



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr B Jheinga

**Respondent:** Davymarkham Ltd (in administration)

**HELD AT:** Leeds

**ON:** 12 July 2019

**BEFORE:** Employment Judge Brain

## REPRESENTATION:

**Claimant:** In person

**Respondent:** No attendance or representation

# JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The claimant's claim for a protective award pursuant to the Trade Union and Labour Relations (Consolidation) Act 1992 stands dismissed. Pursuant to section 188(1B) of the 1992 Act the claimant has no standing to pursue such a complaint individually as he is an employee in respect of which an independent trade union was recognised by the employer.
2. The respondent made an unlawful deduction from the claimant's wages. The respondent shall pay to the claimant the sum of £5,916 being the gross amount due. The claimant shall give credit for the sum of £1,956 received by him from the National Insurance fund. This leaves a balance due to the claimant in the sum of £3,960 gross.
3. The claimant is entitled to compensation for accrued annual leave untaken at the effective date of termination of the contract of employment. The respondent shall pay to the claimant the sum of £2,400 being the gross sum due to the claimant. The claimant shall give credit in the sum of **£896.27** being the amount received by him from the National Insurance fund. The respondent shall pay to the claimant the balance in the sum of **£1,504.73** gross.
4. The claimant's complaint of breach of contract succeeds. The respondent was in breach of contract by failing to pay to the claimant expenses incurred by him

in the course of his employment in the sum of £1,597.31. This sum shall be paid to the claimant by the respondent.

5. All of the payments referred to in paragraphs 2, 3 and 4 of this Judgment shall be paid to the claimant by the respondent on or before 26 July 2019.

### Note

*The claimant brought a claim for a protective award pursuant to the 1992 Act. He had no status so as an individual claim to do so by virtue of the provision in section 188(1B) of the 1992 Act. This provides that a complaint for a protective award may only be brought by an independent trade union in circumstances where such a trade union is recognised by the employer. This was the situation in this case. As the claimant falls within the description of employees in the Judgment issued in case number 1805671/2018 (Unite the Union v Davymarkham Ltd (in administration)) he will benefit from that Judgment and is entitled to be paid 90 days' remuneration pursuant to it. There is no requirement for an individual Judgment to be issued in the claimant's name for the protective award and indeed it is legally impermissible so to do as the only person with standing to bring the claim is Unite the Union.*

Employment Judge Brain  
Corrected Judgment Dated 22 July 2019

Note - Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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