

# IS IT TUPE OR A REDUNDANCY?

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## Introduction

The law protecting employees' rights following a change of employer has existed in the UK since 1981, under the Transfer of Undertakings (Protection of Employment), or TUPE, regulations. Essentially these regulations protect and preserve the terms and conditions of employees who transfer with a contract or business operation, or when one business (or part of a business) is sold to, or merges with, another.

However a recent European case threatens to cause great complications for organisations considering to transfer overseas – and with the growth in numbers of overseas call centres, this may have implications for many businesses here in the UK.

## A Recent Case Study

In a recent case (Holis Metal Industries Ltd v GMB & Newell Ltd) the Employment Appeals Tribunal (EAT) held that TUPE could still apply where a business was transferred from the UK to another outside the European Union.

Affected employees were told that the manufacturing part of their employers, Newell Ltd, was to be sold to an Israeli company, Holis Metal Industries Ltd. The employees were made redundant, and not transferred over to Israel.

As the parties failed to follow the consultation process that is required under TUPE, and Newell Ltd was based in the UK prior to the transfer taking place, all of these employees would be able to bring a claim for unfair dismissal. It is therefore clear that TUPE legislation protects the rights of workers, even across borders.

## Our Concerns at HR Insight

This adds to our concerns here at HR Insight.

Very often, we are approached by clients believing they have a redundancy situation when in fact they have a TUPE issue.

This has generally happened when a business has lost a contract or outsources a part of their business operations to another entity and believes that the workers engaged on that work should be made redundant.

## Good News and Bad News

On the one hand, this is good news. Liability for any redundancy costs are the responsibility of the party who the contract (or part of the business) has transferred to.

It's bad news however when TUPE is not correctly identified. Even without the potential of unfair dismissal claims, employers face being penalised with an award of 13 weeks pay to each employee that they don't consult with.

The overseas issue just makes it more complex as it potentially also includes situations where an organisation changes to a service provider abroad. The question being faced now is where this judgement leaves us here in the UK?

Essentially, at this point, we would strongly recommend that organisations err on the side of caution. If you are thinking of selling a part of your business, or outsourcing a part of your operations, it would be wise to follow the various obligations required under TUPE. This would include consulting with employees or their representatives, and bringing to their attention any measures that the future employer may introduce after the transfer.

## Care with Employee Objections

Employees can object to a transfer within the UK which has the simple result of their contract coming to an end (equivalent to a resignation).

However, a transfer abroad may be more complex. Under TUPE, employees who object due to suffering a 'material detriment' can consider themselves dismissed. It would seem that having to move abroad could well constitute such a detriment, which would mean they could bring an unfair dismissal claim. This development could prove to be a minefield when facing TUPE transfers abroad, and must be handled carefully.

## Can We Help?

If you need help on any issue associated with redundancy or TUPE legislation, or with any other issue, please call us on **01708 758958**. Alternatively visit us at [www.hrinsight.co.uk](http://www.hrinsight.co.uk).

We look forward to hearing from you.