



EMPLOYMENT TRIBUNALS

Claimant: Mr Hunt
Respondent: W1 Hardware Limited
On: 1-2 May 2025
Before: Employment Judge McAvoy Newns
Heard at: London Central Employment Tribunal (by CVP)

Appearances:

For the Claimant: Mr Welch, Counsel
For the Respondent: Mr Kawa, Lay Representative

JUDGMENT

The Claimant's employment did not transfer to the Respondent pursuant to Regulation 3(1)(a) of The Transfer of Undertakings (Protection of Employment) Regulations 2006. Consequently, his claims against the Respondent are dismissed.

WRITTEN REASONS

Background

1. Oral judgment was given at the end of the hearing. The Claimant's counsel applied for written reasons at that point. These written reasons have been provided as soon as practicable following that request.

Form of hearing

2. This was a remote hearing which was not objected to by the parties. The hearing took place via CVP, the Tribunal's video conferencing platform.

Findings of fact

Clarifying the issues

3. The purpose of this hearing was for me to decide, as a preliminary issue, whether the Claimant transferred to the employment of the Respondent on or after 7 January 2023 following the alleged purchase by the Respondent of all or part of the business carried on by F.S. Blake & Sons Limited (“FS Blake”) (my emphasis added).
4. The emphasis is important. This is because the order actually stated that I was required to decide, as a preliminary issue, whether the Claimant transferred to the employment of the Respondent on or after 7 January 2023 following the purchase by the Respondent of all or part of the business carried on by FS Blake.
5. In this regard, Employment Judge Nicklin, who made the order, must have been under the impression, presumably because of the way in which the Claimant had put his case, that it was accepted between the parties that the Respondent had acquired FS Blake.
6. However, it was clear from the Respondent’s representations during today’s hearing and the documentation in the hearing bundle that the Respondent was not the buyer. I go on to make findings relevant to this later.
7. Additionally, the order from Employment Judge Nicklin was for me to determine whether this transfer happened pursuant to TUPE or otherwise (my emphasis added).
8. It appeared from the Claimant’s case as well as the written submissions that had been provided to me that there was no “otherwise” being relied upon. However, for completeness, at the outset of this hearing and again during submissions, I questioned the Claimant’s counsel about this point. He made it plain that the Claimant was only contending that the transfer happened pursuant to TUPE and, in particular, that the transfer was a business transfer pursuant to Regulation 3(1)(a). He was not contending that there was a service provision change pursuant to Regulation 3(1)(b) TUPE or that section 218 of the Employment Rights Act 1996 (“ERA”) applied.

Background facts

9. The Claimant’s oral evidence is that he commenced employment with FS Blake on 6 January 2020. However, no contractual documentation showing such an employment relationship has been provided and, as I explain later, the Claimant was payrolled via another company at least during the period running up to the acquisition.
10. The Claimant was employed as the Retail Manager responsible for running FS Blake’s hardware store, known as Blakes of Belgravia.

Sale of FS Blake

11. The Claimant’s claim has been based on the fact that, in January 2023, FS Blake was sold to the Respondent. However, it was not. The Share Purchase Agreement (“SPA”) in the hearing bundle makes it plain that FS Blake was sold as a sale of shares to two individuals: Saz Bek and Pasar Saleh. There is no documentation in the bundle evidencing a subsequent sale of FS Blake,

or part of FS Blake's business, including Blakes of Belgravia, to the Respondent. Nor do the parties adduce any oral evidence relevant to any such acquisition.

12. The previous owners of FS Blake were Paul Norwood and Terence Cook. The Claimant's oral evidence was that Mr Cook told him that he would transfer to the Respondent and maintain continuous employment following the sale.
13. Although I have no reason to doubt the Claimant's evidence, as the Claimant was very credible, it appears there must have been some confusion in the messaging that he received from Mr Cook. Unless it was the case that the Respondent was originally due to purchase FS Blake (and no evidence of this has been provided), I cannot see why Mr Cook would suggest that the Claimant be employed by the Respondent post-acquisition. He might have said that he would have continued to be employed by FS Blake (as is common with share sales).

FSB (Wholesale) Limited

14. On 10 January 2023, a P45 was issued confirming that the Claimant's employment with FSB (Wholesale) Limited had ended with effect from 6 January 2023, the day before the acquisition. This would make sense, given that FSB (Wholesale) Limited was not being sold as part of the acquisition and the plan was for the Claimant to continue working for Blakes of Belgravia which remained within the ownership of FS Blake.

Payrolling of the Claimant: January to March 2023

15. The Respondent accepts that it paid the Claimant his wages / SSP between January and March 2023. Although no wage slips have been adduced, the Respondent's oral evidence was that these named the Respondent as the payer.
16. The Respondent's reasons for this were that, upon the sale of FS Blake, it transpired that FS Blake did not have PAYE facilities. Therefore, whilst this was set up, to ensure that the Claimant was paid, his wages were put through the payroll of the Respondent.
17. There is logic behind the Respondent's assertion in this regard. It was accepted by both parties that the Claimant was, pre share sale, not paid by FS Blake. Instead, as explained above, he was paid by FSB (Wholesale) Limited. I do not doubt the Respondent's evidence that FS Blake did not have the appropriate payroll facilities and therefore a solution, to ensure the Claimant was paid, needed to be found.
18. The Respondent's position about whether it employed the Claimant or not has been confused and inconsistent. In the ET3, it is denied that the Respondent ever employed him. However, when reviewing the Respondent's company accounts and observing that the Respondent had an average of 4 employees throughout 2023, the Respondent acknowledged that the Claimant was one of them. Mr Kawa's oral evidence during this hearing was that the Respondent did employ the Claimant during this period.
19. I expect there was some confusion about whether the fact that Respondent payrolled the Claimant meant that the Respondent was employing the

Claimant following a TUPE transfer. Given that the Respondent was payrollling the Claimant, it is understandable why the Respondent would include the Claimant on its list of employees in the company accounts. But this is a very different point to whether there was a transfer of an undertaking from one entity to the Respondent.

20. The company accounts for FS Blake show that it employed no employees in 2023. This has been used to support the Claimant's position that there was a TUPE transfer to the Respondent following the share sale. However, given that the Claimant had not been payrollled through FS Blake, this is an illogical argument. The Claimant was not payrollled through FS Blake in 2023 which is why he would not have been included as an employee on their company accounts.

Day to day management of Blakes of Belgravia

21. The Respondent's position is that FS Blake continued after the share sale to run Blakes of Belgravia. It was initially run by the owners, Saz Bek and Pasar Saleh, who became employees in 2024. Mr Kawa was also involved, working alongside the owners.
22. Although the company accounts for FS Blake do not name the employees of 2024, they do specify an average of two employees for that year. It is reasonable to conclude, considering this and the Respondent's oral evidence, and the lack of evidence or challenge to the contrary, that these two employees were Saz Bek and Pasar Saleh.
23. The Claimant continued working at Blakes of Belgravia, in his existing role, until he was signed off work from 27 February 2023. During the time that he was working, he observed that the business ran as usual, save that new computer and alarm systems were installed.
24. The Claimant provided Mr Kawa with fit notes covering the period up to 30 April 2023. The second fit note, covering this latter period, was provided on 22 March 2023.

P45

25. On 27 March 2023, Mr Kawa WhatsApp messaged the Claimant a P45 which provided for a back dated leaving date of 28 February 2023. This confirmed that the Claimant's employer was the Respondent.
26. In respect of the reasons why this second P45 was issued, the Respondent's position was again confused and inconsistent. On one hand, the Respondent said that the Claimant told them that he required an operation and would be unable to return to work. Consequently, the P45 was therefore issued. The Claimant disputed this. However, on the other hand, the Respondent said that this was done because FS Blake had managed to set up a payroll system and the Claimant was to be moved onto that. No evidence of this payroll system or the Claimant being moved onto the same was however provided. These are matters that would have required further investigation should the Claimant's claims have proceeded to a final hearing.
27. In respect of the reasons why this P45 named the Respondent as the employer, this was because the Respondent had been paying the Claimant his wages for the preceding few months. The P45 set out the payments that this entity had paid the Claimant and the tax treatment of the same.

Employee information

28. Page 58 of the bundle contains a table providing certain information about the Claimant. The creator of this document is unclear. I am told that it was disclosed by the Claimant. This document does not assist in establishing whether there was a business transfer. The buyers of the shares of a company, whether the acquisition is going to lead to a TUPE transfer or not, will undoubtedly want to understand the employment related liabilities that they will be assuming post-acquisition. Assuming that this document was created pre-sale, I suspect this was its purpose.

The Law

29. Regulation 3(1)(a) of The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") states: "These Regulations apply to a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity".
30. In *Brookes and ors v Borough Care Services Ltd and anor* 1998 ICR 1198, the EAT held that it was widely recognised that a transfer of shares as distinct from a transfer of business was outside the scope of TUPE.
31. In *Print Factory (London) 1991 Ltd v Millam* 2007 ICR 1331, the Court of Appeal upheld an appeal against a decision from an Employment Appeal Tribunal, restoring the decision of the Employment Tribunal. There, it was held that there had been more than a simple share sale. The acquirer had taken over the day-to-day running of the purchased company, taking the key management decisions and doing 'far more than a simple shareholder would have done following a simple sale'. Thus, the Tribunal found that there had been a TUPE transfer. It was also noted that whether there was a transfer of a business was a question of fact that had to be resolved deploying the experience and expertise of the Tribunal. The mere fact of control, which would follow from the relationship between parent and subsidiary, would not be sufficient to establish the transfer of the business from subsidiary to parent. In this case, the Tribunal had identified a number of evidential indications which, in combination, established that control of the business, in the sense of how its day-to-day activities were run, had transferred. On the evidence, the Tribunal had been entitled to conclude that there had been a transfer. Therefore there was no ground on which the EAT could have legitimately interfered with that conclusion.
32. In *Jackson Lloyd Ltd and anor v Smith and ors* EAT 0127/13, the acquirer of the shares took over the company's management, facilities, amenities and functions. An Employment Tribunal found that, while the share sale did not constitute a relevant transfer, there was a TUPE transfer when the day-to-day control of Jackson Lloyd Ltd's business was taken over.
33. In *ICAP Management Services Ltd v Berry and anor* 2017 IRLR 811 it was held that the key questions in ascertaining whether there was such a transfer are whether the new party (i) has become responsible for carrying on the business, (ii) has incurred the obligations of employer, and (iii) has taken

over day-to-day running of the business - in other words, whether the new party has 'stepped into the shoes' of the employer.

Submissions

34. Both parties provided written and oral submissions. These submissions are not set out in detail in these reasons but both parties can be assured that I have considered all the points made, even where no specific reference is made to them.
35. Whilst I did not expect the unrepresented Respondent to address me on the law, I did expect the Claimant's counsel to do so. The Claimant's counsel appeared to proceed throughout this hearing on the premise that this was a simple case; because the Respondent had been named on the Claimant's P45 and because the Respondent had been paying his wages post-acquisition, it was a tantamount to a "done deal" that there had been a business transfer of the Claimant's employment to the Respondent. After he had given submissions, I asked him whether he had any specific authorities that he wished for me to consider. He told me that he did not.

Conclusions

36. Where employees are transferred from one employer to another on the sale or disposal of a business, TUPE lays down complex rules dealing with enhanced rights for employees. However, none of these rules will take effect without the occurrence of a 'relevant transfer'.
37. For Regulation 3(1)(a) to apply there needs to be:
 - 37.1 A transfer of an undertaking or business, or part of an undertaking or business;
 - 37.2 To another person;
 - 37.3 Involving the transfer of an economic entity which retains its identity.
38. The central question here is whether there was a transfer of an undertaking, or part of an undertaking, from one person to another.
39. In line with the Acquired Rights Directive, the BIS Guide states: 'To qualify as a business transfer, the identity of the employer must change. The Regulations do not therefore apply to transfers by share take-over because, when a company's shares are sold to new shareholders, there is no transfer of a business or undertaking: the same company continues to be the employer'. This is the position confirmed in *Brookes*.
40. Although this is the established position, uncertainty can arise where the purchasing company assumes day-to-day control of the new asset. This is clear from some of the other cases cited above. Unfortunately, the Claimant's counsel did not refer me to these cases nor explain how they applied to this present case, despite me giving him an opportunity to do so.
41. As mentioned before, this case has been pursued on the basis that the Respondent acquired FS Blake. However, it did not. FS Blake was acquired by Saz Bek and Pasar Saleh.

42. Nevertheless, I considered whether the Respondent did assume day to day control over and stepped into the shoes of Blakes of Belgravia.
43. There is an issue about who the Claimant's employer was prior to the share sale. Whilst I expect, in reality, it was FS Blake, on paper, from the evidence presented to us, it was FSB (Wholesale) Limited. This is who the Claimant was payrolled through and no documentary evidence of any contractual relationship between the Claimant and FS Blake has been provided.
44. If the Claimant was employed by FSB (Wholesale) Limited, that employment ended on 6 January 2023. At that point, the Claimant's employment must have transferred to another entity. The question is, did it transfer to FS Blake, the Respondent or someone else.
45. For the purpose of this hearing, I am only required to consider whether there was a transfer to the Respondent. Considering the case law, I would need to find that, after the share sale, the Respondent took over the day to day running of Blakes of Belgravia in order for there to be such a transfer.
46. The main connection between FS Blake and the Respondent is Mr Kawa. He is and has been a director of the Respondent and became a director of FS Blake soon before the sale.
47. Although Mr Kawa was involved in the running of Blakes and Belgravia, he was not doing so alone. The owners were also involved, as was the Claimant, in his role as Retail Manager, for a short period of time. Additionally, Blakes of Belgravia is presently being run by the owners who are now payrolled employees of FS Blake.
48. Mr Kawa was the Claimant's point of contact during the relatively short period of time that he was employed following the sale. They liaised with each other regarding the Claimant's sickness absence and Mr Kawa issued the P45 (considered later).
49. It is relevant also that no one else from the Respondent was involved in the running of Blakes of Belgravia at this time. Specifically, the owners of FS Blake were not involved in the Respondent.
50. Mr Kawa was clearly involved in the day to day running of Blakes of Belgravia. He accepted that himself. He also was involved in the management of the Claimant, a central employee for Blakes of Belgravia at the time. However, he could have exercised these duties in one of two capacities: either on behalf of the Respondent or in his capacity as a director for FS Blake.
51. I concluded that it was more likely that he did so in his capacity as a director of FS Blake. This is because he was working alongside the owners of FS Blake, who had no involvement in the Respondent. Also, no one else from the Respondent was involved in the day to day running of FS Blake. The Claimant's counsel did not seek to assert that the Respondent had any other involvement in the day to day running of Blakes of Belgravia.
52. Although the Claimant was payrolled by the Respondent and was issued with a P45 by the Respondent, there were logical reasons for this, as explained in my findings of fact earlier. This does not equate to the Respondent taking over the day to day running of Blakes of Belgravia. Merely payrolling an

employee from a different entity does not equate to the transfer of an undertaking from one entity to another pursuant to Regulation 3(1)(a) of TUPE. When putting the Claimant on the Respondent's payroll, there is no evidence whatsoever of any undertaking having passed to the Respondent.

53. The Respondent also accepted during this hearing that it employed the Claimant for this short period of time. However, a concession of employment is not the same as there being a transfer of an undertaking from one entity to another pursuant to Regulation 3(1)(a) of TUPE.
54. Consequently, the Claimant's employment did not transfer to the Respondent pursuant to Reg 3(1)(a) of TUPE.

Section 218 of the ERA

55. The Claimant's counsel told me no case in respect to a transfer pursuant to section 218 of the ERA was being made. As the Respondent had not had an opportunity to give representations in respect of the same, relying upon this concession from the represented Claimant, it would have been unjust for me to give consideration to section 218 of the ERA and therefore I've not done so.

Substitution of parties

56. Rule 35 of the Tribunal Rules of Procedure states that the Tribunal may on its own initiative, or on the application of a party, by way of substitution or otherwise, add another party to the proceedings if it appears that there are issues between that person and any of the existing parties falling within the jurisdiction of the Tribunal which it is in the interests of justice to have determined in the proceedings.
57. FS Blake were not added as a respondent to the proceedings when the ET1 was first filed. This is despite there being provision in the ET1 for multiple respondents to be included. Indeed, it is common, where there is uncertainty in respect of the identity of the employer, for multiple respondents to be included and for such uncertainty to be resolved by the Tribunal at a later date. Bearing in mind that the Claimant was legally represented, it is unclear why this was not done.
58. No application has been made to add FS Blake to the proceedings and I note that there has been a case management preliminary hearing prior to this hearing and the Claimant has been legally represented throughout.
59. Considering the contents of the Respondent's ET3, in which the Respondent clearly set out their position that the claim had been filed against the wrong respondent, it is unclear to me why no such application was made. This application could have been made soon after receipt of the ET3 or, at the very least, before or during the case management hearing. In my view, this is something a reasonably competent solicitor ought to have advised their client to do.
60. Nevertheless, even absent an application, the earlier mentioned Rule allows me to add FS Blake to the proceedings if:
 - 60.1 There are issues between FS Blake and the Claimant; and
 - 60.2 It is in the interests of justice to have those issues determined.

61. Clearly, there are issues between FS Blake and the Claimant. Although I've not been able to determine this as a matter of fact, it is likely the true employment relationship would have been between these two persons.
62. However, before I add FS Blake as a respondent, I have to be content that it is in the interests of justice to do so. Additionally, I am required to consider whether this is in accordance with the overriding objective, particularly:
 - 62.1 ensuring that the parties are on an equal footing,
 - 62.2 dealing with cases in ways which are proportionate to the complexity and importance of the issues,
 - 62.3 avoiding delay, so far as compatible with proper consideration of the issues.
63. The Claimant had a long period of employment with FS Blake and, when his employment was terminated, he ought to have received a substantial notice payment. It appears to have been accepted that no procedure was followed prior to the issuing of the P45. Inconsistent reasons have been given for the issuing of the P45. He believes his employment was terminated for discriminatory reasons. The Claimant should be able to have these claims examined by a Tribunal. If successful, he should be entitled to a remedy. If I do not add FS Blake to the claim, he will be deprived of all of this.
64. However, the events giving rise to this claim happened more than two years ago. The claim was lodged in August 2023. Although time limits are not an issue when considering adding parties to proceedings, a significant amount of time has passed and seeking to bring FS Blake into the scope of this claim many years later is likely to lead to significant unfairness to them. They will be required to file an ET3. Another case management hearing will need to be listed. It is likely to be 2026, possibly 2027 before the case is even heard. Memories of the events of January to March 2023 will be very unreliable at that point. I am also conscious that the Claimant has been legally represented throughout and has had ample opportunity to add FS Blake to these proceedings if he wished to pursue his case in this way. I am also conscious that if no application for FS Blake to be added was made previously due to an error on the part of the Claimant's legal representatives, he may have a separate remedy against them.
65. For these reasons and because no positive case has been made by the Claimant's representatives for FS Blake to be added at any stage, even during the course of this hearing, I have decided it is not in the interests of justice nor compliant with the overriding objective to do so.

Conclusions

66. As all of the Claimant's claims necessitate a transfer of employment to the Respondent, and there was no such transfer, they are dismissed.

Employment Judge McAvoy Newns

8 May 2025

Sent to the parties on:

14 May 2025

For the Tribunal:

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