



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr J Abbott and Others

**Respondents:** (R1) Secretary of State for Business, Innovation and Skills  
(R2) Mark Group Limited (In Administration)

**Heard at:** Nottingham

**On:** 26 April 2018

**Before:** Employment Judge Hutchinson (sitting alone)

## Representation

**Claimants:** Ms N Toner, Solicitor

**Respondents:** (R1) Mr Tinkler of Counsel  
(R2) No Appearance

**JUDGMENT** having been sent to the parties on 12 June 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

## REASONS

### Background to this hearing

1. On 23 January 2017 I made a reserved judgment following a hearing that had taken place on 25 November 2016 I determined that: -

1.1 The claims against the then first and fourth Respondents were dismissed.

1.2 The claims of maternity and/or pregnancy discrimination were dismissed.

1.3 The Tribunal did have jurisdiction to hear the remainder of the claims.

1.4 Some of the Claimants did not have sufficient service to claim unfair dismissal/redundancy pay.

1.5 Some of the Claimants could proceed with their claims of constructive unfair dismissal.

1.6 The claims for a protective award made by those Claimants whose employment with the company terminated prior to the appointment of joint administrators on 7 October 2015 were struck out.

1.7 The other claims of failure to consult should proceed.

2. I then conducted a further hearing on 27 April 2017 when I gave judgment in favour of the Claimants in respect of a protective award for all Claimants referred to in that judgment. The protected period was 90 days beginning 7 October 2015. The judgment and reasons were sent to the parties on 8 June 2017. Following that judgment, the Secretary of State made payment in respect of the claim but on 5 September 2017 the Claimants' Solicitor Ms Toner made an application against the remaining Respondents for failure to pay the sums due to the Claimants by way of a protective award and failure to pay correctly notice, holiday pay and redundancy pay under Section 192 TULRCA 1992 and Section 188 ERA 1992 respectively. At that stage I was provided with a schedule of 40 Claimants in respect of whom it was said that there had been an underpayment.

3. On 1 November 2017 I received a counter schedule from the Solicitor acting for the administrators of Mark Group Limited.

4. There was a delay in obtaining the documentation that the Claimants needed and at a hearing on 8 February 2018 I ordered the Respondents to provide documents in their possession relating to the claims made by the Claimants' representative in respect of those Claimants included in the schedule that had been proved on 31 January 2018. There were still 40 Claimants who were claiming an underpayment from the Secretary of State in respect of sums they said that were due to them. I also listed the matter for a hearing on 26 April 2018 to determine the final payments due.

#### The hearing

5. The second Respondent did not attend the hearing. Matters had been resolved in respect of most of the Claimants and as set out in my judgment I was able to dismiss many of the claims.

6. There remained 11 Claimants who were in dispute about the monies they were owed. These were: -

- Carl Cottingham
- Paul Dynes
- Amanda Galves
- Ross Hart
- Alan Ismay
- Hemant Mistry
- George Moss
- Anthony Scadding
- Clifford Tomlinson
- David Watts
- Marie Wright

7. At the hearing I had witness statements and heard evidence from each of the Claimants who were still in dispute. I was satisfied with the truthfulness of the evidence they gave. There was an agreed bundle of documents and where I refer to page numbers it is from that bundle.

8. Ms Toner was representing the Claimants and Mr Tinkler of Counsel represented the Secretary of State. I also had written representations from the second Respondent's Solicitor.

#### My findings

9. My findings in respect of each of the Claimants was as follows: -

#### Carl Cottingham

10. His claims had been resolved in respect of holiday pay and redundancy pay. The only matter that was in dispute related to his notice pay.

11. Mr Cottingham had been employed by the second Respondent for 23 years and because of that was entitled to 12 weeks' notice which ran from 8 October 2017 to 30 December 2017.

12. He did not dispute that the Insolvency Service was entitled to deduct a sum of £2,500 from the notice pay to reflect his income from alternative employment. He said and I accept that he should have received 7.5 weeks' notice pay at a rate of £623.48, amounting to £4,676.10. He should give credit for benefits of £490.82, leaving him with £4,185.28 before deductions for tax.

13. The Insolvency Service said that they were entitled to make a deduction of £323.64 in respect of benefit they say he was entitled to but did not claim. The Claimant tells me and I accept that he did not believe that he was entitled to those benefits. In the circumstances I was satisfied with his explanation and that he had therefore taken reasonable steps to mitigate his loss. I was satisfied that it was appropriate for the Secretary of State to pay therefore the balance of this sum.

#### Paul Dynes

14. The claim for him was of an underpayment of the protective award. The Insolvency Service had written to him on 7 July 2017. The letter confirmed that his protective award period was from 7 October 2015 to 4 January 2016 and that he was entitled to a maximum of 8 weeks in respect of arrears of pay and protective award. His entitlement was based on his gross pay being £412.33 per week. I am satisfied that the Claimant was on a salary of £30,000 per annum which meant a capped sum of £489.00 per week should have applied. The gross payment he should have received for the 8 weeks was therefore £3,912.00 (8 x £489.00) which means that he has been underpaid by the sum of £613.36 and I give judgment to the Claimant in respect of that sum.

#### Amanda Galves

15. Amanda Galves was employed from 2 February 2009 until her dismissal on 7 October 2015. I am satisfied that she made a mistake when she completed

**Case No: 2600015/2016 and Others**

the forms applying for redundancy pay, holiday pay and notice pay from the Insolvency Service (pages 116-121, 124-5). She said that her gross salary was £15,212 per annum when in fact it was £15,500 per annum as evidenced in her contract of employment (pages 114-5).

16. Ms Galves received payments for redundancy pay, holiday pay, notice pay and the protective award (pages 122-3, 126-9) but these were calculated at a rate of £291.74 per week. Her gross pay was £298.08 per week. The amounts she should have received were;

Redundancy pay -	£2,682.72 (9 x 298.08)
Holiday pay -	£230.71 (3.87 x £59.61)
Notice pay -	£1,788.48 (6 x £298.08)
Protective award-	£2,384.64 (8 x £298.08)

17. This error has led to an underpayment in respect of the following payments due to the Claimant, namely: -

Redundancy pay	-	£57.06
Holiday pay	-	£4.91
Notice pay	-	£38.04
Protective award	-	£50.72

Ross Hart

18. Mr Hart was born on 16 June 1981. He was employed by the second Respondent from 1 June 2010 to 7 October 2015. His statement of terms of employment are at page 140. His salary as stated in that statement was £25,000 per annum ie £480.77 per week.

19. He has received no payment at all from the first Respondents.

20. He was awarded a protective award on 6 June 2017.

21. I have seen a witness statement of Elisa Charlton of Deloitte LLP who dealt with the administration of the second Respondents (pages 147-152). In paragraph 26 of that witness statement she accepted that Mr Hart did have over 2 years' service at the point of his redundancy. I am satisfied that at the point of his redundancy he had 5 years' service.

22. At that time the statutory cap was £475.00 per week.

23. I am satisfied that the Claimant is entitled to a redundancy payment of £2,375.00 (£475.00 x 5).

24. The Claimant was dismissed without notice and is entitled to 5 weeks' notice pay. That amounts to £2,403.85. The Claimant earned £302.50 in his last week of notice so the amount due gross would be £2,101.35.

25. I deducted a nominal 20% to cover tax and National Insurance which amounted to £420.27 and the net notice pay that the Claimant is entitled to is £1,681.08.

**Case No: 2600015/2016 and Others**

26. The Claimant is also entitled to holiday pay. In his final holiday year, he had accrued 21.5 days and had taken 19.5 days holiday. He was therefore owed 2 days' holiday pay which amounts to £192.31 (2 x £96.155).

27. The Claimant is also entitled to a protective award. The maximum amount that the first Respondent would pay in respect of the protective award is 8 weeks and so the Claimant is entitled to £3,846.16 (£480.77x 8) which is what I order the first Respondent to pay.

Hemant Mistry

28. I was satisfied that this Claimant was employed from 18 November 2013 to 7 October 2015 when she was dismissed without notice. She was entitled to 1-week notice under her contract of employment. She commenced alternative employment on 14 October 2015.

29. At the time of her dismissal she earned £276.55 per week gross, £221.24 per week net. I am satisfied that the Claimant is entitled to 1 week of notice pay. This amounts to £221.24.

30. The other claims made by Hemant Mistry are dismissed on withdrawal.

Alan Ismay

31. Alan Ismay withdrew his claims in respect of notice pay and holiday pay and they were dismissed.

George Moss

32. The Claimant gave evidence that he had been employed by the Respondents as a Scaffolding Technician. His statement of terms of employment is at pages 187-189. His employment had commenced on 25 June 2012 and he was dismissed on 7 October 2015 without notice. He had 3 years' service. At the date of his dismissal he was 52 years old. He was paid £500 per week. His net pay was £400 per week. His payments from the National Insurance fund are limited to £489.00 per week in respect of his protective award and £475 per week in respect of redundancy pay.

33. I was satisfied that the Claimant was entitled to: -

A protective award	-	£3,912.00 (£489.00 x 8)
Notice pay	-	£1,200.00 (3 x £400.00)
Redundancy pay	-	£2,127.50 (1.5 x 3 x £475.00)

Anthony Scadding

34. I heard evidence from Gemma Scadding the widow of Anthony Scadding. Mr Scadding was awarded a protective award by me on 8 June 2017. Mr Scadding died on 12 June 2017.

35. Mr Scadding was paid a salary of £36,000 per annum as per his claim for redundancy in insolvency payments at pages 190-195 of the bundle. His claim for a protective award is capped at £489.00.

36. He is therefore entitled to a protective award of £3,912.00 (8 x £489.00).

Clifford Tomlinson

37. Mr Tomlinson commenced his employment with the second Respondent on 25 November 2013 and he was dismissed on 7 October 2015. He was entitled therefore to one week's notice. His salary at the time of his dismissal was £17,500 per annum and his net pay was £269.23. I was satisfied that the Claimant was entitled to notice pay in this sum. His other claims are withdrawn and dismissed.

David Watts

38. Mr Watts was employed by the second Respondent from 13 October 2008 until 7 October 2015. He worked as a Cavity Wall Installer and commenced new employment on 9 November 2015.

39. He was paid by the second Respondent average weekly pay of £525.74 (pages 229a, 232).

40. He has made claims for holiday pay, redundancy pay and notice pay.

41. In a letter from the Insolvency Service of 23 October 2015 (pages 239-40) the calculations of the amounts due to him in respect of redundancy pay were made on the basis that his weekly wage was £391.89. I am satisfied that this is not the correct amount.

42. In a further letter sent by the Insolvency Service on 8 December 2015 (pages 241-2) he was informed of his entitlement to notice pay. It was calculated again on the incorrect figure of £391.89 per week. The amount of notice pay that the Claimant was entitled to gross was therefore £3,154.44 (6 x £525.74). Deducted from this should be: -

Money earned during notice period	-	£859.17
Benefits he was entitled to	-	£261.00
Total	-	£2,034.27
Less 20% for notional tax and NI	-	£406.85
Net entitlement	-	£1627.42
Paid	-	£984.96
Balance notice pay due	-	£642.46

43. The redundancy pay has also been incorrectly calculated. The redundancy pay that the Claimant was entitled to was £3,325.00 (£475.00 x 7). A payment has been made to the Claimant of £2,743.23 and the balance due is therefore £581.77.

44. In respect of holiday pay the Claimant had accrued 10.37 days holiday at £475.00 per week. The total payment that the Claimant was due in respect of holiday pay was therefore £985.15 (10.37 x £95.00). He has already been paid £812.78 which leaves a balance due to him of £172.37 gross. The net figure with notional tax and National Insurance at 20% of £34.47 is £137.90.

45. In respect of the protective award the Claimant is entitled to £3,912.00 (8 x £489.00). He has been paid £3,135.12 and is owed a balance of £776.88.

Marie Wright

46. This Claimant did not have a contract of employment. The calculations in respect of the payments due from the Insolvency Service are at pages 248-53. That confirms that her gross income was £186.30. However, in the letter from the Insolvency Service dated 30 October 2015 (pages 257-7) and 18 November 2015 (page 258-9) the calculations have been made based on her pay being £185.79. I am satisfied that this is not the correct amount.

47. The Claimant was entitled to a redundancy payment of £931.50 (£186.30 x 5). She has received a payment of £928.95 and is therefore due the sum of £2.55.

48. In respect of her holiday pay the Claimant is due 3.37 days holiday. Her daily rate of pay was £37.26 which means the Claimant was due to receive the sum of £125.56. The Insolvency Service also made a deduction in respect of tax but she did not pay tax. They paid her a total sum of £100.18 and she is due a further sum of £25.38.

49. In respect of the protective award the Claimant was entitled to £1,490.40 (£186.30 x 8). The amount she received from the Insolvency Service was £1,456.80 and so the Claimant is entitled to a further sum of £33.60.

50. In respect of notice pay the Claimant was entitled to 4 weeks' notice. This amounts to £745.20 (£186.30 x 4).

51. The Claimant received from the Insolvency Service the sum of £346.04 which leaves a balance due of £399.16. From that should be deducted the benefit of £310.60 leaving a net figure of £88.56 due.

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Employment Judge Hutchinson

Date 8 November 2018

REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE