



EMPLOYMENT TRIBUNALS

Claimants: Mr P Mailey & others (See Schedule)

Respondent: Quinns Belfast (2009) Ltd
(In creditors' voluntary liquidation)

JUDGMENT

Employment Tribunals Rules of Procedure 2013, Rule 21

The respondent not having complied with an Unless Order made on 8 November 2019 by 22 November 2019 and not having indicated an intention to continue to resist the claims, and on the information before the Regional Employment Judge particularly in the witness statement of the claimants,

The judgment of the Tribunal is that:

- 1) The claims are all well-founded in that the respondent failed to comply with its statutory collective consultation obligations under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 before proposed redundancy dismissals took effect at its establishment at Unit 16, Spinouse Road, Liverpool L24 1YA on 9 January 2019 in respect of the whole workforce employed there.
- 2) Under Section 189(1)(d), (2), (3) and (4) of the 1992 Act, the Tribunal makes a protective award in respect of the each of the claimants named in the schedule and the respondent is ordered to pay remuneration to them for a protected period of 90 days beginning on 9 January 2019.
- 3) The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.

REASONS

1. By claim forms presented on 28 March 2019, 9 April 2019, 30 April 2019 and 10 May 2019, the claimants all claimed a protective award in respect of breach of the collective consultation requirements.

2. No responses in time were presented to the claims by the respondent but responses presented late on 28 May, 2 July, 8 July and 8 August 2019 resisting all the claims were accepted with extensions of time. Whilst acknowledging that there had been no consultation prior to the first redundancy dismissal taking place on 9 January 2019, the respondent raised various arguments against the making of protective awards or the making of maximum 90-day awards.

3. However, although there was cooperation between the parties initially for preparation of a bundle before the hearing, the respondent's representative came off the record on 21 November 2019 after the respondent had been put into creditors voluntary liquidation on 21 October 2019. The respondent failed to comply with an Unless Order to provide witness statements and gave no further indication that it was continuing to resist the claims.

4. On a full consideration of the file of proceedings, with witness statements provided by the claimants Mr W Todd, Mr K Barry and Mr J Smyth, it was possible to issue this Judgment under Rule 21 without a hearing. The parties were told of the Tribunal's intention to do so by letter sent on 3 December 2019 postponing the hearing then listed on 6 December 2019.

5. On the information provided, the Tribunal makes the following findings. The respondent carried on business employing more than 20 employees at Unit 16, Spinouse Road, Liverpool L24 1YA. This was the English site and operation, which opened in late 2016 or early 2018, as a second base of a larger printing and finishing business based in Belfast, Northern Ireland. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce. The overall number of employees is unclear, since Mr Smyth speaks of about 90 and the responses name variously about 38 employees and "fewer than 70".

6. Whilst a meeting was held with almost all members of the workforce on 9 January 2019 following an invitation to the meeting dated 7 or 8 January 2019, there was no proper warning or notice given to or consultation with the workforce about redundancy dismissals. No employee representatives had been elected or appointed for any such consultation. Effectively, since the respondent had lost contracts, the Liverpool site was closed with redundancy dismissals of the whole Liverpool workforce being put into effect, the first taking place that day and others through to 18 January 2019. It appears, however, that the main Belfast operation continued trading on into 2019.

6. In these circumstances, the respondent was in breach of its collective information and consultation obligation under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of each claimant named in the schedule for the maximum protected period of 90 days commencing on 9 January 2019.

7. The respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the first

respondent must comply with the provisions of Regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:

- (a) the name, address and national insurance number of every employee to whom the award relates; and
- (b) the date of termination of the employment of each such employee.

7. The respondent will not be required to make any payment under the protective awards made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the first respondent.

Regional Employment Judge Parkin

Date: 18 December 2019

JUDGMENT SENT TO THE PARTIES ON
23 December 2019

FOR THE TRIBUNAL OFFICE

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Claimants: Mr P Mailey & Others

Respondent: Quinns Belfast (2009) Ltd (In Voluntary Liquidation)

**ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The respondent is under a duty to give the Secretary of State the following information in writing: (a) the name, address and National Insurance number of every employee to whom the protective award relates; and (b) the date of termination (or proposed termination) of the employment of each such employee.

That information shall be given within 10 days, commencing on the day on which the Tribunal announced its judgment at the hearing. If the Tribunal did not announce its judgment at the hearing, the information shall be given within the period of 10 days, commencing on the day on which the relevant judgment was sent to the parties. In any case in which it is not reasonably practicable for the respondent to do so within those times, then the information shall be given as soon as reasonably practicable thereafter.

No part of the remuneration due to an employee under the protective award is payable until either (a) the Secretary of State has served a notice (called a Recoupment Notice) on the respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the respondent in writing that no such notice is to be served.

This is without prejudice to the right of an employee to present a complaint to an Employment Tribunal of the employer's failure to pay remuneration under a protective award.

If the Secretary of State has served a Recoupment Notice on the respondent, the sum claimed in the Recoupment Notice in relation to each employee will be whichever is the less of:

- (a) the amount (less any tax or social security contributions which fall to be deducted therefrom by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Secretary of State receives from the employer the information referred to above; OR
- (b) (i) the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or

income support to the employee for any period which coincides with any part of the protected period falling before the date described in (a) above; or

- (ii) in the case of an employee entitled to an award of universal credit for any period (“the UC period”) which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person’s earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

The sum claimed in the Recoupment Notice will be payable forthwith to the Secretary of State. The balance of the remuneration under the protective award is then payable to the employee, subject to the deduction of any tax or social security contributions.

A Recoupment Notice must be served within the period of 21 days after the Secretary of State has received from the respondent the above-mentioned information required to be given by the respondent to the Secretary of State or as soon as practicable thereafter.

After paying the balance of the remuneration (less tax and social security contributions) to the employee, the respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the respondent as a debt to the Secretary of State, whatever may have been paid to the employee, and regardless of any dispute between the employee and the Secretary of State as to the amount specified in the Recoupment Notice.

Multiple Schedule

Case Number Case Name

2402876/2019 Mr Paul Mailey -v- Quinns Belfast (2009) Ltd (In Voluntary Liquidation)
2402877/2019 Mr Kieron Barry -v- Quinns Belfast (2009) Limited
2402878/2019 Mr Ian Bell -v- Quinns Belfast (2009) Limited
2402879/2019 Mr Leslie Bowen -v- Quinns Belfast (2009) Limited
2402880/2019 Miss Francine Davies -v- Quinns Belfast (2009) Limited
2402881/2019 Mr David Ellis -v- Quinns Belfast (2009) Limited
2402882/2019 Mr Steven Flanagan -v- Quinns Belfast (2009) Limited
2402883/2019 Mr Stuart Hall -v- Quinns Belfast (2009) Limited
2402884/2019 Mr Jonathan Kavanagh -v- Quinns Belfast (2009) Limited
2402885/2019 Mr Stephen O'Hare -v- Quinns Belfast (2009) Limited
2402886/2019 Mr Joseph Smuth -v- Quinns Belfast (2009) Limited
2402887/2019 Mr Todd Walter -v- Quinns Belfast (2009) Limited
2402888/2019 Mr Allan Walker -v- Quinns Belfast (2009) Limited
2402889/2019 Mr Paul Williams -v- Quinns Belfast (2009) Limited
2405475/2019 Ms Linda Foster -v- Quinns Belfast (2009) Ltd (In Voluntary Liquidation)
2405549/2019 Ms Ellie Peers -v- Quinns Belfast (2009) Limited
2406164/2019 Ms Jacqueline Crompton -v- Quinns Belfast (2009) Limited
2406165/2019 Mr Andrew Morris -v- Quinns Belfast (2009) Limited
2406166/2019 Mr Vincent Lopez -v- Quinns Belfast (2009) Limited
2406167/2019 Mr James Crompton -v- Quinns Belfast (2009) Limited
2406168/2019 Mr Jack Crompton -v- Quinns Belfast (2009) Limited