



# EMPLOYMENT TRIBUNALS

**Claimant: Mr C Anderson**

**Respondent: Boyd and Co (Metal Workers) Limited (03172103) in Administration**

**Heard at: North Shields**

**On: 21 May 2019**

**Before: Employment Judge Shepherd**

## **Appearances**

**For the claimant: Mr Shevlin**

**For the respondent: No appearance**

## **JUDGMENT**

### **Employment Tribunals Rules of Procedure 2013 – Rule 21**

1 The claimant's complaint that the respondent failed to comply with the requirements of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 succeeds.

2 The respondent is ordered to pay remuneration, calculated in accordance with section 190 of the Trade Union and Labour Relations (Consolidation) Act 1992, to all employees of the respondent dismissed on 10 September 2018.

3 The protected period is 90 days from 10 September 2018.

4 The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply. Regulation 6 imposes on the Respondent a duty to provide information to the Secretary of State. Regulation 7 postpones this award in order to enable the Secretary of State to serve a recoupment notice under Regulation 8. The full effect of Regulation 6, 7 and 8 is set out in the annex to this judgment.

## **REASONS**

1. By a claim presented to the Tribunal on 18 January 2019 the claimant brought a claim for a protective award pursuant to section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992.

**2.** No response has been received. The Administrators have provided consent to the claim being pursued. They have also confirmed that more than 20 employees were made redundant at the same establishment.

**3.** I am satisfied that the claim succeeds and there are no mitigating circumstances and, in accordance with the decision in *Susie Radin Ltd v GMB and others* [2004] IRLR 400, a protective award of 90 days from 10 September 2018 is made.

**Employment Judge Shepherd  
21 May 2019**

**Claimant: Mr C Anderson**

**Respondent: Boyd & Co (Metal Workers) Limited (03172103) (In  
Administration)**

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

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

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 less of:

- (a) 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
- (b) (i) 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 protected period falling before the date described in (a) above; or
- (ii) in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person's earned income for that period was the

same as immediately before the period to which the prescribed element is attributable.

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.