



EMPLOYMENT TRIBUNALS

Appellants: Mr Anthony White t/a/ A and A Motors
Mr Stuart Benson t/a A and A Motors

Respondent: Commissioners for Revenue and Customs

HELD AT: Manchester **ON:** 15 May 2017

BEFORE: Employment Judge Howard

REPRESENTATION:

Appellants: In person
Respondent: Mr N Flanagan, Counsel

JUDGMENT

The hearing is postponed and will be heard on 11th July 2017 at 10.00 am in the Manchester Employment Tribunal for one day.

Directions

1. By 5th June 2017 the Respondent shall write to the Appellants and send a copy to the Employment Tribunal, informing the Appellants whether it is the Respondent's position that the TUPE regulations 2006 applied to the sale of the business from Mr Anthony White to Mr Stuart Benson on 31st July 2014 and, if so, whether the Notice of Underpayment is withdrawn against Mr White.
2. The Respondent is to attend the relisted hearing with two further copies of the bundle of documents.

Note of Discussion

1. The issues for the relisted hearing of this appeal are:-

- (i) Whether the TUPE regulations 2006 applied to the acquisition of the business by Mr Benson on 31st July 2014 and consequently to the contract of employment of Mr Wright.
 - (ii) If so, whether liability for any underpayment contrary to the National Minimum Wage Act 2008 and Regulations transfers to Mr Benson;
 - (iii) If so, whether the Notice served on Mr White should be rescinded; pursuant to Section 19(c)(1)(a) of the National Minimum Wages Act 1998 or should be rescinded or rectified pursuant to Sections 19(c)(1) (b) and (c) and (8) of the National Minimum Wage Act 1998;
 - (v) If the TUPE regulations do not apply; whether Mr Wright was an apprentice to Mr Benson, if so, during what period.
2. It is accepted by the Respondent that Mr Wright was an apprentice and completed an NVQ Level 2 whilst employed by Mr White between 31st August 2012 and the 1st September 2013.
3. If Mr Wright was employed by Mr Benson as a new employer to whom the TUPE regulations did not apply, the Tribunal will determine whether Mr Wright entered into a new apprenticeship with Mr Benson and if so, during what period.
4. It was agreed by Mr White and Mr Benson that Mr Wright's employment had been continuous and there was no break in service during the sale of the business. Both Mr White and Mr Benson are sole traders and Mr Benson agreed that he had bought the business A & A Motors as a going concern and had continued to operate the business in much the same manner as it had been operated by Mr White.
5. Mr Benson accepted that the claimant had been paid for 33 hours work per week and raised no further issue on hours of work.
6. There was the possibility of a conflict of interest between Mr White and Mr Benson as Mr Benson's position was that he was unaware that Mr Wright had previously undergone an apprenticeship. The Employment Judge explained to Mr Benson that it was for the Tribunal to determine whether he could rely on the apprenticeship exemptions under the National Minimum Wage Regulations but that his alleged lack of knowledge would not be a defence, in itself. Accordingly, the Employment Judge treated Mr White and Mr Benson as individual Appellants, both of whom would be given the opportunity to cross examine the Respondent's witnesses and make representations.
7. The implications and impact of the TUPE Regulations had not been raised or explored between the parties before the hearing and given that Mr White and Mr Benson were both unrepresented, the Employment Judge considered that they should be afforded further time to take advice and consider the situation. Both Mr White and Mr Benson sought a postponement to do so, which was not objected to by the Respondent's counsel.
8. The Respondent's counsel explained that, in the event that the Notice was withdrawn against Mr White, a consequence might be that a further Notice of Underpayment in respect of that earlier period could be served upon Mr Benson.

Counsel anticipated that the Respondent would use the postponement to consider matters further and explore any possibility of reaching a sensible and pragmatic solution.

Employment Judge Howard

Date 16th May 2017

JUDGMENT AND DIRECTIONS SENT TO THE PARTIES ON

.22 May 2017

FOR THE TRIBUNAL OFFICE