



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Mr J Coles and 25 Others

AND

Respondents

The Sunday Independent Limited (1)

Mr David Duncan Williams (2)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Exeter

ON

19 March 2019

EMPLOYMENT JUDGE N J Roper

MEMBERS

Mr I Ley

Mr T Slater

Representation

For the Claimants:

Ms N Joffe of Counsel

For the First Respondent:

Mr D D Williams (the Second Respondent)

For the Second Respondent: In person

JUDGMENT

The unanimous judgment of the tribunal is that:

1. The correct name of the First Respondent (Company Number 10724859) is now The Sunday Independent Limited and the record is amended accordingly.
2. The complaint that the First Respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded.
3. The Tribunal makes a protective award in respect of all employees of the First Respondent who worked in the View From Business and who were based at Lyme Regis and who were dismissed as redundant on or after 4 January 2018 and orders the Second Respondent to pay those employees remuneration for the protected period of 90 days beginning on 4 January 2018. The Tribunal declares that each such employee is entitled to an award in respect of 90 days, irrespective of the date of termination of his/her employment.

REASONS

1. This is a claim for a protective award brought by 26 employees following their dismissals by reason of redundancy from a newspaper business which controlled newspaper titles in and around East Devon and Dorset known as the View From titles (“the View From Business”).
2. This judgment should be read in conjunction with the judgment following a preliminary hearing dated 18 September 2018, and a further judgment following determination of the unfair dismissal and related claims brought by Mr Coles, as lead claimant, dated 20 March 2019. Both judgments are under Tribunal reference number 1400481/2018. These judgments include more detailed findings of fact.
3. We have considered the evidence before us, both oral and documentary, and we have considered the legal and factual submissions made by and on behalf of the respective parties. We find the following facts proven on the balance of probabilities.
4. On 14 July 2017 the First Respondent purchased “Pulman’s view” and the “View From” titles from Capital Media Newspapers Limited, which was then in administration. This is the View From business which was a newspaper and media business which operated out of premises at Lyme Regis. There were approximately 31 employees in the View From business which transferred under TUPE to the First Respondent on 16 January 2018.
5. On 4 January 2018 the First Respondent purported to make all staff redundant, and issued a letter under the name of View From Newspapers on 4 January 2018 which was headed “Closure of Business”. This letter confirmed the closure of the View From Newspapers and the Lyme Regis office. It was a generic letter which was handed to all employees, and it confirmed the termination of each employee’s employment by reason of redundancy, apparently on one month’s notice. It also confirmed that as of the date of that letter the employees were on garden leave and were no longer required to attend work unless specifically requested to do so. It was a generic letter which did not confirm the correct amount of notice for each employee.
6. There was no recognised independent trade union, and there was no election of employee representatives. The First Respondent failed to undertake any or any adequate consultation with any of the claimants prior to their dismissals.
7. Having found the above facts we now apply the law.
8. The relevant law is in the Trade Union and Labour Relations (Consultation) Act 1992 (“TULRCA”).
9. Section 188(1) of TULRCA provides as follows: “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 about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or

- may be affected by measures taken in connection with those dismissals". S188(1A) provides that "The consultation shall begin in good time and in any event – (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and (b) otherwise, at least 30 days, before the first of the dismissals takes effect.
10. S 188(1B) provides that: "For the purposes of this section the appropriate representatives of any affected employees are – (a) if the employees of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or (b) in any other case, whichever of the following employee representatives the employer chooses:- (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf; (ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1)."
 11. S 188(2): provides that: "The consultation shall include consultation about ways of – (a) avoiding the dismissals, (b) reducing the numbers of employees to be dismissed, and (c) mitigating the consequences of the dismissals, and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives."
 12. Section 188(4) provides: "For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives – (a) the reasons for his proposals, (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant, (c) the total number of employees of any such description employed by the employer at the establishment in question, (d) the proposed method of selecting the employees who may be dismissed, (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which any dismissals are to take effect, (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with the obligation imposed by or by virtue of any enactment) to employees who may be dismissed, (g) the number of agency workers working temporarily for and under the supervision and direction of the employer, (h) the parts of the employer's undertaking in which those agency workers are working, and (i) the type of work are those agency workers are carrying out."
 13. Section 188(5) provides: "That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or in the case of representatives of a trade union sent by post to the union at the address of its head or main office."
 14. In this case there was no recognised trade union, and no elected representatives with authority to act on behalf of the employees. In addition,

- there was no election put in place by the First Respondent which satisfied the provisions of section 188A(1).
15. In this case there were clear breaches of sections 188(2) and 188(4) by the First Respondent.
 16. Accordingly, the Tribunal makes a protective award in respect of all employees of the First Respondent who worked in the View From Business and who were based at Lyme Regis and who were dismissed as redundant on or after 4 January 2018 and orders the Second Respondent to pay those employees remuneration for the protected period of 90 days beginning on 4 January 2018. The Tribunal declares that each such employee is entitled to an award in respect of 90 days, irrespective of the date of termination of his/her employment.

Employment Judge N J Roper
Dated 20 March 2019

Judgment sent to Parties on

27 March 2019

For the Tribunal Office

26 Cases Numbered consecutively 1400481/2018 to 1400508/2018
(excluding case numbers 1400482/2018 and 1400489/2018)

	Case no.	Claimant
1.	1400481/2018	Mr J Coles
2.	1400483/2018	Mr O Alner
3.	1400484/2018	Miss K Austin
4.	1400485/2018	Miss L Bright
5.	1400486/2018	Mr R Briggs
6.	1400487/2018	Miss A Budden
7.	1400488/2018	Mr R Coombe
8.	1400490/2018	Mr S Chan
9.	1400491/2018	Mrs C Denslow
10.	1400492/2018	Miss N Edmeades
11.	1400493/2018	Miss L Filtness
12.	1400494/2018	Miss J Glover
13.	1400495/2018	Mrs C Hodges
14.	1400496/2018	Mr P Hodges
15.	1400497/2018	Mr G Kingsley
16.	1400498/2018	Mr B Kirkby
17.	1400499/2018	Miss C Lamb-Wilson
18.	1400500/2018	Mr R Larcombe
19.	1400501/2018	Mr A Larsson
20.	1400502/2018	Miss N Moore
21.	1400503/2018	Mrs L Quick
22.	1400504/2018	Miss C Sutton
23.	1400505/2018	Miss A Taylor
24.	1400506/2018	Mr M Tipping
25.	1400507/2018	Miss C Welch
26.	1400508/2018	Miss R Witt

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

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Regulation 5(2)(b), SI 2010 No 2429 Reg.5.

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 lesser of:

- (i) 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
- (ii) 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 protective period falling before the date described in (i) above.

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.