



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr N Riches

**Respondent:** TUI UK Limited

**Heard at:** Bedford Employment Tribunal      **On:** 23 February 2017

**Before:** Employment Judge K J Palmer

**Representation:**

**Claimant:** In person

**Respondent:** Mr M Ball (Solicitor)

## **JUDGMENT PURSUANT TO A PRELIMINARY HEARING** **(RESERVED)**

1. This matter came before me again today pursuant to a Preliminary Hearing set down for one day on 1 December 2016 which had to be postponed.
2. The reasons for the postponement are set out in the Case Management Discussion summary sent to the parties pursuant to that postponed hearing.
3. Today's hearing was the continuation of that original Preliminary Hearing pursuant to various directions given by me including directions for specific disclosure and the production of further witness statements and a supplementary bundle.
4. I had before me today Mr Ball, a solicitor representing the Respondent and the Claimant in person. At the first postponed hearing I heard evidence from a Mr Jeremy Osborne of the Respondent. He was not here today.

5. The Respondent called one further witness, David Jones, and I have before me the signed witness statement in very brief form from David Burling, the CEO of TUI Group's Northern Region. TUI UK Limited, the Respondent in these proceedings is part of the TUI Group.
6. I did not however hear evidence from David Burling.

## **THE ISSUE**

7. The issue before me was a contractual one. In essence the Claimant worked for TUI UK Limited, the largest tourism services group in the world for 36 years from 10 March 1980 until he was dismissed by reason of redundancy on 23 May 2016. At the time of his dismissal he was employed as a Business Support Manager.
8. He received a payment on termination described by the Respondent as an enhanced redundancy payment. However, his claim, which is the only issue before me in this case, is that in or about 1992 he signed a new contract which gave him far greater enhanced redundancy terms than that which was eventually accorded to him. His claim is based on the shortfall between what he received and what he says under his 1992 contract he was entitled to.
9. At the outset of the hearing both parties agreed that the sum in dispute is that shortfall and is £86,000.
10. The Respondent of course pointed out to me at the first hearing that even if the Claimant is successful in his claim for £86,000, I must apply the cap by which Tribunals are bound in breach of contract cases of £25,000 under the "Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 (SI 1994/1623)".
11. Therefore the issue before me is a simple one. The Claimant says he had a contract which had within it an enhanced redundancy clause. Sadly however he now cannot produce it and cannot find a copy.
12. The Respondent says that they cannot find a copy of the contract to which he refers in 1992 and they go on to say that if any such copy were to be found they would honour it and pay the additional sum.
13. What we do know and what emerged at the first hearing was that a number of employees certainly did have such an enhanced clause in their contract for a period of time. One of the reasons for the postponement was to send the Respondent away to see if they could find any pattern in the individual employees who enjoyed contracts with those particularly enhanced terms. It seemed to me to be important for me to know whether a particular grade or level of employee routinely had the clause and whether the Claimant was of that grade.

14. The Respondent attended today with Mr David Jones from whom I heard evidence pursuant to a witness statement and the original bundle that was before me on 1 December and a further supplementary bundle pursuant to the specific disclosure I ordered. The Claimant also produced a witness statement and I heard evidence from him as well today.
15. David Jones gave very helpful evidence and produced a schedule attached to his witness statement which was a summary of important contractual information he had gleaned from a variety of employees' contracts pursuant to a detailed search which he undertook pursuant to my Orders at the last hearing. In essence however the search did not reveal nearly as many contracts as had been hoped as he was able to give evidence that all retained records for employees who had worked for the Respondent during 1988 to 1994, in this case the critical period, but who had left the Respondent by 2009 were destroyed in line with standard archiving practices. He went on to say that the Respondent does not have any records for anyone who worked during the relevant period but who was no longer employed by 2009.
16. He explained further difficulties thrown up by the archiving of records in that records are not filed by grade or date of commencement of employment but by employees surname or year of leaving. It is not possible to search by way of a filter that identifies the grade and/or a specific employment period. The Respondent simply does not retain any record of employees in the relevant period by way of grade. There therefore may have been many employees in the relevant period who enjoyed the enhanced clause but we will never know.
17. What he did do was to find a number of employees who enjoyed the enhanced clause set out in his schedule.
18. He was able to locate contracts for two of the three specific individuals indicated in my Order, Brian Maddocks and David Selby, both of whom had contracts at or about the material time which included the enhanced clause.
19. For the avoidance of doubt that enhanced clause indicated that any employee dismissed by reason of redundancy would receive an enhanced redundancy payment amounting to one month's pay for each year worked. In the Claimant's case this would have meant him receiving some £86,000 more than he did on termination.
20. Interestingly he could not find the contract for Mr Pugh from whom I heard evidence. It is not in doubt that Mr Pugh did have a contract which enjoyed the enhanced clause.

21. Therefore before me was evidence of several individuals who had enjoyed the enhanced clause. However, it could not be gleaned that there had emerged a pattern that all employees of a certain grade either did receive the clause or not. It seemed to have been applied fairly randomly.
22. This was generally accepted by both parties.
23. During the giving of his evidence the Claimant said that he had actually had two copies of the contract illustrating the enhanced terms but had mislaid both during a period between 2013 and 2015. He was cross examined by Mr Ball quite closely as to why he would be so careless as to lose two copies in a time period quite near to when he was eventually dismissed by reason of redundancy when it meant so much money to him. He said at the time he didn't believe that he was genuinely going to be made redundant in the near future even though ultimately he was.
24. What is clear from the evidence I have heard today is that irrespective of whether the Claimant received a contract in 1992 which had within it the very advantageous enhanced redundancy clause enjoyed by some other employees, any contract in 1992 was superseded by various other contracts signed by the Claimant at later dates.
25. In fact I had five contracts before me signed by the Claimant perhaps very significantly at least two of those post-dated the relevant period in 1992 when the Claimant said he had received the contract with the enhanced terms. Arguably the most important contract he entered into was dated August 2000. I say important because it is undeniable that he signed this contract on 5 September 2000 accepting its terms. The contract was issued to him on 17 August 2000 and reflected within it an appointment date of 4 September 2000 but continuous service stretching back to 10 March 1980.
26. Subsequent to that there were variations to his terms by way of side documents in January 2002, February 2005, July 2005 and January 2008. These variously amended his terms as to salary, job title, grade and other issues. He was cross examined by Mr Ball as to why, when he was presented with the August 2000 contract, he did not raise an issue about the fact that it did not contain the enhanced redundancy clause. He argued that he did in an email dated 1 August 2000 to Helen Macey, under the subject heading "J1 offer". The J1 refers to the grade he was to be accorded in the new contract in August of 2000. In that email he asks "can I confirm that all my other contract details remain unchanged". However he did not specifically refer to the redundancy clause and signed the document despite the fact he got no response which was satisfactory to him.

27. He was asked why he would sign a document which he regarded as incorrect and not reflective of his terms of employment. He said he raised the issue with Helen at the time.
28. Further he was questioned on what happened when he returned to Luton in the company's employ in 2005 and he didn't raise it.
29. Reverting back to the 17 August 2000 contract there is contained within that contract under the heading "Substitution of Agreement" at clause 23 the following:  
  
*" This agreement is in substitution for all other agreements or arrangements between you and the company whether express or implied which should be deemed to have been cancelled on the date of this agreement. "*

### **Conclusions**

30. Based upon the evidence I have heard over 1 ½ days in these proceedings it cannot be said with any certainty whether the Claimant received a contract in or about 1992 which contained the enhanced redundancy terms or not. One of the issues I expected to be faced with today was whether based on all the evidence before me I could on the balance of probabilities conclude that it was more likely than not that the Claimant had enjoyed a contract with such a clause.
31. I had thought that calling for the additional disclosure may assist me in that task in that I would be able to ascertain that a specific grade, the same or similar to the Claimant, of employees had all enjoyed the enhanced clause. Sadly, and I accept that the Respondent tried their best to comply with my Order, no such documents were produced today which gave such an indication. Yes documents were produced which showed that certain employees enjoyed the enhanced clause. However there was no pattern vis a viz the grade of employee who did or didn't enjoy such a clause.
32. What is clear however is that the Claimant entered into fresh documentation post the date he said he was given any 1992 contract. Most particularly in August of 2000 where he signed a fresh agreement accepting its terms and conditions on 5 September 2000.
33. That contract in August 2000 contained a clear and unequivocal Substitution of Agreement clause which in my Judgment fatally holes the Claimant's case below the waterline. Essentially the moment the Claimant signed the August 2000 contract it esponded and cancelled any previous contract including any contract the Claimant entered into in 1992 which may or may not of included the enhanced redundancy clause.

- 34. I therefore do not even have to contemplate whether on the balance of probability I think the 1992 contract with its enhanced clause was ever entered into by the Claimant.
- 35. For the reasons set out above the Claimant's claim must fail and is dismissed.

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**Employment Judge  
Dated 28 April 2017**

**RESERVED JUDGMENT & REASONS SENT TO THE  
PARTIES ON**

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**FOR THE SECRETARY OF EMPLOYMENT  
TRIBUNALS**