



THE EMPLOYMENT TRIBUNAL

SITTING AT: LONDON SOUTH

BEFORE: EMPLOYMENT JUDGE BALOGUN

BETWEEN:

Anasova, Malgorzata and others

Claimants

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

Under the provisions of Rule 69, the Judgment sent to the parties on 27.2.19 is amended as set out in block type

Attached to the judgment is a schedule of the Claimants in this claim

Judgment amended on 16 April 2019

AMENDED 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

Southern Salads (in administration)

List of claimants represented by Unionline

1. Leonard Thomas Hemmings	2303506/2017
2. Vladimirs Marics	2303507/2017
3. Alicja Malgorzata Pulawska	2303508/2017
4. Marcin Grzywacz	2303509/2017
5. Tomasz Kilan	2303510/2017
6. Sima Petroniene	2303511/2017
7. Valdas Dirmontas	2303512/2017
8. Aleksandrs Smirnovs	2303366/2017
9. Ayshe Ahmed	2303367/2017
10. Alicja Malucka	2303368/2017
11. Barbara Sekula	2303369/2017
12. Emilia Synowiec	2303370/2017
13. Andrejs Delvers	2303371/2017
14. Adam Olejnik	2303372/2017
15. Arkadiusz Witkowski	2303373/2017
16. Damian Woznica	2303374/2017
17. Daniel Zhelyazkov	2303375/2017
18. Ismail Mollov	2303376/2017
19. Ilgvars Skraba	2303377/2017
20. Ivan Vlaev	2303378/2017
21. Krzysztof Bronowicki	2303379/2017
22. Konrad Brzezinski	2303380/2017
23. Konrad Synowiec	2303381/2017
24. Krystian Tokarczyk	2303382/2017
25. Krzysztof Tyka	2303383/2017
26. Marcin Gruszka	2303384/2017
27. Mark Kingsnorth	2303385/2017
28. Mateusz Pytlinski	2303386/2017
29. Maciej Radkowski	2303387/2017
30. Mateusz Szewczuk	2303388/2017
31. Marek Tomczak	2303389/2017
32. Paul King	2303390/2017
33. Rafal Kubiak	2303391/2017
34. Robert Staniszewski	2303392/2017
35. Roman Woznica	2303393/2017
36. Sylwester Jezierski	2303394/2017
37. Slawomir Polniaszek	2303395/2017
38. Tomasz Lewandowski	2303396/2017
39. Tomasz Szpiega	2303397/2017
40. Witold Maciejowski	2303398/2017
41. Zbigniew Polniaszek	2303399/2017
42. Zbigniew Wyborski	2303400/2017

80

43. Anna Kozieradzka	2303401/2017
44. Karina Woznica	2303402/2017
45. Marzena Woznica	2303403/2017
46. Agnieszka Rewers	2303404/2017
47. Adam Wellle	2303405/2017
48. Jaroslaw Grzywacz	2303406/2017

List of duplicated claims, represented by UnionIne, which can be removed from the multiple

1. Leonard Thomas Hemmings	2303326/2017
2. Vladimirs Marics	2303327/2017
3. Alicja Malgorzata	2303291/2017
4. Aleksandrs Smirnovs	2303292/2017
5. Marcin Grzywacz	2303293/2017
6. Tomasz Kilan	2303294/2017
7. Sima Petroniene	2303295/2017
8. Vladas Dirmpontas	2303296/2017

Multiple Schedule**Multiple: 5382 - Southern Salads Limited (in Administration)**

Case Number	Case Name
2303590/2017	Miss Nadezda Anosova -v- Southern Salads Limited (in Administration) & Others
2303732/2017	Mr Sam Bearman -v- Southern Salads Limited (in Administration) & Others
2303733/2017	Ms Katarzyna Bernik -v- Southern Salads Limited (in Administration) & Others
2303734/2017	Mr Jatin Bhatt -v- Southern Salads Limited (in Administration) & Others
2303735/2017	Mr Andrejs Delvers -v- Southern Salads Limited (in Administration) & Others
2303736/2017	Ms Kamila Dzieliczak -v- Southern Salads Limited (in Administration) & Others
2303737/2017	Mr Ivaylo Gelov -v- Southern Salads Limited (in Administration) & Others
2303738/2017	Mrs Agnieszka Golema -v- Southern Salads Limited (in Administration) & Others
2303739/2017	Mr Lukasz Golema -v- Southern Salads Limited (in Administration) & Others
2303740/2017	Mrs Olga Gurinovic -v- Southern Salads Limited (in Administration) & Others
2303741/2017	Mr Vladimir Gurinovic -v- Southern Salads Limited (in Administration) & Others
2303742/2017	Mr Richard Hayward -v- Southern Salads Limited (in Administration) & Others
2303743/2017	Mrs Sylwia Korzeniewska -v- Southern Salads Limited (in Administration) & Others
2303744/2017	Mr Krzysztof Korzeniewski -v- Southern Salads Limited (in Administration) & Others
2303745/2017	Miss Anna Krajniak -v- Southern Salads Limited (in Administration) & Others
2303746/2017	Miss Agnieszka Kucharczyk -v- Southern Salads Limited (in Administration) & Others
2303747/2017	Mr Anthony Morant -v- Southern Salads Limited (in Administration) & Others
2303748/2017	Mr David Oakley -v- Southern Salads Limited (in Administration) & Others
2303749/2017	Miss Hannah Palmer -v- Southern Salads Limited (in Administration) & Others
2303750/2017	Miss Victoria Parsons -v- Southern Salads Limited (in Administration) & Others
2303751/2017	Mr Adam Percy -v- Southern Salads Limited (in Administration) & Others
2303752/2017	Mr Marek Pitonak -v- Southern Salads Limited (in Administration) & Others
2303753/2017	Mr Martin Pitonak -v- Southern Salads Limited (in Administration) & Others
2303754/2017	Mr Rastislav Pitonak -v- Southern Salads Limited (in Administration) & Others
2303755/2017	Mrs Alla Pjatkova -v- Southern Salads Limited (in Administration) & Others
2303756/2017	Mrs Magdalena Porczynska -v- Southern Salads Limited (in Administration) & Others
2303757/2017	Mr Mariusz Porczynski -v- Southern Salads Limited (in Administration) & Others
2303758/2017	Ms Lorna Proops -v- Southern Salads Limited (in Administration) & Others
2303759/2017	Mr Janis Puspurs -v- Southern Salads Limited (in Administration) & Others
2303760/2017	Mr Ian Roden -v- Southern Salads Limited (in Administration) & Others
2303761/2017	Mr Abdelidum Serih -v- Southern Salads Limited (in Administration) & Others
2303762/2017	Mr Khurram Shehzad -v- Southern Salads Limited (in Administration) & Others
2303763/2017	Mrs Dimka Slavova -v- Southern Salads Limited (in Administration) & Others
2303765/2017	Miss Marta Sowa -v- Southern Salads Limited (in Administration) & Others
2303766/2017	Miss Ivalina Tsokova -v- Southern Salads Limited (in Administration) & Others
2303767/2017	Mr Russell Wordie -v- Southern Salads Limited (in Administration) & Others
2303768/2017	Ms Justyna Wrons -v- Southern Salads Limited (in Administration) & Others
2303769/2017	Mrs Malgorzata Zakierska -v- Southern Salads Limited (in Administration) & Others
2303770/2017	Mr Piotr Zakierski -v- Southern Salads Limited (in Administration) & Others

Printed On: 19-Jan-2018 11:02 By: Mrs C Gangadax

Page 1 of 1

83