



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BALOGUN

BETWEEN:

Anasova, Malgorzata and others

Claimant

AND

Southern Salads Limited (In administration)

First Respondent

Secretary of State for Business Energy and Industrial Strategy

Second Respondent

ON: 25 February 2019

APPEARANCES:

No attendance, decision on the papers

JUDGMENT

1. The duplicated claims of Andrejs Delvers, case no: 2303735/2017 and Alekandrs Smirnovs, case no: 2303764/2017 are dismissed upon withdrawal.
2. The First Respondent failed in its duty to consult appropriate employee representatives on redundancy pursuant to section 188 of the Trade Union & Labour Relations (Consolidation) Act 1992 (TULRCA).
3. The First Respondent failed in its duty to make arrangements for the election of employee representatives for the purpose of such consultation, pursuant to section 188A TULRCA.
4. The claims for a protective award are well founded.
5. The tribunal awards 90 days' pay in respect of each Claimant pursuant to section 189 TULRCA.

6. The other claims shall remain stayed until further notice.

REASONS

1. By multiple claim forms 86 Claimants bring claims for a protective award for failure to consult on redundancy and other claims, variously of unfair dismissal, unlawful deduction of wages, redundancy payments and notice pay. The first Respondent is in administration and has played no active role in these proceedings. The second Respondent has consented to the proceedings going ahead. It was agreed at a case management hearing, conducted by me on 4 June 2018, that this hearing would deal solely with the protective award claims while the other claims would be stayed.
2. By agreement, this hearing has been dealt with on the papers, in the absence of the parties. The Claimants' representatives have provided a number of witness statements, a bundle and skeleton arguments in support of the Claimants' cases. I have taken these into account. No documents or evidence has been presented by or on behalf of the Respondents.

The Law

3. Section 188 TULRCA provides that where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult with appropriate representatives of employees who may be affected by the proposed dismissals.
4. Section 188A provides that where there are no appropriate representatives, the employer shall make arrangements for the election of such representatives.
5. Section 189 TULRCA provides that where a complaint that an employer has failed to comply with a requirement of section 188 or 188A is well founded, a protective award of up to 90 days pay may be made to affected employees.

Findings of Fact

6. The first Respondent was, until its Administration, in the business of supplying freshly prepared salads, vegetables, slaw and fruit to the foodservice, retail and food manufacturing sectors across the UK.
7. In June 2017, due to financial difficulties, FRP Advisory, a business advisory firm, was engaged by the first Respondent to identify potential equity investors and debt providers. When that became impossible, the first Respondent put the business into administration.

8. On 4 August 2017, notice of intention to appoint Administrators was served on creditors and on 16 August 2017, Administrators were appointed.
9. Immediately following the appointment of the administrators, nearly all of the first Respondent's 292 employees were dismissed by reason of redundancy, with the remaining dismissed not long afterwards.
10. The first Respondent did not recognise a trade union or have other appropriate representatives with whom it could inform and consult with on behalf of the workforce. Further, the first Respondent had made no arrangements for the election of such appropriate representatives.

Conclusion

11. I am satisfied from the evidence that the number of employees dismissed in one establishment exceeded 20 and that the dismissals occurred without any collective consultation on redundancy. The Claimants are therefore entitled to a protective award.
12. In deciding on the amount of the protective award, I have borne in mind the case of GMB v Susie Radin Ltd [2004] EWCA Civ 180. That case reminds us that the purpose of the award is punitive rather than compensatory and, in assessing the level of award, the focus should be on the seriousness of the employer's default. Where there has been no consultation at all, the maximum period of 90 days should be awarded and only reduced if there are any extenuating circumstances. It does not matter that consultation would have made no difference.
13. In our case, there has been a total failure to inform or consult so the default can rightly be described as of the utmost seriousness. As the first Respondent has not participated in these proceedings, there have been no extenuating circumstances presented that the tribunal can take account of. In those circumstances, the tribunal makes the maximum award of 90 days' pay in respect of the Claimants.

Employment Judge Balogun
Date: 25 February 2019