



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4120213/2018**

**Held in Edinburgh on 30<sup>th</sup> April 2019**

**Employment Judge: Sally Cowen**

**Mr A Hamill**

**Claimant  
In Person**

**Crummock (Scotland) Ltd**

**Respondent  
Did not appear and was  
not represented**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

1. The Tribunal declares that the respondent failed to comply with its obligations under section 188 of Trade Union and Labour Relations (Consolidation) Act 1992 and make a protective award under section 189 of that Act in favour of the claimant for a period of 90 days starting on 1<sup>st</sup> June 2018.
2. The respondent is ordered to pay the claimant the total sum of £29,003.67 comprising of the following: a protected award of £18,233.10, unpaid holiday of £514.57, an unfair dismissal basic award of £9,906 and a statutory award of £350 being a total of £29,003.67.

**REASONS**

**Background**

1. This is a claim arising from the claimant's dismissal by the respondent without notice on 1<sup>st</sup> of June 2018 when the respondent company went into receivership. The claimant is a litigant in person and represented himself today. The respondent was not represented and did not appear. Permission has been granted by the Sheriff Court for this litigation to proceed. The claimant has given evidence to the Tribunal in person and produced a Schedule and supporting documents of his loss.

#### The Facts

2. On 1<sup>st</sup> of June 2018 the claimant along with 286 other employees of the respondent was told of their immediate dismissal by the receiver. The Directors of the company including the claimant had had 1½ days' notice that the receiver was being appointed and that jobs would be lost as a result.
3. The claimant has worked as the Safety Health Environment and Quality and HR Director of the company for 13 years, but was not consulted in advance of his dismissal nor was he asked to carry out a consultation process for any other employee in his role as HR Director.
4. On 1<sup>st</sup> of June 2018 the claimant along with the other Directors were told that they could not continue in their roles and awaited instructions from the receiver. Later that day they were taken into a Board Room and told that all staff would be dismissed immediately. A whole staff meeting was then held at which an announcement was made by the receivers. The claimant was paid monthly by the respondents and received his pay up to the 30<sup>th</sup> of May 2018 but did not receive pension contributions for May 2018.

#### Decision

5. Section 188 of TULRCA says that consultation for a collective redundancy must occur where more than 20 employees are being made redundant. The Tribunal finds that the respondent was clearly in breach of this section, on this occasion. No attempt was made to undertake any consultation or to appoint employee representatives. The claimant is therefore entitled to a protective award. This

Tribunal makes a declaration under section 189(2) of TULRCA that the claimant is entitled to a protective award. The protected period is a matter for the Employment Tribunal's discretion and must be made on a just and equitable basis in all the circumstances. Having heard the evidence of the claimant in this matter the Tribunal concludes that the appropriate protected period is 90 days and the Tribunal calculates the award to be £18,233.10.

6. The claimant also claimed unpaid holiday pay. Based on the Tribunal's calculation of a daily net pay of £202.59 the claimant is owed £514.57 net in unpaid holiday pay, having accrued 4.6 days in unpaid holiday. The Tribunal has taken into account the £295.79 the claimant received from the National Insurance Fund under this heading.
7. The claimant also claims an unpaid pension contribution of £1,210. Although this is shown as deducted on his pay slip the claimant believes that this amount has not yet reached his pension fund. As the claimant believes that this will be made in due course by the National Insurance Fund, no award is made under this heading.
8. Finally, the claimant also has claimed unfair dismissal under section 98 of the Employment Rights Act 1996. The claimant acknowledged in his evidence that it was a genuine redundancy situation but claimed for lack of an appropriate procedure under section 98(4), making his dismissal unfair. The Tribunal considers that whilst the lack of procedure was contrary to ACAS guidelines, good industrial practice and indeed statute, even if a consultation had occurred it would have still resulted in a dismissal ultimately. The Tribunal finds that this would probably have occurred between one and two weeks later and therefore the Tribunal awards;
  - a. a basic award of £9,906, being comprised of 13 weeks at 1½ weeks per year at the statutory rate of £508,
  - b. a compensatory award of 2 weeks earnings the equivalent of £2,025.94,
  - c. a statutory award for loss of long service at £350.

Set off against the compensatory award is the £6,096 which the claimant has received for notice period from the National Insurance Fund thus reducing the compensatory award to nil.

Employment Judge:	Sally Cowen
Date of Judgement:	30 April 2019
Entered in register:	02 May 2019
And copied to parties	