



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4106802/2023

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Held via Cloud Video Platform (CVP) in Glasgow on 12 February 2024

Employment Judge: Russell Bradley

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Miss L Wilson

**Claimant
In Person**

S&L Hospitality Limited

**Respondent
Represented by:
Ms L Wallace –
Company Secretary**

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Tribunal is that the claim for a statutory redundancy payment
20 under Part XI of the Employment Rights Act 1996 against the respondent is
dismissed.

REASONS

Introduction

1. On 1 November 2023 the claimant presented an ET1. In it she made the
25 single claim for a redundancy payment, relying on a termination date of 2
July 2023. On 16 November the first lodged an ET3 in which it resisted the
claim. With it, the respondent submitted 10 documents which set out the
relevant history and about which I make brief findings below. In short, the
respondent's position is that on or about 3 July 2023 the claimant's
30 employment transferred to a third party by the Transfer of Undertakings
(Protection of Employment) Regulations 2006 (TUPE). That position was
vouched by the 10 documents.

2. On 17 November the tribunal wrote to the claimant asking her to (urgently)
consider the respondent's position and consider whether she wished to add

the transferee third party to this claim. She replied shortly thereafter to say,
“In response to your email. I am unable to name another person as the new
company never tuped me over. I was informed from Lillian Wallace that I
would be but when I went to introduce myself to the new owner I was
5 informed that he was providing me with a brand new contract and would not
be tuped me over. After this meeting I was never contacted again.”

Regrettably the claimant has been labouring under the misapprehension
that it is open to a transferee to decline to employ employees who transfer
under TUPE. Equally regrettable is her belief that receiving a P45 is
10 indicative of the ending of employment in a TUPE situation. An employer
issues one when an employee stops working for them, but that need not be
because the employment relationship has ended which it does not on a
TUPE transfer.

Findings in Fact

- 15 3. From the material before me including the discussion between the parties I
found the following uncontroversial facts proved.
4. The claimant is Leeann Wilson. On 30 June 2007 she began employment at
the Shore at Carronshore (“the premises”). On or about 22 August 2018 her
employment transferred under TUPE to the respondent. On or about that
20 date the respondent took on a lease of 5 years of the premises. The landlord
was Tarduf Services Limited.
5. On or about 21 May 2023 the claimant took maternity leave. It was at that
time her intention to remain on maternity leave until about March 2024. On
12 June 2023 her son was born.
- 25 6. In early June 2023 the respondent was negotiating for a third party to take
on their lease, or at least take on a lease from its landlord for the premises.
In the period between 5 and 30 June the respondent and the third party
were in email correspondence about the transfer of the staff at the premises
under TUPE. There were about 6 staff liable to transfer, including the
30 claimant. In that period, the respondent sent to the third party a schedule
which provided details of the employee’s job title, start dates, rates of pay,

hours of work and contact details. Those details included their email addresses. On 14 June the respondent sent to the third party a copy of the claimant's MAT B1 form. In its covering email, the respondent said (about the claimant) "*we have put a claim for maternity funding but only up to 2 July 2023, so all the remainder of the maternity funding is available for you to claim so you can pay her this each week.*"

7. On 30 June the third party emailed the staff (excluding the claimant) to say amongst other things, "*We are looking forward to working with all of you soon. For now, we will be closed for a week and will be sorting your rota out. Before we open up, we would like to meet up with all of you.*"

8. On 3 July the third party took over the running of the premises. It entered into a lease with the landlord. That was the transfer of an entity for the purposes of TUPE. The claimant's employment transferred on 3 July from the respondent to the third party.

9. On or about 14 July the claimant attended the premises to introduce herself to the new tenant. She was told that neither she nor any of her colleagues would be TUPE'D to the new tenant.

10. Some time after 3 July the respondent issued to the claimant a P45 form.

11. After 3 July and continuing until the end of February 2024 the claimant has been receiving statutory maternity pay from the State.

The law

12. Section 135(1) of the Employment Rights Act 1996 provides "*1) An employer shall pay a redundancy payment to any employee of his if the employee—(a) is dismissed by the employer by reason of redundancy, or (b) is eligible for a redundancy payment by reason of being laid off or kept on short-time.*"

13. Regulation 4(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 provides, "*1) Except where objection is made under paragraph (7), 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 be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee.”

5 **Discussion and decision**

14. On 2 and 3 July 2023 the claimant was a person assigned to the organised grouping of employees that was subject to a relevant transfer from the respondent to the third party. Albeit on maternity leave at the time, her employment transferred under TUPE (Regulation 4) to the third party. The transfer thus did not operate so as to end her contract. She was not dismissed on 2 July. She is therefore not entitled to a redundancy payment from the respondent. She does not satisfy section 135 of the 1996 Act.

15. Her claim is therefore dismissed.

Other matters

16. Ms Wallace indicated that she is able and willing to obtain the full name and address of the third party tenant who took over the premises on 3 July 2023 and give that information to the claimant. In my view she may well be still employed by it. She may be able to bring claims against it.

17. I suggested that she seek advice from ACAS or from one of the University Law Clinics who may be able to assist.

R Bradley

Employment Judge

14 February 2024

Date

30 **Date sent to parties**
