



# EMPLOYMENT TRIBUNALS

**Claimants:** Mr G Stewart and others

**Respondents:** (1) Coilcolor Limited (in Administration)  
(2) Secretary of State for Business, Energy and Industrial Strategy

**Heard at:** Cardiff **On:** 21 May 2018

**Before:** Employment Judge A Frazer  
Mr W Davies  
Mrs M Farley

**Representation:**

**Claimant:**  
Mr G Williams of  
Community Union

**Respondent:**  
No appearance

## JUDGMENT

1. This is the unanimous Judgment of the Tribunal. The Claimants are as follows:-
  - Mr Gary Stewart
  - Mr Kelvin Powell
  - Mr Christopher Croft
  - Mr Ian Waters
  - Mr Dennis Johannsen
  - Mr Thomas Coughlan
  - Mr Andrew Harris
2. For the purposes of s.189(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 the Respondent failed to comply with its duty to consult the Claimants about proposed dismissals by reason of redundancy.

3. The remedies are as follows:-
  - 3.1 We make a declaration that the Claimants' complaints are well-founded.
  - 3.2 We make protective awards to each Claimant for 90 days' gross pay.
4. For the purposes of s.189(3) of the Trade Union and Labour Relations (Consolidation) Act 1992 each individually named Claimant in paragraph 1 above is the beneficiary of the protective award.
5. For the purposes of s.189(4) of the Trade Union and Labour Relations (Consolidation) Act the protected period began on 18 July 2017 and ended on 16<sup>th</sup> October 2017. This is when the recoupment regulations apply. We consider that it is just and equitable, having regard to the seriousness of the Respondent's failure to comply with s.188 TULRCA, for it to last for 90 days.

## **REASONS**

6. The Claimants were employed by Coilcolor Limited (in Administration) at their site in Newport which was formerly part of the Whitehead Steelworks. There were about 50 employees employed at the site in 2016 and the number had dwindled to 45 by the time the company went into administration in 2017. Mr Dean Proctor was the Managing Director of the company.
7. In November 2016 there were two floods at the site which affected production. Prior to this the employees had been on short time working since 11 July 2016. They did not go back to their normal working hours until January 2017. As the year went on however production slowed down.
8. On 11 July 2017 Mr Proctor appeared on BBC News expressing his disappointment at the Welsh Government's response when he had raised the risk of job losses with them. We noted that he had gone outside of the company in order to talk about potential redundancies to the press, but had not first spoken to his own employees directly about the prospects of their redundancy. We also note that he had not held any election to appoint employee representatives in accordance with his obligations. There was no recognised Trade Union. There had been an application for statutory recognition the previous year but that had been rejected.
9. Mr Proctor held an informal meeting on site on 13 July 2017. At that meeting Mr Proctor informed the staff that there were no visits planned for potential partners or buyers on the Thursday or Friday and that they should go home and report back for work on Monday 17 July. They attended work on 17<sup>th</sup> only to be told to come in the following day as no buyer had been found in time to save the company. They attended work the following day and were

informed by Mr Proctor that the company had gone into administration and that their employment was being terminated. Their effective dates of termination were 18 July 2017.

10. A protective award is punitive and not compensatory. The starting point where there has been no consultation at all is the maximum period of 90 days in accordance with **Suzie Radden -v- GMB [2004] IRLR 400**. We find that this was a case where the employee should receive the maximum award of 90 days. We find that there was no consultation at all. The employees were given information in a very piecemeal manner at the very last moment. There was no reason why they ought not to have been consulted well before in circumstances where it must have been apparent to the employer that there were going to be redundancies. We have not heard any evidence from the employer as to why we should reduce the award from 90 days and therefore the Respondent must pay 90 days gross pay to each individual Claimant.

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Employment Judge A Frazer  
Dated: 21 May 2018

REASONS SENT TO THE PARTIES ON

.....8 August 2018.....

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

**NOTE:**

This is a written record of the Tribunal's decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal's Rules of Procedure 2013.