



EMPLOYMENT TRIBUNALS

- Claimants:** Mr M Bangura & others (See Schedule)
1) Shawe Lodge Home Ltd (In creditors' voluntary liquidation)
- Respondents:**
- 2) Secretary of State for Business, Enterprise and Industrial Strategy

JUDGMENT

Employment Tribunals Rules of Procedure 2013, Rule 21

The first respondent not having presented a response to the claims, and on the information before the Regional Employment Judge particularly in the witness statement of the claimants,

The judgment of the Tribunal is that:

- 1) The claims are all well-founded in that the first respondent failed to comply with its statutory collective consultation obligations under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 before proposed redundancy dismissals took effect at its establishment at Barton Road, Urmston, Greater Manchester on 18 May 2018 in respect of the whole workforce employed there.
- 2) Under Section 189(1)(d), (2), (3) and (4), the Tribunal makes a protective award in respect of the claimants and the first respondent is ordered to pay remuneration to them for a protected period of 90 days beginning on 18 May 2018.
- 3) The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.

REASONS

1. By a claim form presented on 17 August 2018 the claimants claimed a protective award in respect of breach of the collective consultation requirements. No response was presented to the claims by the first respondent. The Secretary of State was served with the claim and provided his response on 5 December 2018, which was treated as his written representations.

2. On a full consideration of the file of proceedings, with witness statements provided by the claimants, it was possible to issue this Judgment under Rule 21 without a hearing.

3. On the information provided, the Tribunal makes the following findings. The respondent carried on business running a care and nursing home employing over 20 employees at Barton Road, Urmston, Greater Manchester. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce.

4. On 18 May 2018, the whole of the employees were made redundant and the care home and company ceased to trade. The company was formally put into creditors voluntary liquidation on 18 June 2018.

5. There was no proper warning or notice given to or consultation with the workforce. No employee representatives had been elected or appointed for any such consultation. The dismissals of the whole workforce were put into effect at once.

6. In these circumstances, the first respondent is in breach of the duty under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of the claimant for the maximum protected period of 90 days commencing on 18 May 2018.

7. The first respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the first respondent must comply with the provisions of Regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:

- (a) the name, address and national insurance number of every employee to whom the award relates; and
- (b) the date of termination of the employment of each such employee.

7. The first respondent will not be required to make any payment under the protective awards made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the first respondent.

Regional Employment Judge Parkin

Date: 7 January 2019

JUDGMENT SENT TO THE PARTIES ON

30 January 2019

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Multiple Schedule

Case Number	Claimant
2414621/2018	Mr Mohamed Bangura
2414622/2018	Ms Aneta Chipinska
2414623/2018	Ms Sonal Shroff
2414624/2018	Ms Mina Amathree
2414625/2018	Mr James Kelly
2414626/2018	Ms Edith Mantey
2414627/2018	Mr Herbert Okwelogu
2414628/2018	Mr Brian Cameron
2414629/2018	Mr Colin Walsh
2414630/2018	Ms Zhulieta Kostova

Claimants: Mr M Bangura and others (see schedule attached)

Respondents: 1) Shawe Lodge Home Ltd (In creditors' voluntary liquidation)
2) Secretary of State for Business, Energy and Industrial Strategy

**ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The respondent is under a duty to give the Secretary of State the following information in writing: (a) the name, address and National Insurance number of every employee to whom the protective award relates; and (b) the date of termination (or proposed termination) of the employment of each such employee.

That information shall be given within 10 days, commencing on the day on which the Tribunal announced its judgment at the hearing. If the Tribunal did not announce its judgment at the hearing, the information shall be given within the period of 10 days, commencing on the day on which the relevant judgment was sent to the parties. In any case in which it is not reasonably practicable for the respondent to do so within those times, then the information shall be given as soon as reasonably practicable thereafter.

No part of the remuneration due to an employee under the protective award is payable until either (a) the Secretary of State has served a notice (called a Recoupment Notice) on the respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the respondent in writing that no such notice is to be served.

This is without prejudice to the right of an employee to present a complaint to an Employment Tribunal of the employer's failure to pay remuneration under a protective award.

If the Secretary of State has served a Recoupment Notice on the respondent, the sum claimed in the Recoupment Notice in relation to each employee will be whichever is the less of:

- (a) the amount (less any tax or social security contributions which fall to be deducted therefrom by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Secretary of State receives from the employer the information referred to above; OR

- (b) (i) the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or income support to the employee for any period which coincides with any part of the protected period falling before the date described in (a) above; or
- (ii) in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person's earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

The sum claimed in the Recoupment Notice will be payable forthwith to the Secretary of State. The balance of the remuneration under the protective award is then payable to the employee, subject to the deduction of any tax or social security contributions.

A Recoupment Notice must be served within the period of 21 days after the Secretary of State has received from the respondent the above-mentioned information required to be given by the respondent to the Secretary of State or as soon as practicable thereafter.

After paying the balance of the remuneration (less tax and social security contributions) to the employee, the respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the respondent as a debt to the Secretary of State, whatever may have been paid to the employee, and regardless of any dispute between the employee and the Secretary of State as to the amount specified in the Recoupment Notice.