



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case Nos: 4104162/2016 & 4104163/2016

Held at Dundee on 20 June 2017

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Employment Judge: Mr N M Hosie (sitting alone)

15 **Mr Christopher Keenan**

**First Claimant
Represented by:
Mr D Martyn
Solicitor**

20 **Mr David B Alexander**

**Second Claimant
Represented by:
Mr D Martyn
Solicitor**

25 **Secretary of State for Business, Energy
& Industrial Strategy**

**Respondent
Represented by:
Ms S Littlehales
Tribunal Officer**

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ETZ4 (WR)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that: -

5 (1) the Judgment of the Employment Tribunal which was registered on 13 April 2017 is revoked; and

(2) there is substituted therefor the following:

10 *The Judgment of the Employment Tribunal is that the former employer, Tullis Russell Papermakers Ltd, failed to consult the claimants pursuant to Sections 188 and 188A of the Trade Union and Labour Relations (Consolidation) Act 1992.*

15 *Further to the administration of the former employer, the respondent (as statutory guarantor) is ordered to pay the claimants a protective award of 40 days' pay under s.189 of the 1992 Act. The award is subject to any statutory deductions for arrears of wages already made to the claimants; any recoupment of state benefits; and the application of the relevant statutory cap on a week's pay.*

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REASONS

1. On 13 April 2017, a Judgment ("the original Judgment") was registered in the following terms: -

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"The Judgment of the Employment Tribunal is that the respondent is ordered to pay each of the claimants a protective award of 56 days' pay in terms of s.189 of the Trade Union and Labour Relations (Consolidation) Act 1992."

30 2. By e-mail dated 27 April 2017, which is referred to its terms, the respondent sought a reconsideration of that Judgment in terms of Rule 70 in Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013, as amended.

3. I did not refuse the application. It was agreed that a hearing was not necessary in the interests of justice and I afforded the parties a reasonable opportunity to make further written representations.
- 5 4. By e-mail dated 15 May, which is referred to for its terms, the claimant's solicitor intimated that he "*objected to parts of the reconsideration application but not to others*" and he suggested that the original Judgment be amended, by consent, in terms which he detailed.
- 10 5. The claimant's solicitor then went on in his e-mail to dispute the contention by the respondent that the respondent did not have authority to make a payment out of the national insurance fund where the employee has not already obtained a protective award against his former employer.
- 15 6. He also submitted that **Banks and Others v Secretary of State for Employment and others (EAT424/82)** was relevant, whereas **Harford v Secretary of State for Trade and Industry [UKEAT/0313/07/LA]** which the respondent relied on could be distinguished.
- 20 7. The respondent replied by letter dated 30 May 2017, which is referred to for its terms. The respondent did not object to the original Judgment being amended, but suggested some minor alterations to what the claimant's solicitor had proposed. The respondent then went on to address what the claimant's solicitor had described as "*Reconsideration of Substance of Order*" and submitted that
25 paragraphs 37 to 43 in the Reasons for the original Judgment should be "*removed*".
- 30 8. Finally, the claimant's solicitor responded by e-mail dated 30 May 2017, which is referred to for its terms. He advised that he did not object to the original Judgment being amended as proposed by the respondent. However, he did not accept that it was necessary for paras 37 to 43 to be removed.

Conclusion

9. Having considered the terms of the original Judgment, and the reasons for it and the submissions on behalf of the parties, I decided that the original Judgment
5 should be revoked and that there should be substituted therefor a Judgment in the terms which were agreed between the parties.

10. I then went on to address the issue of the so-called “Reconsideration of Substance of Order”. In this regard, I was persuaded that the submissions by the claimant’s
10 solicitor were well-founded. Indeed, by and large, these were in respect of issues which I had considered at the Hearing on 10 January 2017. The respondent chose not to appear at that Hearing but I had regard to the averments in the ET3 response form and, in particular, the “letter” annexed which the respondent intimated should be taken as the respondent’s written representations in this matter.

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11. I arrived at the view, therefore, that it was only the Judgment which required to be amended and that I should not remove Paras 37-43 in my Reasons, as submitted by the respondent.

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Employment Judge: Nicol M Hosie

Date of Judgment: 26 June 2017

Entered in register and copied to parties: 27 June 2017

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