relevant parts of regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') set out what can constitute a 'relevant transfer':
1. These Regulations apply to—
- (a) [...]
 - (b) a service provision change, that is a situation in which—
- 1. [...]
 - 2. 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; [...]*
2. *and in which the conditions set out in paragraph (3) are satisfied.*
- ii. *[...]*
 - iii. *(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.*
 - iv. *(3) The conditions referred to in paragraph (1)(b) are that—*
 1. *immediately before the service provision change—*
 1. *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;*
 2. *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*
 2. *the activities concerned do not consist wholly or mainly of the supply of goods for the client's use.*

Regulation 4(7), TUPE:” Paragraphs 1 and 2 shall not operate to transfer the contract of employment and the rights, powers, duties, and liabilities under or in connection with it of any employee who informs the transferor or the transferee that he objects to becoming employed by the transferee.

Statutory Notice Pay

9. Section 86 ERA provides the following in relation to the required minimum period of notice:
 1. *The notice required to be given by an employer to terminate the contract of employment of a person who has been continuously employed for one month or more—*
 1. *is not less than one week's notice if his period of continuous employment is less than two years,*
 2. *is not less than one week's notice for each year of continuous employment if his period of continuous employment is two years or more but less than twelve years, and*
 3. *is not less than twelve weeks' notice if his period of continuous employment is twelve years or more.*

F: CONCLUSIONS

Mr Lachgar

For the reasons I have set out above, Mr Lachgar was employed for a continuous period of more than 20 years. The Claimant's continuous employment began on 22nd February 1993 and he was made redundant on 17 February 2021. I conclude that contrary to the Respondent's position and for the reasons I have set out above, there was no break in his period of employment when there was a service provision change from Peartree to Interserve.

Redundancy: He had 27 years of service and was entitled to 20 years redundancy pay. He thus is entitled to a redundancy pay for 20 years at a rate of 1.5 weeks. The total redundancy pay to which he is entitled to, based on one and a half week's pay of £322.15 (gross) is £ 9,664.50.

Notice Pay: Because he was employed for over 20 years, Mr Lachgar was entitled to 12 weeks' notice pay. He was given 5 weeks' notice and thus is owed 7 weeks' notice pay. Based on £322.15, he is entitled to £2,255.05.

I therefore make a total award in favour of Mr Lachgar in the sum of **£11,919.55** gross.

Ms Pitrelli

For the reasons, I have set out above, Ms Pitrelli was employed for a continuous period of 10 years. Her continuous employment began on 6th October 2010 and she was made redundant on 17 February 2021. I conclude that contrary to the Respondent's position and for the reasons I have set out above, there was no break in her period of employment when there was a service provision change from Peartree to Interserve.

Redundancy: She had 10 years of service. Based on her age of 47 years old, she was entitled to 13 weeks pay. The total redundancy pay she was entitled to therefore based on 6 weeks at one and a half week's pay and 4 weeks at 1 week's pay (£ 333 gross) is £ 4,329.

Notice Pay: Because she was employed for over 10 years , she was entitled to 10 weeks' notice. She received 4 weeks' notice. Thus, she was entitled to 6 weeks pay, based on £ 333, entitling her to £1998.

I therefore make a total award in favour of Ms Pitrelli in the sum of **£6,327.00 (gross)**