



EMPLOYMENT TRIBUNALS

Claimant: Miss R Ghirmay

Respondent: (1) Carisway Facilities Support Limited (in Creditors' Voluntary Liquidation)
(2) Greenzone Cleaning & Support Services Limited

Heard at: Midlands West

On: 29 August (Liability evidence)
30 August (Submissions and deliberations)
31 August (Liability Judgment, remedy hearing)

Before: Employment Judge C Knowles

Representation
Claimant: Mr N Alazar (Claimant's husband)
Respondent: (1) No attendance or representation
(2) Miss A Jervis (Advocate) (not in attendance for the remedy hearing)

JUDGMENT

Liability Judgment

1. There was no TUPE transfer from the First Respondent to the Second Respondent, whether under Regulation 3 (1) (a) or 3 (1) (b) of the Transfer of Undertakings (Protection of Employment) Regulations 2006. Liability for the Claimant's contract of employment did not transfer from the First Respondent to the Second Respondent.
2. The Claimant's claims against the Second Respondent are not wellfounded, and are dismissed, because there was no TUPE transfer.

3. The Claimant was dismissed by the First Respondent by reason of redundancy. Her claim for a statutory redundancy payment against the First Respondent is well-founded and succeeds.
4. The Claimant was unfairly dismissed by the First Respondent and her claim for unfair dismissal against the First Respondent is well-founded and succeeds.
5. There is a 50% chance that the First Respondent would have fairly dismissed the Claimant. A 50% reduction will be made to the compensatory award for unfair dismissal, under the principles set out in **Polkey v A E Dayton Services Limited 1988 ICR 142**.
6. The Claimant did not in any way cause or contribute to her own dismissal.
7. The Claimant was dismissed without notice by the First Respondent and the Claimant's claim for statutory notice pay against the First Respondent is well-founded and succeeds.
8. The Claimant was entitled to be paid accrued but untaken holiday pay by the First Respondent (pursuant to Regulation 30 of the Working Time Regulations 1998).

Remedy Judgment against the First Respondent

9. The First Respondent must pay to the Claimant a statutory redundancy payment of **£1,021.29** (that being (1.5 x 2 years continuous service) x average gross weekly pay of £340.43).
10. The First Respondent must pay to the Claimant statutory notice pay of **£547.40 net** (being 2 x average net weekly pay of £273.70).
11. The First Respondent must pay to the Claimant her accrued but untaken holiday pay of **£909 gross** (the Claimant had accrued 195.33 hours in the year from 17 April 2021 to the date of dismissal on 28 March 2022, she had taken 96.74 hours of paid leave, and so had 98.59 hours outstanding at a gross hourly rate of £9.22). This award has been calculated gross, and tax and national insurance will have to be accounted for.
12. No separate basic award for unfair dismissal is made, because the First Respondent is required to pay the statutory redundancy payment above.
13. The First Respondent must pay to the Claimant a compensatory award for unfair dismissal of **£12,044.60**. The Tribunal is satisfied, having heard evidence from the Claimant, that the Claimant did not claim any relevant statutory benefits between the date of her dismissal and the date of the

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Judgment, and therefore the provisions of The Employment Protection (Recoupment of Benefits) Regulations 1996 (as amended) do not apply.

Employment Judge **C Knowles**

Date 31 August 2023