

Ward Brothers (Malton) Limited v Middleton, Unite And Bulmers' Transport Limited (In Administration)

This case considered whether Bulmers Transport Limited ("**Bulmers**") was under the "supervision of an insolvency practitioner" pursuant to Regulation 8(7) Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**").

Comment

The case provides some helpful clarity on the inter-relationship of Regulation 8(7) TUPE and s388 Insolvency Act 1986, when determining whether a company is under the "supervision of an insolvency practitioner".

Whilst Bulmers had taken advice from persons who were qualified to act as insolvency practitioners, no insolvency practitioner was in fact appointed at the point at which Bulmers ceased to trade and the employees were taken on by Ward Brothers (Malton) Limited ("**Ward**"). This was fatal to Ward's attempts to show that Regulation 8(7) applied.

The Facts

HMRC presented a winding-up petition against Bulmers. Bulmers decided to cease trading shortly before the petition was to be heard. On the next working day following the cessation of trade, Ward took over Bulmer's major haulage contracts, utilising those of Bulmer's workforce willing to work at lower rates of pay.

Insolvency practitioners had been advising Bulmers in the period leading up to its cessation of trade, but no appointment had been taken. Administrators were appointed 10 days later.

Regulation 8(7) TUPE applies where a transferor is "the subject of bankruptcy proceedings or any analogous insolvency proceedings which have been instituted with a view to the liquidation of the assets of the transferor and are under the supervision of an insolvency practitioner". When Regulation 8(7) applies, employment contracts do not transfer under TUPE.

Ward contended that Bulmers was "under the supervision of an insolvency practitioner" within the meaning of Regulation 8(7) of TUPE. It contended there was a high level of involvement from the insolvency practitioners, and with a winding-up petition already issued, it sought to utilise the saving provision afforded by Regulation 8(7) TUPE.

The Employment Tribunal held that the insolvency practitioners were not "supervising" Bulmers or involved in the liquidation of its assets. Ward appealed.

Held

The EAT held that, in accordance with s388 Insolvency Act 1986, and approving Elias J's comments (when he was President of the EAT) in *Slater v Secretary of State of Industry* (2007 IRLR 928), a company is only under the supervision of an insolvency practitioner when he or she has been appointed. There was no appointment in this instance, and consequently there was no prospect of regulation 8(7) of TUPE applying. Therefore TUPE applied to the transfer of employment contracts.

Contact

Mark Prior

Senior Associate

T +44 161 830 5266

E mark.prior@squiresanders.com