



EMPLOYMENT TRIBUNALS

Claimant:
Mr I Samoila

v

Respondents:
**Burgess Marine Limited (In
Administration) (1)**
**The Secretary of State for
Business, Energy and
Industrial Strategy (2)**

Heard at: Reading

On: 3 September 2019

Before: Employment Judge Hawksworth (sitting alone)

Appearances

For the Claimant: No attendance or representation

For the First Respondent: No attendance or representation

For the Second Respondent: No attendance or representation

JUDGMENT

1. The respondent breached its duties to the claimant under s188 of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. The claimant's claim for a protective award succeeds.
3. The claimant is awarded a protective award of 90 days' pay amounting to £12,152.06.

REASONS

1. The claimant's claim was presented on 5 March 2018 after a period of Acas early conciliation from 1 March 2018 to 1 March 2018. The claimant's claim is for a protective award under section 188/189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act).
2. The claimant did not attend the hearing. He says in his ET1:

- 2.1. he worked as a Welder Fabricator for the first respondent from 14 December 2015 until his dismissal for redundancy on 13 December 2017;
 - 2.2. he worked at HMNB at the Portsmouth and Porchester sites where more than 20 employees were dismissed for redundancy;
 - 2.3. he was not informed and consulted about the redundancy contrary to section 188 of the Act.
3. The first respondent is in administration. An ET3 for and on behalf of the first respondent was presented on 5 April 2018 by Mr Danny Dartnail, one of the joint administrators. In the ET3 Mr Dartnail said that the first respondent defended the claim. He said that the claimant's salary was £944.95 per week. He said that the employees at five of the first respondent's sites including Porchester were made redundant immediately on the appointment of the administrators. However, it was his understanding that a protective award was not applicable as there were only 18 employees at the Porchester site.
 4. The second respondent is the Secretary of State. The second respondent's ET3 was presented on 30 January 2019 and says that the Secretary of State cannot comment on the extent to which, when proposing to make 20 or more employees redundant, the claimant's employer failed to consult representatives of the affected employees.
 5. On 2 September 2019 Mr Dartnail sent a further email to the tribunal. He said:

"I confirm that neither the Company nor the Joint Administrators have any objection to [the claimant] proceeding with a claim against the Company for a protective award. We will therefore not be contesting this matter and do not intend to attend tomorrow's hearing."
 6. Therefore, the claimant's evidence is now uncontested and I accept his evidence. I am satisfied that the first respondent was under a duty to comply with the requirements of section 188 and that it failed to do so. The claimant is entitled to a protective award.
 7. I conclude that it is just and equitable to make an award for a protected period of 90 days. This amounts to 12.86 weeks. The claimant's weekly pay was £944.95. The total protective award is £12,152.06.

Employment Judge Hawksworth

Date: 3 September 2019

Judgment and Reasons

Sent to the parties on: 24 / 9 / 2019

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For the Tribunal Office

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