EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: S/4102677/2019

Hearing Held at Dundee on 17 May 2019

Employment Judge: Mr J Hendry

Mr Marshall Powrie	**Claimant** **In person**
McGill & Co Ltd (in Administration)	**Respondent** **No appearance**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

1. The complaint that the respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded;
2. A protective award should be made in favour of the claimant, Mr Marshall Powrie in terms of section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 and orders the respondent to pay remuneration to the claimant for the protected period of 90 days from 1 February 2019.

REASONS

1. The claimant sought a protective award in respect of the respondent's failure to consult when proposing to dismiss him as redundant in terms of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

2. The history of this matter is straightforward and unfortunately common. The claimant worked for McGill & Co Ltd a large building firm in Dundee. Although there had been rumours of financial difficulties there was no consultation with the claimant or other staff or any indication that the firm was in severe difficulties. He attended work on 1 February 2019 as normal. He was asked to attend a meeting along with other staff at the Apex Hotel in Dundee. At the meeting he was advised that the company was being put immediately into administration. The workforce was immediately dismissed as redundant. The claimant believes that 375 employees were made redundant.

3. The claimant worked full time for 40 hours per week and earned £11.50 per hour in his job.

Protective Award

4. The relevant sections of Section 188 of the 1992 Act as amended are in the following terms:-

> ***188 Duty of employer to consult . . representatives.***
> *(1) 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.*
> *(1A)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 45 days, and

(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

5. The claimant started work with the respondent as a Data AV Engineer on the 8 January 2018. His employment ended on 1 February 2019. The company employed more than 20 staff at its premises in Dundee.

6. The claimant worked for the respondent company in Dundee. I am satisfied that the claimant was working at the same establishment namely the company's Head Office in Dundee when more than 20 employees were made redundant through the respondent company going into administration.

7. The company was obliged to consult about dismissals and that consultation ought to have begun in good time prior to 1 February 2019.

8. The claimant was not of a description in respect of which an independent trade union was recognised by the respondent; there were no representatives appointed or elected; there was no provision made by the respondent for the election of any employee representatives; there was no issue or a special circumstance defence set out by the respondent in terms of section 188(7) of the 1992 Act. The proceedings were undefended.

9. In the circumstances, I shall make a declaration in terms of section 189(2) that the complaint is well founded and that the company failed to comply with the consultation requirements under section 188.

10. Section 189(2) of the 1992 Act also provides that in addition to making such a declaration, a Tribunal may also make a protective award. As I understand it the issue and the basis upon which any such award is calculated is entirely a question for the Tribunal. I start with the maximum award of 90 days and consider whether that should be reduced. In reaching

my decision I was assisted by the terms of the judgment of the Court of Appeal in the case of ***Suzy Radin Ltd v GMB and others [2004] IRLR 400.***

11. In the present case the protected period commenced on 1 February 2019. As there was no consultation whatsoever the claimant had no opportunity of proposing alternative measures either by himself or through any representative to avoid or reduce redundancies. There was no exploration of alternatives to redundancy or defence or explanation put forward for the failure. The respondent did not attend the Tribunal hearing. It is not clear what their approach would have been in relation to the question of consultation.

12. In my view therefore, there are no mitigating circumstances which justify a reduction in the maximum period and I have decided, therefore, that it would be just and equitable to make a protective award for a period of 90 days commencing 1 February 2019 and so do.

Employment Judge: **James Hendry**
Date of Judgment: **22 May 2019**
Entered in register: **23 May 2019**
and copied to parties