



EMPLOYMENT TRIBUNALS

Claimants: Mr C Jenkins
Mr J Rastrick
Mr N Rowing
Mr R Rickard

Respondents: Canute Engineering Limited (in Voluntary Liquidation)
Canute Logistics Limited (In Voluntary Liquidation)
Canute Haulage Limited (In Voluntary Liquidation)

Heard at: Nottingham **On:** Wednesday 14 August 2019

Before: Employment Judge Hutchinson (sitting alone)

Representatives

Claimants: No Appearance

Respondents: No Appearance

JUDGMENT

The Employment Judge gave judgment as follows: -

1. The complaints that the Respondents failed to comply with the requirements of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 are well founded.

2. The Employment Judge makes a protective award in respect of all employees of the Respondents at their premises at Elkesley Business Park, Elkesley, Retford, Nottinghamshire DN22 0QL who were dismissed as redundant on or after 21 December 2018 and orders the Respondents to pay to those employees' remuneration for a protective period of 90 days beginning on 21 December 2018.

REASONS

Claims and Issues

1. The Claimants presented their claims to the Tribunal on the date set out below and were all employed at the Respondents' premises at Elkesley Business Park, Elkesley, Retford, Nottinghamshire DN22 0QL. The Claimants' details are set out below.

Craig Jenkins

2. Craig Jenkins was employed by Canute Engineering Limited as an HGV Technician and presented his claim to the Tribunal on 17 March 2019. He had been employed by Canute Engineering since 29 November 2010.

Raymond Rickard

3. Mr Rickard had been employed by Canute Logistics Limited as an HGV Driver. He had worked for them since 21 November 2012. He presented his claim on 24 January 2019.

Neil Rowing

4. Mr Rowing had been employed by Canute Haulage Limited as an HGV Driver. He presented his claim on 15 February 2019.

John Rastrick

5. Mr Rastrick had been employed by Canute Logistics Limited as an HGV Driver since 1 February 2015. He presented his claim to the Tribunal on 14 February 2019.

6. All the Claimants were dismissed on 21 December 2018 and when they presented their claims they did so with early conciliation certificates. All the claims were in time.

7. All the claims were for a protective award. Initially Canute Haulage Limited was in administration but subsequently it went into Voluntary Liquidation. The claims were all served on the Respondents on 29 April 2019 and the hearing today was listed to deal with the claims. All the claims were consolidated to be heard together.

8. Subsequently the Secretary of State was informed about the claim.

9. No response was received from the three Respondents who are all part of the same group.

10. The Secretary of State, Business, Energy and Industrial Strategy presented a response on 22 May 2019 which sets out the Secretary of State's position. It neither supports nor resists the claims.

11. None of the Claimants attended the hearing, nor did the Secretary of State or the Respondents. I decided to proceed with the matter on the papers before me which included correspondence received from the Claimant's because of information requested by the Tribunal.

12. The allegations by the Claimants is that the Respondents failed to engage in proper consultation with them under the provisions of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULR(C)A"). They say that they were simply told on 21 December 2018 they were all dismissed.

13. Under Section 188 TULR(C)A the employer is required to consult appropriate representatives of employees affected by the decision to dismiss. If they recognise a trade union they are obliged to consult that trade union. If there is no recognised trade union the employer is obliged to consult either an existing body of employee representatives or one appointed by those affected by the decision. Employees can only bring a claim themselves if there is no recognised trade union or elected employee representatives.

14. If I am satisfied that the Claimants were not consulted and they had no representatives (either trade union or elected) then I will need to consider the number of days to make that award for.

Evidence

15. I have not heard any evidence at the hearing today.

Facts

16. The Respondents are all part of the Canute Group. All the Claimants were employed at Elkesley Business Park, Elkesley, Retford, Nottinghamshire DN22 0QL in their various capacities described above.

17. The Canute Group ceased operations on 21 December 2018. Approximately 120 staff members moved to customers of the group but the remainder were made redundant.

18. I am satisfied that more than 80 people were made redundant on the same day at that site. All the drivers, fitters and office staff were called to a meeting at 4:00 pm on Friday 21 December 2018. They were seen by the Insolvency Practitioners in small groups and informed that from that time the company were in administration and they were all made redundant with immediate effect.

19. They were not given any notice or paid any notice pay or redundancy pay by the company. This has had to be claimed from the Insolvency Service.

20. Nationwide more than 1,000 employees were made redundant.

21. I am satisfied that there was no recognised trade union and no elected representatives.

The Law

22. Section 188 of the TULR(C)A provides:

“(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissal or may be affected by measures taken in connection with those dismissals: -

(1a) The consultation shall be begin in good time and in any event:

(a) Where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days and;

(b) Otherwise at least 30 days;

Before the first of the dismissals takes effect.

(2) The consultation shall include consultation about ways of: -

(a) avoiding the dismissals;

(b) reducing the numbers of employees to be dismissed, and;

(c) mitigating the consequences of the dismissals;

And should be taken by the employer with a view to reaching agreement with the appropriate representatives.”

23. If I am satisfied that the employer has failed to comply with the requirement Section 189 provides:

“(1) Where an employer has failed to comply with the requirement of Section 188 or Section 188A, a complaint may be presented to an Employment Tribunal on that ground.

(2) If the Tribunal finds the complaint well founded it shall make a declaration to that effect and may also make a protective award.

(4) The protected period: -

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and;

(b) is of such length as the Tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer’s default in complying with any requirement of Section 188;

But shall not exceed 90 days.”

24. As the Secretary of State says a claim for a protective award may only be brought by the appropriate representatives where there are any. An employee may bring the claim on his or her own behalf only if there is no recognised trade union or elected representative or the claim relates to the employer’s failure to arrange the election of employee representatives.

25. The Secretary of State has also referred me to the authorities of:-

- **USDAW and Another v WW Realisation 1 Limited (In Liquidation and Others)** UK EAT/548/12
- **USDAW v Ethel Austin Limited** (In Administration) UK EAT/547/12

26. As to the length of the period in respect of the protective award I referred myself to the case of **Susie Radin Limited v GMB and Others** [2004] ICR 893. The award is designed to be punitive rather than compensatory. As found in that case there were several factors that I should have in mind in applying Section 189. These are: -

- The purpose of the award is to provide a sanction
- I have a wide discretion to do what I consider just and equitable but I should focus on the seriousness of the employer's default
- Defaults vary in seriousness
- Deliberateness of any failure may be relevant as also may be the availability of legal advice
- A proper approach where there has been no consultation is to start with the maximum period of 90 days and reduce it only if there are mitigating circumstances justifying a reduction to an extent which the Tribunal considers appropriate

My Conclusions

27. I am satisfied in this case that there was no recognised trade union.

28. I am also satisfied that there were no elected representatives.

29. More than 80 employees were dismissed at the Respondent's site at Elkesley on 21 December 2018 I am satisfied that the Respondents carried out no consultation whatsoever and simply dismissed the Claimants and all the other employees at the site where they worked without any discussion on 21 December 2018.

30. In the circumstances of this case bearing in mind the timing and the complete disregard the Respondents had for its employees, many of whom had worked for the company for a considerable period, the award in this case should be the maximum available, namely 90 days.

31. The compensation will be subject to recoupment.

Employment Judge Hutchinson

Date 6 September 2019

**Case No: 2600209/2019
2600589/2019
2600552/2019
2600233/2019**

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE