Case No: 2416750/2018

EMPLOYMENT TRIBUNALS

Claimant: Mr M Clarke

Respondent: Clovermead Limited (1)
Vinci Construction UK Limited (2)
Kidderminster Petroleum Services Limited (3)
Petrocom Limited (In Liquidation) (4)
CP Installations (5)

Heard at: Liverpool **On:** 8 March 2019

Before: Employment Judge Wardle

Representation
Claimant: Mrs F Ali – Solicitor
Respondent: Ms E Hodgetts - Counsel

RESERVED JUDGMENT

The judgment of the Tribunal is that there was no relevant transfer of an undertaking arising from the first respondent's loss of a portion of a contract for services that it had with the second respondent and that the claimant's employment did not transfer to any of the named respondents and that the claim against the second respondent is dismissed on withdrawal.

REASONS

1. By his claim the claimant has brought complaints of automatically unfair dismissal under Regulation 7(1) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) and in the alternative ordinary unfair dismissal under section 94 of the Employment Rights Act 1996 (ERA) and

that he was wrongfully dismissed and that he is owed holiday pay and other payments in the form of monies outstanding for work carried during his employment such as his two weeks in hand, which he contends amounts either to an unlawful deduction of his wages within the meaning of section 13 of ERA or a breach of his contract of employment.. He also complains that there was a failure to inform and consult with him in regard to a relevant transfer contrary to Regulation 13(2) of TUPE and that he has been denied his right to a written statement of employment particulars contrary to section 1 of ERA.

2. His complaints arise in the context of his having his employment with the first respondent terminated on the grounds ostensibly of a relevant transfer pursuant to Regulation 3(1)(b)(ii) of TUPE in the form of a service provision change whereby activities ceased to be carried out by the first respondent ("Clovermead") on behalf of the second respondent ("Vinci") and were instead carried out by other contractors.

3. By way of background the first respondent had an agreement with CBRE, a Facilities Management Company, to provide services as a sub-contractor to Shell UK Oil Products Limited ("Shell") in the form of fuel systems, signage and canopy and fabric works. The contract, which CBRE had with Shell was then awarded to the second respondent (Vinci) with an effective date of 1 July 2018. The second respondent then entered into sub-contracts with the first, third ("Kidderminster"), fourth ("Petrocom") and fifth ("CP Installations") respondents from this date. Initially there was no impact on the first respondent but very soon into the life of the sub-contracts on or around 25 July 2018 the second respondent following discussions with the third, fourth and fifth respondents reshuffled the Shell sites for which they were responsible between the three respondents leaving the first respondent with no work in respect of fuel systems or fabric works.

4. Responses have been submitted by the first, second and third respondents but not by the fourth and fifth. In so far as the fourth respondent is concerned a letter was sent by an Insolvency Practitioner that the company (Petrocom Limited) was in liquidation and that it had ceased trading in November 2018. However, it was noted that the name of the company with whom the second respondent sub-contracted on 1 July 2018 was not Petrocom Limited but Petrocom (Maintenance) Limited, which while sharing the same registered office address as the liquidated company is, the Tribunal was advised, a different company, which is according to Companies House information still trading. In so far as the fifth respondent is concerned it was noted that the company with whom the second respondent sub-contracted on 1 July 2018 was not CP Installations but CP Installations (Southern) Limited, which has a different registered office address to the address given in the claimant's ET1, which has to date been used for the purposes of early conciliation and service.

5. As regards the responses that have been received they make the following contentions. The first respondent says that it discovered in or around mid-September that the contract to which the claimant was assigned had been

given to the second, third, fourth or fifth respondent and that his employment transferred by operation of law on 24 October 2018 and that as such any liability for any claims lies with them in the light of which it requested a Preliminary Hearing to determine whether it should be dismissed from the proceedings. The second respondent says that in the light of the claimant stating in his grounds of complaint that his employment passed to the third, fourth and/or fifth respondent as part of a relevant transfer that there did not appear to be any basis on which he claims that his employment did or should have transferred to it whether under TUPE or otherwise and that it should be removed as a respondent from the proceedings. The third respondent says, among other things, that there was no relevant transfer within the meaning of Regulation 3(1)(b) of TUPE as (a) the activities carried out by it and the fourth and fifth respondents were not fundamentally the same as those carried out by the first respondent prior to it losing the Shell contract with the second respondent (b) the services were so fragmented as a result of the Shell sites originally allocated to the first respondent having been divided between it and the fourth and fifth respondents so that it was not possible to either (i) establish that a service provision change had taken place and/or (ii) to which sub-contractor the work previously carried out by the claimant had been transferred and/or (c) there was no discernible pattern of reallocation of the activities previously carried out by the first respondent under the Shell contract to determine to which sub-contractor the claimant had transferred.

6. In the light of the assertions made by the first and second respondents in their responses that they were not the correct respondents the claimant was asked by the tribunal to comment and advised that in the event of him not accepting their assertions the case would be listed for a Preliminary Hearing to determine the correct respondent followed immediately by the final hearing (if appropriate) or alternatively for Case Management. The claimant subsequently responded to say that he was not agreeable to their being dismissed from the proceedings. This resulted in the parties being informed on 5 February 2019 that the final hearing listed for 8 March 2019 would be vacated and replaced by a Preliminary Hearing for the above purpose of determining the correct respondent.

7. In the meantime the claimant has indicated his intention to withdraw his claim against the second respondent and pursuant to Rule 52 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 such claim is dismissed on withdrawal.

8. In addition notification has been received that the first respondent has posted a Notice of Intention to appoint an Administrator, which process is anticipated to be completed by 11 March 2019 at the latest. If it transpires that the first respondent is put in administration then pursuant to paragraph 43(6) of Schedule B to the Insolvency Act 1986 these proceedings against it will in order to be continued require the consent of the administrator or the leave of the court.

9. In addressing the question of the determination of the correct respondent(s) to this claim the Tribunal heard evidence from the claimant and on behalf of the

third respondent from Mr Steven Harrington, Managing Director. Each of the witnesses gave their evidence by written statements, which were supplemented by oral responses to questions posed. It also had before it documents in the form of a bundle, which it marked as “R1”.

10. At the conclusion of the hearing the parties were informed that the Tribunal would be reserving its decision. It has since had time to reach conclusions on the matters requiring determination by it having regard to the evidence, the submissions and the applicable law.

11. Having heard and considered the evidence it found the following facts.

Facts

12. The claimant was employed by the first respondent from 26 June 2004 to 24 October 2018 as a Pipefitter G2, engaged on a number of contracts carrying out maintenance, routine survey, inspections and testing, which work was allocated to him randomly and depending on priority.

13. The first respondent is a company that provides contractor services specialising in the installation and maintenance of petrol stations throughout the UK. It was a Shell approved contractor and it had a sub-contract with CBRE, a facilities management company, that Shell had contracted with for the provision of its facilities management services to its retail services stations in the UK.

14. With effect from 1 July 2018 Shell changed provider of these facility management services from CBRE to the second respondent, who from this date entered into sub-contracts with the first respondent, the third respondent, Petrocom (Maintenance) Limited and CP Installations (Southern) Limited. The first respondent's sub-contract package was for fuel systems, signage and canopy and fabric works. The other companies' packages were for fuel systems only.

15. In early July on the unchallenged evidence of Mr Harrington the third respondent heard rumours that the second respondent was unhappy with the performance of the first respondent and that it was going to remove work from them and that in various conversations with Paul Whiston, a technical operations manager with the second respondent, he was told that the first respondent would not be getting any more reactive maintenance work. In the light of the third respondent having previously raised with the second respondent the possibility of reallocating Shell sites in a more geographically appropriate way and this decision not to give the first respondent any more reactive maintenance work the second respondent suggested a meeting between it and the other three companies to discuss the reallocation of sites, which was arranged for 25 July 2018.

16. At the meeting the current Shell site location list at pages 99-105 was discussed and a re-allocation was jointly agreed. Before the re-shuffle the first respondent had 166 sites, the third respondent had 275 sites, Petrocom

(Maintenance) Limited had 60 sites and CP Installations (Southern) Limited had 60 sites. Following it the third respondent had 322 sites gaining 47 of the first respondent's sites, Petrocom had 132 sites gaining 73 of the first respondent's sites and CP Installations had 107 sites gaining 46 of the first respondent's sites. There was also an exchange of sites between the third respondent and CP Installations, whereby the third respondent lost 13 but gained 12 sites from it. The three companies were according to Mr Harrington's evidence told that the site location list was a live sheet and that any change to it was virtually immediate with the result that all of the first respondent's sites would be re-allocated by close of play that day. Geographically the re-shuffle resulted in the third respondent extending its area, which was predominantly the Midlands, South Wales, the South West and the South Coast, northwards of Birmingham to Stoke-on-Trent and eastwards to above the Wash; Petrocom extending its area, which was predominantly North Wales and the North West eastwards into Yorkshire and northwards to the tip of Scotland and CP Installations extending its area, which was predominantly a strip running eastwards from Birmingham to Kent into the East Midlands and East Anglia. In terms of these extended areas that of Petrocom most closely resembled that of the first respondent.

17. This re-shuffle began to have an effect on the first respondent fairly quickly as Peter Saunders, its Joint Managing Director, wrote to Mr Whiston of the second respondent on 16 August 2018 informing him that they had realised that the volume of calls from them for fuel systems work had dropped considerably and that the only work that they were currently receiving was out of hours emergencies, spill response, impact damage to offset fills, water in tanks and faulty gauges, which work was he pointed out subsidised by the day to day work by which he explained that they paid their engineers 4 hours at basic rate for being called out plus any overtime but that they did not make a specific charge for the 4 hours on the basis that the volume of work covered the difference. He went on to refer to a conversation that they had earlier that morning in which Mr Whiston informed him that they had decided to consider the first respondent's minor work division and its fuel systems division as one entity and that they wanted them performing at the same level before giving work to either entity. Pointing out that the divisions were completely separate and that aside from one fairly minor issue with the fuel systems division the service it had delivered had been acceptable, he ventured to suggest that it was being treated unfairly particularly given the length of service it had and he asked him to consider reinstating fuel systems to its previous position adding that if it continued to be denied day to day work it would have no alternative other than to refuse to offer its out of hours service. He proposed a meeting to discuss how the position could be retrieved.

18. Mr Saunders sent a further email to Mr Whiston on 17 August 2018 with which he attached a schedule, which was not in the bundle, showing each job undertaken on the Shell account for both CBRE and the second respondent over the last three months, which he claimed proved that the first respondent was hitting its Service Level Agreements and that it was operating at 97%. He also responded to an issue that the second respondent had about one of the first respondent's employees called Neil Rava leaving its employment and

their feeling that the employee who would be handling the sub-contract called Phil Winters was not sufficiently experienced explaining that Mr Winters had managed matters on a day to day basis over the preceding three months and that he would have the backing of its Operations Director, Paul Rava, who was Neil Rava's immediate boss. He went on to say that the employees in the fuel systems division were all long service and had worked on the Shell account throughout their working lives and that removing the day to day maintenance took away the balance between installations and maintenance and would result in some of them losing their jobs.

19. Mr Whiston replied by an email sent later that day to say that as discussed the decision had been made to step away from reactive works on both the fabric and pipework fronts in order to rebuild the working relationship previously enjoyed by both parties adding that selected programmed works would be allocated to either division over the coming months, which would be assigned in due course and that he had agreed review meetings with the first respondent's Rebecca Taylor scheduled from September onwards.

20. The effect of the second respondent's decision to redistribute the first respondent's sites can be seen from the claimant's weekly timesheets. These covered at pages 89h to 89i a 5 weeks period from 11 December 2017 to 14 January 2018; at pages 89e to 89g an 8 weeks period from 23 April 2018 to 17 June 2018 and at pages 89a to 89d an 8 weeks period covering 5 weeks from 16 July 2018 to 19 August 2018 and 3 weeks from 27 August 2018 to 16 September 2018. These showed on the Tribunal's calculations in respect of the first of these periods that out of 117.25 hours recorded on sub-contracts for Shell, Rontec (a forecourt operator) and North West Ambulance he worked 106.25 hours for Shell, 7 hours for Rontec and 4 hours for North West Ambulance, which meant that he worked just over 90% of his hours for Shell. In respect of the second period out of 227.75 hours recorded on sub-contracts for Shell, Rontec, British Telecom and North West Ambulance he worked 95.50 hours for Shell, 56.00 for Rontec, 6.00 for British Telecom and 70.25 for North West Ambulance, which meant that he worked just under 42% of his hours for Shell. Following the award of the facilities management contract to the second respondent on 1 July 2018 and the above-mentioned redistribution his timesheets showed that out of 210 hours he worked 15.25 hours for Shell. 104.75 for Rontec, 15.25 for British Telecom, 19.50 for Northwest Ambulance, 39.25 for Volkswagen and 16 for the Co-op, which meant that he worked just over 7% of his hours for Shell.

21. Thus his percentage of hours on the Shell contract fell from just over 58% over the 13 weeks of the first two periods (201.75 hours out of 345.50 hours) to just over 39% of his hours over the 21 weeks of the three periods (217 hours out of 555 hours).

22. On 14 September 2018 Mr Saunders wrote to Mr Whiston informing him that he had taken legal advice and had been made aware that the TUPE Regulations applied to their employees who worked on the Shell account and asked him to advise how he intended to deal with this transfer to make the process as smooth as possible for the affected employees. He wrote further

by email on 21 September 2018 referring to discussions that Mr Whiston had had with Paul Rava on 19 September 2018 and his assurance that the first respondent would have all the information required for the TUPE transfer by 20 September 2018, which he pointed out was still to be received and that if it was not forthcoming by 24 September 2018 he would have no alternative but to instruct solicitors, which would have costs implications for the second respondent. Mr Whiston replied instantly to say that at no time during his telephone conversation with Mr Rava had he given a definitive date for the provision of a written response regarding any TUPE information and added that the matter was being handled with sensitivity and that a response would be communicated in the next seven days.

23. On 28 September 2018 Gareth Jones of the second respondent, who was the Budget Manager for Shell wrote to the third respondent and Petrocom informing them that he needed to share their contact details with the first respondent's pipework division following the re-allocation of fuel pipework works leading to the possible TUPE of some of their staff who are/were dedicated to Shell. The third respondent requested more information before they shared their contact details as they were not sure why the second respondent thought they would TUPE people over.

24. On 1 October 2018 Mr Jones wrote to the third respondent to say that the first respondent had said that they have 4 guys that were dedicated to the Shell contract only which entitled them to TUPE to whichever of the three companies was now covering the area they worked in. On 2 October 2018 he wrote to the first respondent with the details of Petrocom and the third respondent giving contact names and email addresses and advising that the former was now covering Scotland, the North East and parts of North West England and the latter the Midlands to North West England He also explained that he had excluded the third company (CP Installations(Southern) Limited) as they did not operate in the region in question.

25. Mr Saunders subsequently wrote to Petrocom and the third respondent using the contact details provided on 4 October 2018 stating that the first respondent had been advised by the second respondent that the work that their fuel systems division carried out on the Shell account would no longer be carried out by them and that your two companies will be undertaking the work and that they had two individuals, who work - one more or less exclusively and the other over 60% of his time - on the fuel systems work for Shell . He went on to say that both of these employees were subject to TUPE and that they and the two companies had a duty to ensure that the process was carried out in a diligent and timely manner before adding that unfortunately the second respondent did not give notice of their intention to remove this area of activity from the first respondent until they questioned the lack of work coming through and that in fact they were only formally told of the decision to award the work to them on 2 October 2018.

26. On 15 October 2018 Mr Harrington wrote to Mr Saunders asking for details of the two employees and copies of their work records, to which he replied the same night stating that he would get back to him in the morning. The

claimant's details, including his address, date of birth, his role, dates of employment, disciplinary record and training certificates were then sent to Mr Harrington on the afternoon of 16 October 2018 and his rate of pay with an attached copy contract of employment was communicated on the morning of 17 October 2018. At or around this time either on 16 or 17 October 2018 Mr Saunders held a meeting with the claimant and his colleague Rob Shaw, who was the other employee in the frame for transfer. According to the claimant's evidence he together with Mr Shaw were called without notice into this meeting and told that the company had lost the Shell contract with the second respondent to carry out maintenance work on Shell sites and that the work was being given to three other Shell approved contractors, namely the third respondent, Petrocom Limited and CP Installations. He also stated that he had contacted both the third respondent and Petrocom in early October 2018 and that the latter company had said that they were hardly getting any Shell work either and that he informed the former company that they were obligated to take him under the TUPE Regulations in the light of his work on the Shell contract before providing him with the gov.uk TUPE guidelines and advising him that the third respondent would be in touch.

27. On 17 October 2018 Mr Shaw emailed Mr Saunders to say that he had spoken to ACAS and that it was their understanding that as he and the claimant did not work solely on the Shell contract and as any of the company's fuel systems engineers could have been given this work they should not be considered for TUPE and redundancy should be given if there was insufficient work. Mr Saunders replied later that evening to say that they had calculated this in detail when they were informed that they had lost the work and that both he and the claimant were definitely covered by TUPE adding that he would revert to him the next day to confirm the percentage of their time spent on the Shell account. Mr Shaw wrote further on 18 October 2018 stating that he was not disputing why he and the claimant were selected as most or 90 odd percent of their work was for Shell but that they were employed to work on all contracts that the company had and that it was his and ACAS' understanding that to be TUPE transferred to another company their sole job would have had to have been the Shell account. He also wrote on 19 October 2018 referring to the ACAS Guide for Handling TUPE Transfers and pointing out that there has to be an organised grouping of employees providing a service for a particular client and that he and the claimant were not employed as sole Shell contract workers. On the same day Mr Saunders wrote to Mr Harrington of the third respondent stating that they needed to re-engage with their two employees in regard to TUPE and asked where they were up to. He wrote further on 24 October 2018 stating that they had consulted with their two employees on 18 October 2018 and that they had been told that the company had lost the work and that it was now being carried out by the third respondent and that they would be transferring to them. He went on to say that they had had legal confirmation from employment law specialists that the two employees have to transfer and that he intended to inform them of this fact and that they should contact him for instructions as to what he wished them to do. Mr Harrington replied almost instantly to say that they would be in touch and that the matter was in the hands of their solicitors.

28. In line with this it was the claimant's evidence that he was called into a further meeting with Mr Saunders on 24 October 2018, in which he was told that he no longer worked for the first respondent and that his employment was being transferred over to the third respondent as of that day in the light of the majority of his work having been on the Shell account. A letter at page 331 was received by him from Mr Saunders in confirmation, in which it was mentioned that copies of the email that had been sent to Mr Harrington earlier that day and his reply had previously been supplied to the claimant. Later that afternoon Mr Harrington emailed Mr Saunders to inform him that they did not accept that TUPE applied and asked him to provide a copy of his expert opinion confirming that TUPE applied to enable him to take his own advice. Mr Saunders responded the following morning to say that he would not be sending him a copy of the advice he had received and forwarded copies of the letters which had been given to Mr Shaw and the claimant the previous day.

29. On 25 October 2018 Mr Shaw had a telephone conversation with Mr Harrington, who informed him that the third respondent was disputing the first respondent's stance that TUPE applied to him and the claimant, which prompted him to ask Mr Harrington if he could send him the third respondent's position in writing regarding their transfer to them, which saw Mr Harrington forwarding the email he had sent to Mr Saunders the previous day.

30. On 5 November 2018 Mr Harrington emailed Mr Shaw to ask if he and the claimant would be able to attend a meeting with him the following day when he was in Manchester, to which Mr Shaw replied to say that they would not be able to do so as the claimant was full of the flu and he had a job interview. Mr Harrington in acknowledgement told him that he had nothing else from the first respondent but that it had been offered Scotland back plus 30 sites (by the second respondent) and had refused the offer.

Law

31. The relevant law for the purposes of this matter is to be found in the TUPE Regulations. There are two different routes by which a 'relevant transfer' can occur. The first is where the definition in Regulation 3(1)(a) is satisfied involving 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. The second route is where a 'service provision change' as defined by Regulation 3(1)(b) takes place, that is a situation in which (i) activities cease to be carried out by a person ("a client") on his own behalf and are instead carried out by another person on the client's behalf ("a contractor"); (ii) activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person ("a subsequent contractor") on the client's behalf: or (iii) activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf, and in which the conditions set out in paragraph (3) are satisfied

32. Paragraph 2 provides that "economic entity" means an organised grouping of resources which has the objective of pursuing an economic entity, whether or not that activity is central or ancillary and paragraph 2A provides that references in paragraph (i)(b) to activities being carried out instead by another person (including the client) are to activities which are fundamentally the same as the activities carried out by the person who has ceased to carry them out

33. The conditions referred to in paragraph (1)(b) are that (a) immediately before the service provision change - (i) there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client; (ii) the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and (b) the activities concerned do not consist wholly or mainly of the supply of good for the client's use.

34. Paragraph 6 provides that a relevant transfer - (a) may be effected by a series of two or more transactions; and (b) may take place whether or not any property is transferred to the transferee by the transferor.

Conclusions

35. The claimant's case as set out in his ET1 is that the change from the first respondent in the provision of services for the Shell contract to the third respondent and/or Petrocom and/or CP Installations was a service provision change within the meaning of Regulation 3(b)(ii) of the TUPE Regulations. In order to determine whether this contended for service provision change amounted to a relevant transfer within the meaning of Regulation 3 of TUPE it is necessary first of all to ask whether the activities being carried out after the change of service provider for the client were fundamentally the same as those carried out before the change.

36. This requires as a first step the identification of the relevant activities undertaken by the first respondent as the original contractor, which was in the form of reactive maintenance work comprising fuel systems (or pipework), signage and canopy and fabric (or groundwork). As a result of the decision taken by the second respondent on or about 25 July 2018 to remove part of this work in the form of fuel systems and fabric and to redistribute the sites that the first respondent previously serviced in these ways to the third respondent, Petrocom (Maintenance) Limited and CP Installations (Southern) Limited, whilst at the same time reshuffling some of the third respondent's and CP Installations' sites between them the three new contractors received the fuel systems and fabric elements previously undertaken by the first respondent at 166 Shell sites covering Scotland, the North of England and Eastern England with the third respondent taking on 47, Petrocom 73 and CP Installations 46. The relevant activities were therefore considered by the Tribunal to be the service that the first respondent provided for Shell in the form of fuel systems and fabric to 166 of its sites covering the aforementioned

geographical area coloured yellow on the map at page 97.

37. It was submitted by Ms Hodgetts for the third respondent that there were three separate features which made it impossible to say that these relevant activities of the provision of fuel systems and fabric services to Shell remained fundamentally or essentially the same when comparing the activities being carried out before the change of service provider by the first respondent and after by the third respondent. The first related to the functional fragmentation of the activities undertaken by the first respondent in that it retained the signage and canopy work. The second related to the geographical change of the first respondent's Shell sites to the other three contractors. The third related to the ad hoc manner in which the first respondent's employees were assigned the work in that on the claimant's own evidence this was allocated randomly and depending on priority.

38. In the Tribunal's view notwithstanding the fragmentation of the relevant activities by the hiving off and assignment of only a portion of the services carried out by the first respondent in the form of fuel systems and fabric to the other three contractors and by the sites at which those services were provided being re-distributed among them there remained a sufficient degree of similarity between the activities in the hands of the third respondent and/or Petrocom (Maintenance) Limited and/or CP Installations Limited as compared with those in the hands of the first respondent such as to enable it to find that the activities of the provision of fuel systems and fabric being carried out by these three contractors instead of the first respondent were fundamentally the same as those carried on by it before the change.

39. However, as required the Tribunal went on to consider the three conditions as set out in Regulation 3(3) that must be met if a service provision change is to be covered by Regulation 3(b)(ii). The first of the conditions as provided for by regulation 3(3)(a)(i) is that 'immediately before the service provision change there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client'.

40. This requirement is intended to restrict the TUPE Regulations coverage to cases where the old service provider i.e. the transferor has in place a team of employees to carry out the service activities and that team is essentially dedicated to carrying out the activities that are to transfer. In the instant case it appeared according to page 296 to have been claimed originally by the first respondent to the second respondent that it had 4 employees dedicated to the Shell contract in relation to pipework. However, in a later communication at page 309 to the third respondent and Petrocom (Maintenance) Limited dated 4 October 2018 the first respondent resiled from this by asserting that it had two dedicated employees, one of whom worked more or less exclusively on it, believed to be Mr Shaw and the other, believed to be the claimant, who spent over 60% of his time on it. There was therefore some inconsistency in the first respondent's contentions as to the organisational arrangements that it had in place to service the Shell contract via its fuel systems division, in which the claimant was deployed. It was also the case that the claimant's timesheets

showed that Shell was just one of several clients that the division undertook work for and that the first respondent may well have inflated matters in relation to the time that the claimant spent working on the Shell contract as it was evident from his timesheets that the proportion of his time spent on it had progressively reduced during 2018 ahead of the first respondent's loss of the relevant activities as shown by his timesheets for the period between 23 April 2018 and 17 June 2018 when he only spent 42% of his time on it.

41. In addition it was his own evidence that he was not employed to solely work on one contract and that work was allocated to him randomly and depending on priority, which did not suggest that the Shell work was treated with any greater degree of dedication than that carried out for the first respondent's other clients. As such the Tribunal found that there was insufficient evidence of the first respondent having a dedicated team to carry out these relevant activities for Shell and that the first of the conditions as set out in Regulation 3(3) relating to the need for an organised grouping of employees having as its principal purpose the carrying out of the activities concerned on behalf of this client was not satisfied.

42. Accordingly the Tribunal concluded that the circumstances of the first respondent's loss of the fuel systems and fabric components of their contract with the second respondent and their transfer to the third respondent, Petrocom (Maintenance) Limited and CP Installations (Southern) Limited did not amount to a relevant transfer within the meaning of Regulation 3(1)(b)(ii) and that the claimant's employment remained with the first respondent.
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Employment Judge Wardle
18 March 2019

JUDGMENT, REASONS & BOOKLET SENT TO THE PARTIES ON

28 March 2019
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS