

Case Numbers: 1601216/2018, 1601217/2018, 1601219/2018, 1601220/2018,  
1601232/2018, 1601238/2018, 1601241/2018, 1601259/2018, 1601385/2018,  
1601383/2018, 1601384/2018 & 1601261/2018



## EMPLOYMENT TRIBUNALS

**Claimants:**

- (1) Mr S Lane
- (2) Mr R Rumsey
- (3) Mr K Woodward
- (4) Mr G Barrett
- (5) Mr P Bird
- (6) Mr L Dobbs
- (7) Mr P O'Neill
- (8) Mr J Elmore
- (9) Mr R Crompton
- (10) Mr C Webber
- (11) Mr G Stokes
- (12) Miss S Phillips

**Respondents:**

- (1) City Engineering Systems (Bristol) Limited
- (2) The Secretary of State for Business, Energy & Industrial Strategy

**Heard at:** Cardiff      **On:** 18<sup>th</sup> July 2019

**Before:** Employment Judge Howden-Evans (sitting alone)

### Representation

Claimants: Sophie George, solicitor

Respondent:

- (1) No attendance
- (2) Written submissions attached to ET3 response form

## RECONSIDERED JUDGMENT

1. For the purposes of Section 189(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULCRA"), I find that in breach of Section 188 TULCRA, the respondent failed to comply with its duty to consult employee representatives (in the absence of a trade union being recognised by the respondent).

2. The remedies under Section 189(1)(c) TULCRA are as follows:

2.1. I make a declaration that, as affected employees, the claimants' complaints are well founded;

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2.2. I make a protective award.

3. For the purposes of Section 189(3) TULCRA, the former employees of the respondent covered by the protective award are each of the claimants named in these proceedings, as each claimant is presenting their complaint as an individual affected employee (see *Independent Insurance Company Ltd v Aspinall* 2011 ICR 1234).
4. For the purposes of Section 189 (4) TULCRA, the protected period began on 1<sup>st</sup> June 2018. I consider it just and equitable, having regard to the seriousness of the respondent's failure to comply with Section 188 TULCRA, for it to last 90 days.

## **REASONS**

1. Following a period of ACAS EC conciliation, by ET1 claim forms presented on 28<sup>th</sup> September 2018, the claimants contended (among other matters), that contrary to Section 188 TULRCA, the respondent had failed to comply with its duty to consult and sought a protective award under Section 189 TULRCA.
2. By letter of 8<sup>th</sup> November 2018, the tribunal confirmed that as the first respondent company was in administration, proceedings could not be continued without the consent of the Administrator.
3. By ET3 forms dated 13<sup>th</sup> November 2018, the second respondent confirmed it was neither supporting nor resisting the claimants' claims and set out matters the Employment Tribunal should have regard to in considering these claims. I am grateful to the second respondent for this written submission, which I have considered in reaching this decision.
4. By letter of 29<sup>th</sup> November 2018, Susan Clay, joint administrator confirmed the administrators had no objection to the claimants' proceedings.
5. By ET3 forms dated 10<sup>th</sup> December 2018, the first respondent confirmed it was not contesting these claims.

### Evidence

5. I accept the unchallenged evidence of Stephen Lane, Robert Rumsey and Karl Woodward. Consequently, I find:
  - 5.1. There was no union recognised by the respondent for collective bargaining purposes.
  - 5.2. There was no attempt to arrange employee representative elections.
  - 5.3. There was no consultation with any employee representative acting on behalf of the affected individuals at any time.
  - 5.4. On 1<sup>st</sup> June 2018, without any prior warning, consultation or discussion, the claimants were told they were being made redundant with immediate effect

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as the first respondent company was going into administration.

5.5. The first respondent made 19 employees redundant on 1<sup>st</sup> June 2018; a further employee was made redundant on 4<sup>th</sup> June 2018 and further 2 employees were made redundant on 8<sup>th</sup> June 2018.

5.6. All of these 22 employees had previously worked at the first respondent's Cardiff site.

### Analysis and Conclusions

6. It is sad when a company goes into administration and has to cease trading in a particular location. The closure of the respondent company's Cardiff site has been a loss to those who worked there and their families and communities. No doubt it tried hard to keep the site open. However, a company cannot fail to engage in discussions and consultation with trade unions, or in their absence, employee representatives.
7. A protective award is punitive and not compensatory. Where there has been no consultation at all it is appropriate to start at the maximum period of 90 days; see the leading case of *Susie Radin v GMB* [2004] IRLR 400.
8. I have been mindful of the EAT's decision in *Lancaster University v UCU* [2011] IRLR 4, that I should place a serious breach of the duty to consult at the top of the protective award and then look for mitigation. In this case, with no evidence from the respondent company, I have found no mitigating factors.
9. Accordingly, the appropriate period for the protective award is 90 days and each of the Claimants is awarded 90 days gross pay.

## **Calculations**

### **Mr S Lane**

Mr S Lane's protective award amounts to **£6,984.90** (£77.61 gross daily wages x 90 days)

### **Mr R Rumsey**

Robert Rumsey's protective award amounts to **£5,801.53** (£64.46 gross daily wages x 90 days)

### **Mr K Woodward**

Mr K Woodward's protective award amounts to **£8,824.14** (£98.05 gross daily wages x 90 days)

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**Mr G Barrett**

Mr G Barrett's protective award amounts to **£8,932.50** (£99.25 gross daily wages x 90 days)

**Mr P Bird**

Mr P Bird's protective award amounts to **£9,076.50** (£100.85 gross daily wages x 90 days)

**Mr L Dobbs**

Mr L Dobbs's protective award amounts to **£10,941.30** (£121.57 gross daily wages x 90 days)

**Mr P O'Neill**

Mr P O'Neill's protective award amounts to **£8,586** (£95.40 gross daily wages x 90 days)

**Mr J Elmore**

Mr J Elmore's protective award amounts to **£6,760.80** (£75.12 gross daily wages x 90 days)

**Mr R Crompton**

Mr R Crompton's protective award amounts to **£9,778.50** (£108.65 gross daily wages x 90 days)

**Mr C Webber**

Mr C Webber's protective award amounts to **£8,824.50** (£98.05 gross daily wages x 90 days)

**Mr G Stokes**

Mr G Stokes's protective award amounts to **£14,407.20** (£160.08 gross daily wages x 90 days)

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**Miss S Phillips**

Miss S Phillips's protective award amounts to **£8,497.80** (£94.42 gross daily wages x 90 days)

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Employment Judge Howden-Evans

15<sup>th</sup> October 2019

RECONSIDERED JUDGMENT SENT TO THE PARTIES ON

.....16 October 2019.....

.....  
FOR THE TRIBUNAL OFFICE