

Hudson Catering Limited story

BHP Law successful in TUPE case

Anthony Willis, Solicitor in our Employment Law team, successfully acted for a local business with an employment tribunal claim regarding the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

TUPE applies where there is a 'relevant transfer' either because:

1. The business or part of it is taken over by another organisation and/or
2. The provision of services ceases being carried out by one party, on behalf of a client and instead, is carried out by another party.

The net result being that TUPE may trigger and result in the transfer of certain employees from the 'old' or 'outgoing' employer (the transferor) to the 'new' or 'incoming' employer (the transferee). The new employer then inherits the relevant employees and employs them as if it had always been their employer. This includes all the rights and liabilities of the old employer, for the employees.

Background

In 2013 our client, Hudson Catering Limited (Hudson), an independent contract catering company, entered into an agreement with the North East Ambulance Service NHS Foundation Trust (NEAS), to provide catering and hospitality services at its headquarters at Bernicia House in Newcastle. In doing so, it acquired two existing staff arising from TUPE, Mrs Crane and Mrs Moody (the Claimants), who had worked at the site for the predecessor employers from 2001 and 2003 respectively.

Following several changes in 2019 to the catering arrangements, Hudson decided to give three months' notice to NEAS in November 2019 and withdraw from the site. Throughout December 2019 and January 2020, the parties exchanged numerous emails discussing whether NEAS would continue with the services and consequently whether TUPE would apply, i.e. that the incoming service provider would inherit liability for the Claimants employment.

It was NEAS' position that TUPE did not apply – a contention that Hudson rejected. Unable to obtain the identity of, or information about, the successor organisation, Hudson advised the Claimants that they should seek independent legal advice, and contact NEAS and the replacement caterer and assert their continued employment.

Hudson vacated the Bernicia House site on 7th February 2020, and, days later, a new catering company, Nu to Go Limited (Nu), commenced trading from the NEAS headquarters on 17th February 2020.

Nu refused to accept that the Claimants had transferred into its employment. Instead they alleged no knowledge of, or responsibility for, the Claimants; and later, that they had been dismissed by Hudson.

Left without employment the Claimants lodged separate Employment Tribunal claims against Hudson and Nu in May 2020 citing:

- Unfair dismissal
- Redundancy pay
- Holiday pay
- Notice pay

Outcome

We are delighted to confirm that, following a public preliminary hearing in April 2021, wherein Anthony conducted his own advocacy, the Employment Tribunal Judge agreed that there had been relevant transfer (both a transfer of an undertaking, business or part of an undertaking or business; and a service provision change) under regulation 3 of TUPE.

The Tribunal agreed with Anthony that, despite certain differences, the Claimants had been a stable economic entity that transferred to Nu and retained its identity.

So what did this mean for Hudson?

This is significant victory for Hudson.

Through Anthony's assistance, Hudson have now secured a second judgment on 17th June 2021, confirming that as TUPE applied to the Claimants, Hudson have been discharged from the proceedings and all claims against them have been dismissed. This means that liabilities, regarding the Claimants, pass to Nu. They become liable for any of the compensation that the Claimants are seeking as part of their claims, outlined above.

In addition, Hudson no longer need to concern themselves with the Tribunal claim or the costs associated with it, allowing them to get back to business.

Anthony worked vigorously and diligently for our client and provided services including:

- Initial advice
- Drafting and preparing the defence and witness statements
- Corresponding with the other sides and the Employment Tribunal
- Preparing for and conducting the advocacy at the Preliminary Hearings

You can read more about this specific case [here](#).

Get in touch if you need support

If you would like assistance in understanding TUPE and how it applies, then please do not hesitate to get in contact with Anthony Willis at anthonyw@bhplaw.co.uk or Alexander Millward at alexmillward@bhplaw.co.uk, or to speak to a member of the team call 01325 466 794.

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