

Compensation ordered for failure to provide employee liability information where there was a reasonable belief employees would bring claims

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The First Tier Tribunal has held that an outgoing employer breached its obligations under the TUPE regulations by failing to notify the incoming employer of potential claims for unlawful deductions of wages. The fact that the failure to pay happened after the deadline for notification was not a barrier, as the outgoing employer had reasonable grounds for believing wages would go unpaid before it passed information to the incoming employer.

Eville & Jones (UK) Ltd and Grants Veterinary Services Ltd provided veterinary services to abattoirs under contract with the Food Standards Agency. Before those contracts were due to expire, the FSA invited Eville and Grants to tender for new work. Eville successfully secured a new contract but Grants did not and Grants' employees transferred under TUPE to Eville. Grants' financial situation worsened due to its failure to secure a contract and it entered administration.

Under the TUPE regulations, Grants was obliged to provide Eville with employee liability information, which includes notification of potential tribunal claims from its employees, by 19 March 2012.

On 27 March 2012, Grants wrote to its employees initially advising that the March salaries would be paid late. Eville learnt of the delay and asked the FSA to assist in ensuring that Grants paid the salaries owed. Grants nonetheless failed to pay its employees the March wage and Eville paid the arrears from its own funds.

Eville brought proceedings against Grants for breach of TUPE regulations on the basis that Grants failed to notify it of potential tribunal claims arising from its failure to pay salaries.

The tribunal found that by the time of the deadline for providing employee liability information, Grants was aware of its financial difficulties and were making insolvency arrangements which would make it unlikely that its employees would be paid. Once Grants had failed to pay the salaries, it had reasonable grounds to believe that claims may be brought against Eville for unlawful deductions of wages. Therefore, Grants had not complied with its duty to provide employee liability information.

The tribunal awarded Eville £500 per employee. With 131 employees transferred to Eville, this amounted to £65,500. Though this was significantly more than the loss Eville had suffered, the tribunal found it would not be just and equitable to reduce the award as Grant's failure to notify had been significant and not inadvertent.

Eville & Jones (UK) Ltd v Grants Veterinary Services Limited (In Liquidation) ET/1803898/12

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