

TUPE transfers and paying the price for the behaviour of a former employer

In *Rank Nemo (DMS) Limited v Coutinho* the Court of Appeal held that an ex-employee could bring a claim for victimisation against an employer who failed to pay an award of £72,000 for race discrimination and unfair dismissal.

The case establishes that where an employer fails to pay a tribunal award this may give rise to a separate claim of victimisation by the employee who was successful in obtaining an Employment Tribunal decision against the employer.

An interesting side issue in this case is that Mr Coutinho brought a claim for race discrimination and unfair dismissal after his employment was supposed to transfer from his original employer to a new employer under the TUPE Regulations. A decision was made that the new employer, despite never employing Mr Coutinho in practice, should pay an award of £72,500 for race discrimination and TUPE unfair dismissal following the dismissal by the predecessor company.

This is a salutary lesson to employers that they should carry out a detailed investigation of employees they may be taking on where they acquire a business or a new contract. It is also a reminder that the risks and liabilities relating to employees in these circumstances can be significant.

Further reading on this case is available [here](#)