



EMPLOYMENT TRIBUNALS

Claimant

Mr N D Crowther and others

Respondent

**v Techspray Fibreglass Limited (in
voluntary liquidation)**

Heard at Sheffield in person

On: 22 September 2023

Before: Employment Judge Brain

Appearance:

**For the Claimants: Mr N D Crowther, Miss W Whitehead, Mr J Riley,
Mr D Barlow, Mr T Harrison, Mr S Latham,
Mr J McDermott, Mr K Birkett all in person.**

**Mr N D Crowther on behalf of Mr D Pinder and
Miss S Holmes**

For the Respondent: No attendance or representation

JUDGMENT

The Judgment of the Employment Tribunal is that:

1. It is declared that the claimants were dismissed by the respondent by reason of redundancy on 28 April 2023.
2. The claimants' claims stand dismissed upon the basis that all payments due to them arising from the termination of the contracts of their employment have been paid to them by the Secretary of State out of the National Insurance Fund.

REASONS

1. Mr Crowther presented the claim form to the Employment Tribunal on 18 May 2023. He did so on his own behalf and on behalf of the claimants listed in the schedule. Before doing so, he went through mandatory early conciliation as required by the Employment Tribunals Act 1996. The early conciliation certificate on the Employment Tribunal file shows that Mr Crowther commenced the early conciliation process against the respondent on 3 May 2023. That process was concluded on 4 May 2023.

2. The claimants' contracts of employment were summarily terminated on 28 April 2023. They were wrongfully dismissed as there was no grounds upon which for the employer to summarily dismiss them. They were dismissed upon the grounds of redundancy. Unfortunately, the premises at which they worked had been damaged by fire. They were therefore made redundant because of the closure of the place at which they worked.
3. The claimants submitted claims to the Redundancy Payment Service. They confirmed that they had received the following entitlements in full paid out of the National Insurance Fund:
 - 3.1. Pay for the notice period to which they were entitled.
 - 3.2. Redundancy payments.
 - 3.3. Arrears of wages up to and including 28 April 2023.
 - 3.4. A payment for outstanding holiday entitlement.
4. The claimants' claims were for the payment of wages between 29 April 2023 and 16 June 2023. The Tribunal was told that this claim was in respect of a payment of monies by the respondent's parent company's insurers to the parent company (SPI Global Play Limited). This was for wages payable over this seven weeks' period. The claimants said that the money paid to SPI by their insurance company had been used by SPI for purposes other than payment of employee wages.
5. The Tribunal mentioned the Contract (Rights of Third Parties) Act 1999 which gives powers to parties other than the insured and insurer to enforce terms of the contract if the contract is intended to confer benefits upon the third party.
6. In this case, it seems that the insurer has in any case paid the insurance claim made by SPI. No claim may lie against the insurer. It appears to the Tribunal therefore that on the face of it the issue is between SPI and the claimants.
7. SPI are not a party to the Tribunal proceedings. Mr Crowther said that he had obtained an early conciliation certificate as against SPI. The Tribunal accepts this as he produced evidence of it on his mobile telephone.
8. There was correspondence between the Tribunal and Mr Crowther in which he was asked to supply a copy of the early conciliation certificate with SPI. There is nothing on the Tribunal file to indicate that he did so. The Tribunal is not saying that he has not attended to this. It is just that there is nothing on the Tribunal file to show that he has. That is not in and of itself an insurmountable obstacle. It would in any case be open to the Tribunal to join SPI into the proceedings as second respondent.
9. Doing so however may not assist the claimants. The Tribunal only has jurisdiction to consider those claims conferred upon it by Parliament. The claimants were not employees of SPI. There was no contract between them. It appears therefore that the Tribunal has no jurisdiction to entertain a complaint by the claimants against SPI.
10. Furthermore, the claimants' have all received compensation for the wrongful dismissals which is a payment of damages to compensate for the wages payable over the notice period which should have been but was not honoured by the respondent. This payment will therefore be by way of compensation for lost earnings after 28 April 2023 in any case.

11. The claimants may have a complaint against SPI for breach of trust if monies earmarked for them had been dispersed elsewhere. However, that is an issue of which the Tribunal has no jurisdiction and which the claimants will need to pursue in the County Court. The Court will have jurisdiction to consider such a claim and enquire about the provenance of the monies received from the insurer.
12. As the claimants have received all their payments from the Redundancy Payments Service, it follows their complaints must be dismissed (save for the declaration that they were dismissed by reason of redundancy).

Employment Judge Brain

Date:

28 September 2023

Sent to the parties on:

10 October 2023

For the Tribunal:

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