



# EMPLOYMENT TRIBUNALS

**Claimant:** G Tynemouth and others

**Respondent:** Lagan Construction Group

**Heard at:** Newcastle Upon Tyne **On:** 30 July 2018

**Before:** Employment Judge O'Dempsey

***Representation:***

**Claimant:** Ord, Roseby, Gallagher and Galligan (self representing), others did not attend.

**Respondent:** No attendance;

**Secretary of State:** written representations, no attendance.

## REASONS

**JUDGMENT** having been sent to the parties on 22 August 2018 and reasons having been sought, I give the following reasons for that judgment

1. In these cases I gave the judgment that the complaints that the respondent failed to comply with the requirements of section 188 and or 188A Trade Union and Labour Relations (Consolidation) Act 1992 were well founded in the cases:  
2500646/2018, 2500651/2018, 2500663/2018, 2500666/2018,  
2500672/2018, 2500675/2018, 2500742/2018, 2500820/2018,  
2501013/2018.
2. I accordingly made a protective award in respect of the employees of the respondent dismissed on 8<sup>th</sup> March 2018 from the respondent's A19 site. This is the description to which the award relates. I ordered the respondent to pay remuneration calculated in accordance with section 190 of the Trade Union and Labour Relations (Consolidation) Act 1992 for the protected period to the individual claimant in each case.
3. The protected period is from 8 March 2018 to 6<sup>th</sup> June 2018 (being 90 days).

**Case No: 2500639/2018 and others**

4. However in the following cases the complaint that the respondent failed to comply with the requirements of sections 188 and or 188A Trade Union and Labour Relations (Consolidation) Act 1992 is not well founded: 2500639/2018, 2501001/2018, 2501018/2018, 2501083/2018, 2501266/2018.
5. Case number 2500679/2018 had been accepted by the claimant to be a duplicate of case number 2500672 and was dismissed without prejudice to the rights of the claimant to pursue the claims under 2500672.
6. In respect of these claims I made my findings of fact, based on the evidence which I heard from those claimants who did attend the hearing. I heard evidence from Ms Galligan in relation to the common points raised in these cases. In particular she did her best to identify those who were employed at the A19 site. This was the establishment employing 20 or more employees, in relation to which there was a duty on the Respondent to consult under section 188 of the TULRCA 1992. On the evidence before me I was not able to identify another establishment at which 20 or more employees were so proposed for dismissal as redundant.
7. I find that in the cases of 2500646/2018, 2500651/2018, 2500663/2018, 2500666/2018, 2500672/2018, 2500675/2018, 2500742/2018, 2500820/2018, 2501013/2018, all of the claimants were employed at the A19 Site, which was an establishment distinct from the establishments at which the other claimants worked. It had sufficient coherence and managerial structure to warrant being called an establishment for the purposes of section 188.
8. In the other claims, the employees were employed but at different establishments, and I have been provided with insufficient evidence to conclude that it was likely that at any of those establishments there was a proposal to dismiss 20 or more employees. I have noted the contents of their ET1s which was the information I had before me. I make the following findings:
  - a. 2500639/2018, Mr Tynemouth, was not identified in the evidence before me as a person who worked at the A19 site. He gave the address of the Respondent, but gave no separate address as a place of work on his ET1 form.
  - b. 2501001/2018, Mr Hepburn was not identified in evidence as a person who worked at the A19 site. It appears from his ET1 that his establishment was the Teeside Biomass site.
  - c. 2501018/2018, Ms March was not identified in evidence as a person whose establishment was the A19 site. From her ET1 it appears that her establishment was the Lagan Construction Group Huntsman Drive establishment.
  - d. 2501083/2018, Ms Wardingham, was not identified in evidence as a person whose establishment was the A19 site. From her ET1 it appears that her establishment was the Teeside Biomass site.
  - e. 2501266/2018, Mr Thompson, was not identified in evidence as someone who worked from the A19 site.

**Case No: 2500639/2018 and others**

9. In order to succeed in this claim, a claimant must show, by evidence of this fact, that they were employed with others at "one establishment" at which there was a proposal to dismiss 20 or more persons.
10. Several of the claimants did not attend the hearing of this matter and I was unable to determine, on the basis of the evidence before me, that they were employed at one establishment with the appropriate number of other persons. This was despite the evidence from Ms Galligan.
11. The position of the unsuccessful claimants appears to me to be quite different to that of the successful claimants as the latter appear to have been employed at different places about which I had no evidence put before me and could not conclude that they were likely to have been establishments where there was a proposal to dismiss as redundant 20 or more employees as redundant. No duty to consult under the section 188 arises in relation to the establishment at which they worked.
12. It is for the claimant to prove the establishment at which he or she worked, by evidence. The claims which have not been successful failed because I could not conclude that there was a proposal to dismiss 20 or more employees at their establishment within a period of 90 days. The relevant claimants did not attend the hearing and therefore did not produce any evidence to show that they were employed at the same establishment as the other claimants whose claims succeed. Doing the best I could I considered the place that was given on the ET1, if any, as the establishment from which the relevant claimant worked, and as the appropriate "establishment" for the purposes of the section.
13. In those circumstances their claims for an award under section 189 of the trade union and Labour relations consolidation 1992 must fail.

EMPLOYMENT JUDGE O'DEMPSEY

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON  
21 September 2018