



EMPLOYMENT TRIBUNALS

Claimant: Mr S Hussain
Respondent: Safeguard Group Services Ltd
Heard at: Nottingham
On: Friday 21 July 2017
Before: Employment Judge Britton (sitting alone)

Representation

Claimant: In person
Respondent: Ms C Moolenschot, Consultant, Croner

JUDGMENT on a Preliminary issue

1. The claim is permitted to proceed it having not been reasonably practicable for it to have been presented within time and it having been presented within a reasonable time thereafter.
2. Safeguard Security Group Ltd (in creditors voluntary liquidation) is joined as second Respondent.
3. Directions are hereinafter set out.

REASONS

Introduction and adjudication on the out of time issue

1. This case has by now something of a complicated history. I am hopefully going to be able now to clarify what it is about; where we are at; and I will deal in the process with the issue of whether or not the claim now before me is out of time. If so, whether it should be allowed to proceed, it having not been reasonably practicable to bring it before it was and it having been brought within a reasonable time thereafter, all of which of course engages the not reasonably feasible test apropos *Palmer and anor -v- Southend on Sea Borough Council 1984 ICR 372,CA.*
2. The situation is as follows. The Claimant presented his first claim (ET1) case number 2601873/16 to the tribunal on 25 October 2016 claiming for unpaid

wages (including holiday pay) only against Securitas Security Services UK Ltd (Securitas). The claim in that sense related to unpaid wages for 6 weeks commencing circa the beginning of June 2016. It was a claim for the total sum of £3,360 and it was in time.

3. In due course, the issue became as to whether or not the Claimant had been TUPE'd across to Securitas from the then employer, which was Safeguard Security Group Ltd (SSG), which is in creditors voluntary liquidation. I am going to take it very short because there is no doubt that the Claimant believed that he had been assured by Securitas that he had in fact been TUPE'd. The scenario is actually fully set out in Employment Judge Camp's record of the telephone case management he heard on 6 April 2017.

4. If the Claimant was TUPE'd, then issues such as continuity of service for the purposes of redundancy pay and notice pay would not engage. I am now satisfied, having heard from the Claimant today, that when the Claimant brought that first claim, he believed that his lengthy employment ending up via a series of TUPES with SSG had then transferred over to Securitas and thus he did not need to bring claims for redundancy or notice pay.

5. I heard a first case management discussion on this matter on 6 January 2017. At that stage, I was considering whether, as a fallback position, there should be joinder of SSG. Put it at its simplest, I stayed the proceedings because there was an indication (and no more than that) that Securitas might be willing to settle the matter.

6. As it is, the Claimant informed the tribunal within the 28 day period that I allotted that in fact there had not been settlement and therefore I ordered that there be a further telephone case management discussion to take the matter further forward. That is where we come back to Judge Camp's TCMD.

7. On the scenario he correctly analysed in my view, and it fits indeed with the evidence I have heard today of the Claimant, that there actually was not in law a TUPE of the Claimant, to Securitas.

8. If so, then on the face of it when the contract came to an end between SSG and Wards Recycling at which the Claimant was based as a security guard, then as he was not provided with further work by SSG, he was redundant and thus, apart from his unpaid wages, entitled to redundancy and notice pay from SSG, but of course shortly thereafter it seems to have gone into voluntary liquidation. A fortnight or so after seeking to work at Wards recycling he secured employment with Securitas at the Clipper Logistics Warehouse and indeed remains there to this day.

9. So EJ Camp directed that he was considering striking out the Claim against Securitas as having no reasonable prospect of success and would do so by 28 April unless the Claimant had made objections to the contrary by that deadline. EJ Camp made it plain that he was not without sympathy for the Claimant given the scenario which had by now unfolded but that of course the claim was not against Securitas. On 26 April the Claimant duly withdrew that claim and it was accordingly dismissed. He has told me today that this was because of a settlement via ACAS by which Securitas paid him in respect of most of his outstanding wages as a goodwill gesture. It follows that as the wages claim has been dismissed, it cannot be resurrected.

10. But also following upon the hearing before EJ Camp, the Claimant duly made

application on the 12 May 2017 to the Insolvency Service for payment of his statutory entitlements as above as SSG was by reason of the voluntary liquidation insolvent. On the 17th it replied informing him that it would not accept his claims because it had insufficient information from the insolvency practitioner.

11. Thus on 25 May he presented his second ET! claiming for the redundancy, notice and outstanding pay for this same period namely to circa 15 July 2016. But he brought it not against SSG but against Safeguard Group Services Ltd (SGS). As to why is pleaded in the particulars to the ET1 and by reference to the involvement of Insolvency Service and his thus contacting the liquidators of SSG:

“ I was told by the liquidation company that all employees contracts of work had been moved to another company called safeguard group services ltd before safeguard security group ltd went insolvent . Which leads me to to put this case ... against safeguard group services ltd.”

12. By its response first SGS pleads that the claim is out of time. Of course it is as the time limit for bringing such claims is three months from the last act complained of and six months in terms of the non payment of the redundancy money. Second it pleads that the Claimant transferred to Securitas. It does not plead why. It also does not specifically plead as to whether it entered into a contract with Wards Recycling immediately following SSG going into voluntary liquidation, which the Claimant now understands to be the case. Of course if that was the case how does it square with a TUPE to Securitas as it appears to be common ground that Securitas never had a contract with Wards Recycling? On the face of it, that defence is untenable. In which case, the issue is simple, did the contract transfer across to Safeguard Group Services Ltd, in which case it is clearly liable on the face of it to pay the Claimant his redundancy payment and notice pay as put it at its simplest it is a fundamental breach of contract to not pay wages and thus if the Claimant left as a consequence, at law he was dismissed.

13. As to the delay in presenting the claim, the Claimant did his best at the time to find out what was going on. His letters to SSG and its owners, who appear to be linked to SGS, went unanswered. It is only once EJ Camp clarified what was not a TUPE that he understood that he could approach the Insolvency Service and of course as to what then happened I have now rehearsed. It follows that I find that it was not reasonably practicable for him to have brought the second claim before he did.

14. As to the way forward, for reasons which are self evident I am joining as second respondent SSG.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. Safeguard Security Group Ltd (In voluntary creditors' liquidation) is hereby joined to these proceedings. The claim, the current response and these orders are to be served in the usual way. For the avoidance of doubt, the address for service is: Jonathan Guy Lord, Bridgestones, 125/127 Union Street, Oldham, Lancashire OL1 1TE as Liquidator of Safeguard Security Group Ltd (In voluntary creditors' liquidation).

2. Until a response is filed (and of course if one is not, then a default judgment will be issued) this case is stayed.

3. It is reserved for single case management to this Judge.

Employment Judge Britton

Date: 7 August 2017

JUDGMENT SENT TO THE PARTIES ON
19.8.17

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S.Cresswell.....
FOR THE TRIBUNAL OFFICE