



EMPLOYMENT TRIBUNALS

Claimant

Mr W Lake
(Fourth Claimant)

Respondent

06233341 LIMITED
(Third Respondent)

Heard at: London Central Employment Tribunal

On: 6 February 2024 (in chambers)

Before: Employment Judge Adkin

Members: Mr T Cook
Ms C Marsters

JUDGMENT

- (1) The stay of proceedings in relation to the Mr W Lake's claim against the Third Respondent is lifted and the name of the Third Respondent is amended to **06233341 LIMITED**.
- (2) Mr W Lake was automatically unfairly dismissed by the Third Respondent 06233341 LIMITED pursuant to regulation 7(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE 2006").
- (3) The Third Respondent shall pay Mr W Lake the following sums:
 - a. Basic award of £6,752.34.
 - b. Compensatory award of £15,505.96 (including £500 loss of statutory rights).
 - c. ACAS uplift on the above pursuant to section 207A TULRCA 1992 at 20% amounting to £4,735.84.
 - d. Accrued but untaken annual leave pursuant to the Working Time Regulations 1998 (Holiday Pay) of £920.98.
 - e. The total of the above sums is **£27,815.02**.

REASONS

OVERVIEW

1. At this today's Remedy Hearing on 6 February 2024, the Tribunal dealt with remedy in Mr W Lake's claim.
2. This Tribunal made determinations at a Preliminary Hearing on 5, 6, 7, 8 September 2022 ("the September hearing") that the Second Respondent was the Fourth Claimant's employer and therefore transferor for the purposes of claims brought under TUPE 2006 and that the employment of Fourth Claimant did transfer to the Third Respondent 06233341 LIMITED on 3 September 2018 by operation of regulation of 4(1) TUPE 2006. That decision was confirmed in a judgment 16 September 2022 and written reasons were provided on 11 October 2018.
3. In a judgment with written reasons sent on 14 December 2022, following a later hearing on 6 December 2022, the Tribunal stayed Mr W Lake's claims against the Third Respondent LC Transport (Uk) Ltd on the basis that it transpired that this company had been dissolved on 24 April 2022.
4. At the application of Mr W Lake's solicitor Pattison & Brewer Solicitor, by an Order of Court the Third Respondent was restored to the Company Register on 21 September 2023. A letter from P Fairhead, Restoration Case Worker at Companies House dated 11 October 2023 confirmed that Third Respondent was restored to the Register as "**06233341 LIMITED**" as there is already a company with a duplicate of the old company name on the register.

FINDINGS OF FACT

Chronology

5. The Tribunal continues to adopt the helpful chronology provided by counsel at the hearing in September, save where conflicts with our written reasons following the preliminary hearing in September 2022 and the reasons sent on 14 December 2022.

LAW

TUPE

6. The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") contain the following provisions:

Dismissal of employee because of relevant transfer

7.—(1) Where either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated for the purposes of Part X of the 1996 Act (unfair dismissal) as unfairly dismissed if the sole or principal reason for his dismissal is—

(a) the transfer itself; or

(b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.

REMEDY

FAILURE TO INFORM & CONSULT (QUANTUM)

7. We reiterate that because of the decision in **Nationwide Building Society v Benn and ors** [2010] IRLR 922, EAT, the claim for failure to inform and consult pursuant to regulation 15 of TUPE 2006 does not succeed.
8. In case we are wrong about that (given that there is an appeal to the Employment Appeal Tribunal pending) taking account of the fact that there was some process and some consultation which occurred, but there was delay and a failure to include the GMB first and the abuse of TUPE we find the appropriate award would have been **10 weeks' pay**.
9. For the avoidance of doubt, we are not able to make this award because the Claimants do not have standing to bring such a claim following **Benn**.

DISMISSAL/REDUNDANCY

10. Now that the stay on the claim brought by the Fourth Claimant has been lifted, the Tribunal has made conclusions based on our findings of fact following the list of issues used in determining liability for the other Claimants.

Issue 13) Were the Claimants dismissed because of a relevant transfer?

C4

11. The Fourth Claimant's employment should have transferred to the Third Respondent on 3 September 2018. Despite making more than one attempt to contact the Third Respondent he was never provided with any work or pay by that company, which directed him back to the Second Respondent. We find that the Third Respondent thereby dismissed him.

14) Was there an economic, technical or organisational reason entailing changes in the workforce which permitted the Respondent to dismiss?

12. The burden would be on a respondent to establish this defence. No such defence has been established.

15) Was the Claimant automatically unfairly dismissed contrary to TUPE reg 7(1)?

13. We find that this dismissal was because of the transfer and accordingly that this was an automatic unfair dismissal pursuant to regulation 7(1) of TUPE 2026.

16) Were the Claimants dismissed under ordinary unfair dismissal principles in contravention of in section 98(4) Employment Rights Act 1996?

14. It is not necessary to consider this point.
15. In case we are wrong about our finding of automatic unfair dismissal, however, we find that that the decision was unfair on “ordinary” principles pursuant to sections 94 and 98 of the Employment Rights Act 1996. There was no process such as a letter of dismissal, disciplinary hearing or appeal rights granted by the Third Respondent. This was an unfair dismissal.

17) Were the Claimants entitled to redundancy payments?

16. The Fourth Claimant is not entitled to both redundancy pay and a basic award for unfair dismissal.

WRONGFUL DISMISSAL

18) If the Claimants were dismissed, were they given any or sufficient notice of their dismissal?

17. The Fourth Claimant did not receive notice pay on termination and accordingly are entitled to receive notice pay.
18. The claims for damages for wrongful dismissal and the compensatory awards for unfair dismissal overlap. He cannot double recover.

UNLAWFUL DEDUCTIONS FROM WAGES/BREACH OF CONTRACT

19) Did any of the Respondents make unlawful deductions from the Claimants' wages under section 13(1) of the Employment Rights Act 1996 (ERA) in respect of:

19. This appears to overlap with the compensatory award for unfair dismissal.
20. We have not made a further award under this head of claim.

20) In the alternative, did any of the Respondents breach the Claimants' contracts of employment by failing to pay them any sums owing under it relating to:

21. This appears to overlap with the compensatory award for unfair dismissal.
22. We have not made a further award under this head of claim.

WORKING TIME REGULATIONS

21) Did any of the Respondents fail to comply with the Working Time Regulations 1998 by failing to pay the Claimants in respect of accrued but untaken annual leave?

23. We have awarded the Fourth Claimant accrued but annual leave as claimed in his schedule of loss.

ACAS UPLIFT

24. The basic requirements in the case of a dismissal under the code would be that an employee should be invited to a disciplinary meeting, explaining that dismissal was being considered, that they should have the opportunity to attend a meeting and ultimately to appeal any decision to dismiss.
25. Given in this case there was not a total absence of process, we have not awarded the maximum 25%. We have however made an award at a higher level to reflect the failure to the ACAS code. In the circumstances we find the appropriate figure for uplift is **20%**.

QUANTIFICATION OF REMEDY

23) What remedy if any should be awarded?

C4: Mr W Lake

26. We note that Mr Lake was on sick leave at the time of his dismissal and had been on sick leave from 25 June 2018. Having considered the pay slips we can see that he was on full pay sick pay. His uncontested evidence is that this was a temporary period of absence caused by the ill health of a family member and that he was anticipating returning to work within two weeks of a meeting on 22 August 2018.
27. We find on the balance of probabilities that Mr Lake would have, but for his dismissal, returned to work before he exhausted his entitlement to sick pay at full pay and would have earned full pay for 12 months and accordingly we award him the sum claimed as a compensatory award for unfair dismissal.

Employment Judge Adkin

Dated: 6 February 2024

Judgment and Reasons sent to the parties on:

14 February 2024

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For the Tribunal Office