



# THE EMPLOYMENT TRIBUNALS

## Claimants

Ms L Leonard (1)  
Ms C Stubbs (2)

## Respondent

Hadrian Green Ltd t/a City Laundry

## JUDGMENT

### Employment Tribunals Rules of Procedure 2013 –Rule 21

MADE AT NORTH SHIELDS  
EMPLOYMENT JUDGE GARNON

ON 11 FEBRUARY 2019

The Judgment of the Tribunal is:

1. Claim number 2503534/18 is dismissed on withdrawal as a duplicate of 2503531/18. The claims of both claimants for unfair dismissal are stayed until 30 April 2019 at which time the claimants must inform the tribunal in writing whether they consent to that claim being dismissed on withdrawal.

2. The claims of both claimants of entitlement to a redundancy payment and breach of contract (wrongful dismissal) are well founded. Ms Leonard is entitled to a **redundancy payment of £ 6455.32** and I award to her damages for **breach of contract of £ 2823**. Ms Stubbs is entitled to a **redundancy payment of £6592.26** and I award to her damages for **breach of contract of £ 2746.80**

3. Ms Leonard's claim for unlawful deduction of wages is well founded. I order the respondent to repay of **£ 253.15** gross of tax and National Insurance (NI)

4. Ms Stubbs' claim for compensation for untaken annual leave is well founded. I order the respondent to pay compensation of **£ 457.80** gross of tax and NI.

## REASONS ( bold print is my emphasis)

### 1 Claims and Facts

1.1. On 10 December 2018 Ms Leonard presented claim number 2503531/18. She and Ms Stubbs are sisters. On 7 December Ms Stubbs had also presented a claim naming Ms Leonard as a second claimant to whom was allocated claim number 2503534/18. Ms Leonard has agreed to withdraw 2503534/18 as a duplicate of 2503531/18 and confirmed the latter does not contain claims of age discrimination or subsection to detriment on the grounds of having made a protected disclosure.

1.2. Both claims initially named as respondent Mr Atif Malik which was different from the name given on the Early Conciliation (EC) certificate which was "Hadrian Green trading as City Laundry". Under Rule 12 of the Employment Tribunal Rules of

Procedure 2013 (“the Rules“) the claims had to be rejected . The error was corrected immediately by Ms Leonard and the claim accepted by me against “Hadrian Green Ltd trading as City Laundry” on 12 December. It was served on 13 December. A response was due by 10 January 2019. When no response arrived, I declined to make a rule 21 judgment until I had explored the facts further with both claimants at a preliminary hearing. I suspected their employment may have transferred to another employer by operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). Ms Stubbs corrected the error two days later than Ms Leonard and the claim accepted by me on 14 December. However, it was not served until 11 January so a response was not due until 8 February. I could not issue a Rule 21 judgment on that claim until that day had passed.

1.3. At a preliminary hearing I conducted with the claimants on 17 January 2019, I discovered the following facts. Both claimants started work at a laundry at 38 Pallion Way, Sunderland on 9 April 2001. The laundry then had a different name and a different proprietor. By 2010 the persons running the laundry were Mr Atif Malik (Mr Malik) and his brother. For some time it traded as North-East Laundry Services. Both claimants then became aware their employer was Hadrian Green Ltd, a company controlled by Mr Malik which was incorporated on 7 July 2014.

1.4. At the time of one change of ownership, Mr Malik asked both claimants to sign a contract saying they had been made redundant by the company which had hitherto employed them and were employed under a new contract with Hadrian Green Ltd which had taken over the laundry. Both claimants said this was “*overruled by HMRC*” which said their contracts had “ transferred” to Hadrian Green Ltd.

1.5. After the hearing on 17 January 2019, I directed the Secretary of State (SoS) be informed of these claims and asked if he wished to participate. A reply saying he does not contains helpful information for which I am grateful. Both ladies told me they made contact with the SoS before. The SoS says they submitted a claim for a redundancy payment due from “NE Laundry Services” which had made them redundant but could not pay. The SoS rejected it holding their employment with that company had transferred to Hadrian Green Ltd by operation of TUPE. The SoS says they have not yet applied in respect of their dismissal by Hadrian Green Ltd which took place in the circumstances I will now outline. It was the SoS, not HMRC, who “overruled” what Mr Malik had tried to do. **They may now apply to the SoS again**

1.6. At the end of the first week of September 2018, Ms Stubbs was taking some leave. Ms Leonard received a text from Mr Malik on Sunday 9 September telling her not to attend work on the following day as there was a problem. On Monday 10<sup>th</sup> , she received another text telling her to remain off work. She had previously heard rumours Mr Malik was closing the laundry at its present location and moving to another in Washington about 6 miles away. When asked, Mr Malik had denied it.

1.7. On Wednesday, 12 September both claimants visited the Pallion Way premises and found it had been vacated. Having heard rumour the new premises was on Glover Industrial Estate in Washington they drove around there and saw one or two vans displaying the City Laundry name parked at a premises. They entered and spoke to Mr Malik only to be told they had been made redundant by Hadrian Green Ltd, **it** was responsible any redundancy money as the new factory was under a

different name , but it was “going insolvent “ and would not paying them. This was essentially what they were told by him when NE Laundry Service Ltd ceased trading. When at the premises they saw **some but not all** the equipment from the premises in Sunderland. It is of particular importance the machine upon which both of them worked exclusively, used for the production of laundered bedsheets for hotels, **had not been taken to the new premises**. The other main product laundered by the respondent had been table linen for hotels and the machine for that was there.

1.8. They next received a text from Mr Malik saying he was “going through” a firm of insolvency practitioners. On 9 October they received an email from Mr Ian Royle of Begbies Traynor, insolvency practitioners, saying he had been contacted by Mr Malik and formal insolvency was imminent. They heard nothing more from him or Mr Malik.

1.9. The respondent is shown on a Companies House Search as active but under a proposal to strike off, which has been suspended by the Registrar on receipt of objections. Documents Ms Leonard presented to me at the preliminary hearing on 18 January 2019 showed a finance company has a charge, probably fixed and floating, over the company’s assets.

1.10. A limited liability company is an association of one or more human beings registered at Companies House. It is a legal “person” in its own right . The people who manage it are called Directors. The people who “own” it are called shareholders. Neither Directors nor shareholders are personally responsible for its debts.

1.11. A registered office is its official address. The Companies House search shows it as “ Office 1, 38 Pallion Trading Estate , Sunderland, SR4 6SN” Both claims were originally sent to that address as was notice of the preliminary hearing. Ms Leonard’s claim was returned on 13 December by Royal Mail marked “Addressee Gone Away”. Ms Stubbs’s claim was returned by Royal Mail on 16 January 2019 marked “Addressee Gone Away”.

1.12. A claim may be validly served on a limited company either at its registered office or its place of business, which in this case is the same address. Under earlier versions of the Rules in Zietsman and Du Toit t/a Berkshire Orthodontics-v-Stubbington the question on the appeal was whether an Employment Tribunal was entitled to conclude Mr Du Toit had been properly served even though he had not actually received the papers sent to his business premises. He had ceased to practice from that address and did not visit the premises, nor make arrangements for mail to be forwarded. The Tribunal regarded that as thoroughly irresponsible conduct, to which his ignorance of the proceedings was wholly attributable so they declined to review the original decision against him. His Honour Judge Peter Clark accepted the claim was heard and determined in the absence of Mr DuToit in circumstances where he had no actual notice of the proceedings. Whether or not he was deemed to have notice under the provisions of section 7 of the Interpretation Act 1978, was the question. It provides

*“Where an Act authorises or requires any documents to be sent by post (whether the expression 'serve' or the expression 'give' 'send' or any other expression is used) then, unless the contrary intention appears, the service is **deemed to be affected by properly addressing, prepaying, and posting a letter containing the document,***

***and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."***

HH Judge Clark held this included service at the last known place of business, by analogy with what is now Part 6 of the Civil Procedure Rules . In the case of a Company the position is clear under s 1139(1) of the Companies Act 2006 that service at the registered office is effective. As His Honour said "*in the context of employment protection legislation. It will often be the case that an employer goes out of business and ceases to trade from the premises at which the former employee worked. In such circumstances where is the employee to direct his claim? It must be to the last known place of business*".

1.13. Ms Leonard had also supplied the Washington address so, out of caution I directed a copy be sent there. It was returned with the manuscript "NOT AT THIS ADDRESS RETURN TO SENDER" This indicates Royal Mail delivered it and an occupier at the premises, who would know it came from an Employment Tribunal because of the return address stamped on the back of the envelope , put it back in a Royal Mail postbox. I am convinced the claim should be deemed to have been validly served on the respondent.

## **2 The Relevant Law**

2.1. TUPE can be very complicated but in this case, I believe I can simplify the parts which are relevant. Regulation 3 includes:

(1) *These Regulations apply to—*

(a) *a transfer of an undertaking, business or part of an undertaking or business ... to another person where there is a **transfer of an economic entity which retains its identity**;*

(2) *In this regulation "economic entity" means an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.*

2.2. Whether or not there is a transfer of an economic entity which retains its identity, was explained in European Law is Spijkers –v- Gebroeders Benedik Abattoir and in the United Kingdom by Cheeseman –v Brewer. We have to look at the following

Whether the type of business remains the same

Whether there is a significant transfer of tangible or intangible assets

Whether staff are taken on

Whether customers transfer

Whether there is a similar activity before and after the transfer

Whether any interruption of the activities is of short or planned duration.

Fairhurst Ward Abbott –v-Botes Building 2004 ICR 919 held for a relevant transfer of **part of** an undertaking the part does not need to exist as a discrete economic entity prior to the transfer. It may come into being at the time of the transfer.

2.3. Regulation 4 includes:

(1) *... a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and **assigned to the organised grouping of resources** or employees that is subject to the relevant*

*transfer which would otherwise would be terminated by the transfer but any such contract shall have effect after the transfer as it were originally made between the person so employed and the transferee.*

*(2) Without prejudice to paragraph (1), ..., on the completion of a relevant transfer—*

*(a) all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee;*

*(3) Any reference in paragraph 1 to a person employed by the transferor and assigned to the organised grouping of resources .. that is subject to a relevant transfer, is reference to a person so employed immediately before the transfer, or who would have been so employed if he had not been dismissed in the circumstances described in Regulation 7(1) ...*

2.4. Regulation 2 contains

*“ assigned” means assigned otherwise than on a temporary basis”*

2.5. The question of “assignment” was considered in Botzen-v- Rotterdamsche Droogdok 1985 ECR 519. The test is whether the employee was almost wholly engaged in the part transferred. Duncan Web Offset-v- Cooper confirmed the decision is one of fact for the Tribunal taking into account all the relevant circumstances. The percentages of time spent on activities associated with the part transferred and that which is not is one factor, but not the only one, though MRS Environmental –v- Duke shows sometimes there are no other relevant factors. Kimberley Group Housing –v- Hambley 2008 IRLR 682 affirmed the Botzen test

2.6. Regulation 18 says there can be no contracting out of TUPE other than in specific circumstances none of which apply in this case.

2.7. Redundancy is defined in s 139 of the Employment Rights Act 1996 ( the Act) which says dismissal shall be taken to be by reason of redundancy if it is wholly or mainly attributable, among other things, to the fact the employer ceases or intends to cease to carry on the business for the purpose of which the employee was employed either generally **or in a particular place**. Safeway Stores –v- Burrell, affirmed in Murray-v-Foyle Meats, explains if there was (a) a dismissal and (b) a “ redundancy situation” (shorthand for one of the sets of facts in s 139) the only remaining question under s 98(1) is whether (b) was, wholly or mainly the reason for (a).

### **3. Conclusions**

3.1. It is clear both claimants were “dismissed” upon the cessation of the business of the respondent at the premises in Sunderland. That means the dismissal was by reason of redundancy. The only way in which there would be no redundancy payment payable by the respondent is if the provisions of TUPE meant there was no dismissal because their contracts transferred to another company.

3.2. In order for that to happen, it would have to have been a transfer of an economic entity. **or part of one**, which retained its identity,. Further the claimants would have to be assigned to the part transferred. It is clear not all the employees who worked at Pallion are now working at the Washington premises. One of the two machines

which produced the laundry has not been transferred. That was the machine upon which the claimants worked. Applying the remaining tests in Spijkers, I do not know the similarity between the business now and what it was before, and can have no idea which if any customers transferred. I cannot find on balance of probability the contracts **of these two claimants** transferred, though those of other employees probably did .

3.3. Ms Leonard was born on 14 January 1958 and Ms Stubbs on 14 May 1960 so both had 17 years of continuous employment during the whole of which they were over the age of 41. For each of those years they should have received one and a half week's gross pay as a redundancy payment ie 25.5 weeks pay. The statutory minimum notice under s86 of the Act for each of them is 12 weeks and the damages for not being given it are based on net pay. Neither of them received any sums in mitigation of loss which falls to be deducted from their loss

3.4. Ms Leonard's gross pay , verified by her P 60 to 5 April 2018 was £253.15 per week and £235.25 net of tax and NI. Ms Stubbs gross pay , verified by her payslips to April 2018 was £258.52 per week and £228.90 net of tax and NI. Ms Leonard's redundancy payment is  $25.5 \times £253.15 = £6455.32$  and Ms Stubbs  $25.5 \times £258.52 = £6592.26$ . Ms Leonard's damages for breach of contract are  $12 \times £235.25 = £ 2823$  and Ms Stubbs'  $12 \times £228.90 = £ 2746.80$

3.5. Ms Leonard had not been paid for her last week at work which ended on 7 September. She had taken all the annual leave to which she was entitled in the year in which her employment ended. Her unpaid wages are £253.15 gross of tax and NI

3.6. Ms Stubbs had been paid for her last week of work but still had two weeks annual leave left to take from her entitlement up to the date her employment ended. Her compensation for that is  $2 \times £ 228.90 = £ 457. 80$ .

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**T M Garnon EMPLOYMENT JUDGE**  
**JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 11 FEBRUARY 2019**