EMPLOYMENT TRIBUNALS

Claimant: Community Union

Respondent: Betafence Limited

HELD AT: Sheffield **ON: 3 and 4 December 2019**

BEFORE: Employment Judge Little
Ms S D Sharma
Mr D W Fields

REPRESENTATION:

Claimant: Mr D Stewart of Counsel
Respondent: Mr S Flynn of Counsel
(instructed by EEF Limited)

JUDGMENT having been sent to the parties on 17 December 2019 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. These reasons are given at the request of the claimant union in an email also dated 17 December 2019.
2. **The complaint**

   The claimant union sought a protective award under the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992, section 189.

3. **The issues**

   3.1. Was there a breach of section 188(2) of the 1992 Act because the respondent did not engage in consultation with a view to reaching agreement with the claimant union and in particular on the question of enhanced redundancy pay?

   3.2. Was there a breach of section 188(5) if the disclosure of information under section 188(4) was not sent to the claimant's head or main office (but instead to a local office)?

   3.3. If there was one or more breach, should the Tribunal make a protective award and if so, for what period?

   On enquiry from Mr Flynn, Mr Stewart confirmed that the affected employees were the blue collar workers (otherwise described as manual workers), this being the description of those whom the union represented as given in paragraph 7 of the particulars of claim.

4. **Evidence**

   The claimant's evidence has been given by Mr C Betts-Foster, branch secretary and Mr M Cooke, full-time regional organiser. The claimant union had also served a witness statement made by Mr S Scorer, national secretary of the union, but we were told that he would not in fact be giving evidence and in those circumstances we have not read his statement. We understand however that Mr Scorer was present for parts of the two day hearing before us.

   The respondent's evidence was given by Mr A Dawson, plant manager and Mr J Young, formerly an HR manager with the respondent.

5. **Documents**

   The parties had agreed a bundle of documents which ran to 137 pages.

6. **The facts**

   6.1. On or about 27 September 2018 the respondent issued an announcement to all it's staff. A copy of this document is at page 76. It explained that the respondent's UK operation had experienced significant long-term declines in volume and profitability. As a result the respondent was considering closing it's manufacturing and warehousing operations in the UK and withdrawing from the industrial mesh and agriculture markets in the UK. The announcement went on to state that a consultation process would be starting that day. The announcement concluded by referring to a proposed incentive scheme "to recognise your ongoing commitment during the period while we are in consultation".

   6.2. It was intended that the respondent's site at Shepcote Lane in Sheffield would close. That site had made significant losses over the preceding four years – 10 million pounds in 2017 alone.

   6.3. On or about 2 October 2018 there was an informal meeting between Mr Betts-Foster, Mr Keith Hazlewood (at that time a full-time union officer) and Mr Dawson the plant manager at that time for the Shepcote Lane site. During the course of that meeting (in respect of which no notes were taken) Mr Dawson gave the other two attendees a fuller explanation for the reasons

for the proposal to close the site. Mr Dawson's evidence to us was at this stage he still hoped that a solution could be found to save the site.

6.4. On 3 October 2018 the respondent submitted to the Insolvency Service the form to give advance notification of redundancies (HR1). A copy of that document is at pages 70 to 71 in the bundle. On the basis that the proposal was to close the site, among the redundancies thereby created would be 54 manual employees.

6.5. On the same date, 3 October, Mr Dawson wrote to Mr Betts-Foster and a copy of that letter is at pages 73 to 74. By this letter the respondent purported to disclose the required information as set out in section 188(4) of the Act. The respondent accepts that it did not also send that letter to the union's head or main office. Among other information given was that the respondent proposed to pay to those employees who were made redundant their statutory redundancy payment. The letter concluded with an invitation to attend a meeting on 8 October 2018 with all the employee representatives to commence the consultation process.

6.6. That meeting duly took place and the respondent's note of it is at page 83 to 87. A note was also taken by the representatives and those notes are at pages 88 to 90. The company representatives were Mr Dawson and Mr Young, who was described as external HR consultant. Mr Young, from whom we have heard explained that he had been employed by the respondent as their human resources manager from 2008 to January 2013, but had thereafter provided HR advice on a consultancy basis until September 2018. However following a suggestion made by Mr Betts-Foster at the 2 October meeting, Mr Young was brought back to assist in the redundancy consultation exercise. Various employee representatives were at this meeting including Mr Betts-Foster and Mr Hazlewood. Mr Dawson gave a presentation and that included the PowerPoint slides which are in the bundle at pages 77 to 82. Those slides set out, among other things, a proposed production incentive scheme. The so called production bonus would be 50% of an individual's weekly pay and there were five criteria. Mr Dawson explained to us that the purpose behind the proposed bonus was to ensure that there would be an optimal level of production, to ensure there was no drop off in quality and, he frankly indicated, to reduce the risk of sabotage.

6.7. During the course of the 8 October meeting Mr Hazlewood asked if the bonus could be increased to 60% of the weekly wage but Mr Dawson said that that would not be possible. Despite this there was a subsequent request by the representatives that the incentive scheme be increased to 100% and, despite having rejected the 60% idea Mr Dawson is recorded as saying that he would consider that.

6.8. In the representative's notes of the 8 October meeting (page 88) there was a suggestion that the redundancy package should not be limited to the statutory scheme and that instead there should be no limit on weekly pay, no limit on length of service (by which it was meant that periods of temporary employment should be included in the calculation) and that the payments should be on the basis of two week's pay, rather than one, for each year worked.

6.9. A further consultation meeting took place on 15 October 2018. Again there are notes by the respondent (starting at page 93) and notes by the representatives (starting at page 99). Among the employee representatives were Mr Betts-Foster and Mr Hazlewood, but also on this occasion Mr Cooke, another full-time officer with the union. Mr Dawson is minuted as saying that he had been asked to reconsider the statutory redundancy payments and the production incentive and he had done so but the redundancy payments would remain statutory and the production incentive would remain at 50% (page 94). Mr Cooke expressed disappointment at this. He said that although the company had presented a proposal, he felt that it would be definitely implemented. Mr Dawson said that it remained a proposal and that the company would continue to listen to suggestions from the representatives (page 95). Mr Betts-Foster said that a closure was a different set of circumstances and that when other plants had been closed there had been redundancy uplifts, including double payments in Wigan. Mr Cooke asked Mr Dawson if he had the authority to make decisions on enhanced packages and a counter proposal was put forward whereby redundancy payments would have no limit on length of service and no cap on weekly pay. It was also suggested that the bonus should be increased to 100%. Mr Dawson said that he did have authority but would need time to consider what had been said. At this stage the meeting adjourned. On the meeting reconvening the minutes indicates that Mr Dawson stated as follows:

"I have thought about what has been proposed, firstly there have been no enhanced redundancy payments since 2012 and it could be argued that the closure of base products was last year (sic) was in effect a closure as more than 100 people left the business during that restructuring. The business is losing circa £0.5m a month. With regard to the bonus, this was meant to be a goodwill gesture which also secured productivity for the company in a difficult time, it wasn't intended as an offer to be negotiated, it will therefore be implemented from today at a rate of 50%."

6.10. During the 15 October meeting, Mr Cooke again asked Mr Dawson to reconsider the terms of the bonus scheme and the redundancy package. At this stage there was a further adjournment. On the meeting reconvening Mr Dawson said that on the bonus issue he would now be prepared to backdate the payment to two weeks prior and to keep paying the bonus until the close of individual consultation. On that basis Mr Dawson believed that there was potential for employees to earn more than £1000 from the bonus (Mr Cook had suggested a flat rate of £1000). In respect of the enhanced redundancy request Mr Dawson said that he would write to Mr Cooke about this (pp 96-97). We should add that we asked Counsel whether any such letter was within the bundle and we were told it was not.

6.11. The third consultation meeting took place on 24 October 2018 and the notes are at pages 101 to 106. Mr Dawson indicated that the redundancy proposal would remain as per the statutory scheme. Mr Cooke said that the union could not agree to the proposal of statutory pay only and that would result in a 'failure to agree' being formally lodged. Mr Betts-Foster asked Mr Dawson why he was not considering the enhancements. Mr Dawson explained that he did not feel that the enhancement was necessary and the

rationale remained as indicated at earlier meetings. Mr Cooke said that the union and representatives felt that the meetings had not been meaningful due to lack of explanations and answers. Mr Dawson explained that the reason for there being a number of meetings was due to the statutory pay being a sticking point. Mr Dawson was able to confirm following an enquiry by Mr Betts-Foster that employees who had begun on a temporary basis would have that period of employment included within their calculation. Mr Cooke reiterated the request for enhanced payments and Mr Dawson sought clarification of what was being asked for (page 105). The minuted response from Mr Cooke was "two week's wages for every year of service, no cap on either. MC reiterated there will be no movement on their side".

6.12. On 26 October 2018 there was an email exchange between Mr Dawson and Paul Skertchly. Mr Skertchly is the respondent's chief financial officer. A copy of these emails is on page 128 of the bundle. In Mr Dawson's email to Mr Skertchly he refers to being aware "that Dino and Stefano (Dino Constandinos and Stefano Di-Marche, respectively the interim operations consultant and group HR director) are considering enhancing the redundancy payment at Sheffield or at the very least discussing the rationale for enhancement with the exec team". Mr Dawson asked Mr Skertchly to clarify the business position. He went on to say that he had a meeting with the unions on the following Monday and that that was the only sticking point. Mr Skertchly's reply to Mr Dawson was in these terms:

"Andy, as indicated on the call yesterday we will not be making any offer of an enhanced package in Sheffield beyond the statutory entitlement. There are several reasons for this including:

- *Consistency – all previous redundancies in Sheffield have been statutory only.*
- *Fairness – nobody in the past received any enhanced redundancy pay outs in Sheffield.*
- *Affordability – the whole reason for the redundancies is the cash losses suffered in Sheffield so it is not right or sensible to pay out more than is necessary"*

6.13. The meeting to which Mr Dawson had alluded took place on Monday 29 October 2018. Notes of that meeting are at pages 107 to 110. Mr Dawson explained that since the last meeting the respondent group executive team had met following the request by Mr Betts-Foster for reconsideration of the enhanced redundancy packages. Mr Dawson then went on to reiterate Mr Skertchly's rationale for the decision that redundancy pay would remain statutory (in other words as set out in the email referred to above). Mr Dawson said that he was aware that Mr Betts-Foster had raised the issue directly with Dino Constandinos and Stefano Di-Marche. Mr Cooke again said that the union would raise a failure to agree. Mr Dawson is recorded as commenting that the process was one of consultation and not a negotiation (see page 108).

6.14. The fifth consultation meeting took place on 5 November 2018 and the minutes (which erroneously refer to it as the fourth meeting) are at pages 110(a) to 110(h). There are also notes taken by the representatives and these are at pages 110(i) to 110(j). The representative's note (at

page 110(i)) notes that the redundancy package was not discussed at this meeting because it was now "at a higher level" and there was going to be a failure to agree meeting on 19 November.

6.15. Mr Betts-Foster's evidence was that following the 5 November meeting he went through his union papers and found a copy of what he describes as the 2012 agreement. A copy of that document is at pages 67 to 69 in the bundle. It is titled "Variations to current terms and conditions of employment" and it appears to date from 26 February 2012. Mr Betts-Foster was a signatory to that agreement. We also heard evidence from Mr Young in respect of this agreement. He had been involved in the negotiations which led to it. He told us that the context was a restructure which took place in 2012 at which time the company was also losing money. There had hitherto been a contractual redundancy package which permitted redundancy payments to be calculated on the basis of full salary rather than the statutory cap and which also included a 50% uplift to statutory redundancy payments so calculated. Against the backdrop of the risk that a site closure could take place in 2012, the aim had been to improve efficiencies and that included reaching an agreement to revise certain terms and conditions, which included the removal of the beneficial redundancy terms. Mr Young told us that because there was a genuine fear that the site would close in the near future it was agreed to insert a clause into the 2012 agreement which provided that if that occurred within 12 months of the agreement being signed the previous beneficial package would nevertheless apply and if the closure occurred after 12 months then the redundancy package would be renegotiated. The precise terms as set out on page 67 are as follows:

"Future redundancy payments will be based on statutory levels (using the statutory table and Government wage cap) unless:

- *In the event of a plant closure in which case renegotiation with the union will take place.*
- *There is a further restructure in 2012 affecting more than 10 people in which event a renegotiation with the union will take place"*.

In answer to a question from the Employment Judge, Mr Betts-Foster said that he had simply forgotten about this agreement and had then found it in his archives. He provided a copy to Mr Cooke. Mr Dawson's evidence was that the advice he received from HR and the company's solicitors was that the 2012 document was no longer relevant and so it was discounted.

6.16. Production at the Shepcote Lane Site ceased on or about 15 November 2018.

6.17. On 19 November 2018 what was described as a representative's meeting took place. In attendance for the company were Mr Dawson, Mr Young and Stephanie Chase of HR. Among the employee representatives was Mr Betts-Foster. Although in the respondent's note apologies are recorded for Mr Cooke, it transpired that Mr Cooke was in attendance and in fact it is his notes of this meeting (handwritten) which are at pages 114(a) to 114(c). According to Mr Cooke's note, it may be the case that Mr Sean Scorer also attended this meeting. On page 114(a) Mr Scorer is recorded as asking if

there has been a genuine negotiation and Mr Dawson replies "they've asked me to reconsider for weeks now". Mr Scorer is also recorded as saying that the fact that the respondent was loss making was not a good enough argument not to negotiate. It appears that there was a discussion about the bonus scheme contrasted with the redundancy scheme.

6.18. There was a further representatives meeting on 3 December 2018. The respondent's note is at pages 115 to 117. The company representatives were as at the 19 November meeting and among the employee representatives were Mr Betts-Foster, Mr Cooke and Mr Scorer. There is a reference on page 117 to a discussion of enhanced payments with Mr Skertchly but the situation had not changed. It was noted that Mr Skertchly had not been aware of the 2012 agreement but had now been briefed on it but this did not change the situation.

6.19. On the same date, 3 December 2018, Mr Skertchly and Mr Dawson wrote to Mr Scorer. A copy of this letter is at pages 118 to 119. The heading to the letter is "Failure to agree – enhanced redundancy payments". The letter included the following:

"At the commencement of the process the Company indicated that it proposed to make redundancy payments at statutory levels. This was discussed at each consultation meeting, and the Company gave consideration to points made by the representatives in relation to this. This included reviewing costs and holding meetings inside and outside of the formal collective consultation process. Enhanced redundancy payments were also discussed by the Group's executive board following a request made directly to Senior Company Officers by the site's Community Shop Steward (we understand this to be a reference to Mr Betts-Foster*) and the signatories to this letter held a final review meeting about the subject last week".*

The letter went on to refer to the 2012 agreement and then continued:

"The Company believe that the subject of enhancements has been discussed in depth both in and out of collective consultation meetings and that the spirit of this agreement (2012) was fulfilled."

The letter concludes by recognising the difficult circumstances faced by employees and noting the production bonus that was paid. Reference was also made to enhanced packages that had been agreed with employees who had remained and would remain during the decommissioning stage and that that included the site shop steward.

7. **The parties' submissions**

7.1. <u>The claimant's submissions</u>

Mr Stewart had prepared a skeleton argument and also addressed us orally. In his skeleton he noted that there were no material disputes as to the circumstances which gave rise to the claim. The written submissions then go on to set out the relevant statutory provisions.

In terms of what was required by way of consultation we were referred to a passage in the judgment of Glidewell LJ in the case of **R v British Coal Corporation Ex parte Price** [1994] IRLR 72, where it was noted that the

process of consultation was not one in which the consultor was obliged to adopt any or all of the views expressed by the person or body whom he was consulting. Reference was also made within that judgment to the test proposed by Hodgson J in **R v Gwent County Council Ex parte Bryant** that judge defined fair consultation as meaning:

- Consultation when the proposals were still at a formative stage.
- Adequate information on which to respond.
- Adequate time in which to respond.
- Conscientious consideration by an authority of the response to consultation.

At paragraph 4.6 of the skeleton Mr Stewart contended that the respondent had failed to provide to the union such information in relation to each head under section 188(2) as it would require in order to properly assess any proposals made by the respondent. However when we pointed out to Mr Stewart that this was not in fact part of the claim before us he readily accepted that to be so.

Mr Stewart contended that the respondent had not entered the process of consultation with an open mind, but instead was resolutely fixed to it's initial proposal.

We should add that although Mr Stewart appeared to withdraw the assertion in paragraph 4.6 of the written argument we perceive that the claimant's case, as defined at the beginning of this hearing and indeed as defined as long ago as the preliminary hearing for case management on 1 April 2019, was, as expressed in the latter Order, an assertion that the respondent had refused to negotiate with the claimant on the enhanced redundancy issue and that thereby there had been a failure to consult. Mr Stewart's skeleton argument accepted that the relevant issue in this part of the case for the Tribunal was whether the respondent had failed in it's obligation to consult. Despite this, the written submission and the oral submissions to us took what we considered to be a new point, namely that the respondent had allegedly failed to provide the "empirical evidence underpinning the decision to favour the incentivisation scheme" (see paragraph 4.8) with a result, in Mr Stewart's words to us that there could not be fair consultation if the union were "going in blind".

In respect of the issue under section 188(5) – where the relevant information had to be sent - Mr Stewart's submission was that in order to satisfy the requirements of section 188(5) where the employee representative was a trade union, the only option was for the information to be sent by post to the head office or main office address of the union. It was only in that way that the provisions of the subsection could be satisfied. Mr Stewart considered the subsection to be unequivocal on this point.

The Employment Judge asked Mr Stewart whether he accepted that the logic of his submission would mean that if an employer was dealing for instance, with elected representatives there would be two options, giving to the representative by delivering the information to them or sending it by post, whereas if the employer was dealing with a union representative the

only option was by post. Mr Stewart said that that was the basis of his submission.

7.2. Respondent's submissions

In his skeleton argument Mr Flynn correctly, in our view, defined the consultation issue as being whether the respondent had refused to negotiate over whether enhanced redundancy should be paid.

On the section 188(5) issue Mr Flynn quoted from a section of the IDS Employment Law handbook, Volume 9 on redundancy which in turn refers to the case of **NALGO v London Borough of Bromley** an apparently unreported 1991 judgment of the Employment Appeal Tribunal. The facts of the **NALGO** case differed significantly from the case before us but did appear to be authority for the proposition that information could be properly delivered or given under section 188(5) if it was handed into the union office.

Both counsel before us believed that there was no authority directly on the point which we had to decide. In his oral submissions Mr Flynn contended that on a proper reading of the subsection, the information could either be given to a representative or sent to the head office. He pointed out that the subsection refers to the information being given to the appropriate representative so that meant the representative of the union, rather than the union itself. The respondent had given the information to Mr Betts-Foster, the actual representative. Mr Flynn contended that in fact it would be preferable for the information to be given directly to the representative involved in the consultation rather than being sent to the head office of a union. He also pointed out that during the course of the lengthy consultation process the union had not raised the issue.

In relation to the consultation issue, the respondent accepted that in the case of **Junk v Kühnel** [2005] IRLR 310 the European Court of Justice had accepted that there was an obligation on the employer to negotiate with the trade union with a view to reaching an agreed solution. We note that the way this is expressed in the Judgment, at paragraph 43 in the IRLR report is:

"*It thus appears that Article 2 of the Directive imposes an obligation to negotiate"*.

Mr Flynn reminded us of the numerous consultation meetings and contended that the consultation was meaningful. He suggested that in reality the claimant's complaint was simply that the respondent had failed to agree to the request to enhance redundancy pay. In **Ex parte Price** the Court of Appeal had said that there was no obligation to adopt the requests made by the claimant's representatives. In the instant case the respondent had considered those proposals in detail and rejected them. Moreover it had provided a rationale for that rejection.

Addressing Mr Stewart's contention that the respondent had not provided sufficient information as to why the enhanced redundancy proposal was rejected, Mr Flynn said that the union were well aware that there was only one pot of money and the only question was how that was to be directed. The union had simply been contending for a much bigger pot and it had been harking back to redundancies under the previous beneficial scheme.

Mr Flynn said that the production incentive bonus helped both the respondent and the employees as the latter received on average in the order of £1,700 bonus for doing no more than their ordinary contractual duties.

He also pointed out that Mr Stewart's skeleton argument had made no reference to the 2012 agreement. Mr Flynn's comment was that this was not a breach of contract complaint and the 2012 agreement added nothing to the case.

8. **The Tribunal's conclusions**

8.1. Was the respondent in breach of section 188(5) of the 1992 Act?

The respondent accepts that it did not post the requisite information to the union at its head or main office. Instead, it is common ground that the information – in the format of the letter of 3 October 2018 (pages 73 to 74) was given to Mr Betts-Foster, branch secretary of the claimant union, on 3 October 2018.

As we have noted the claimant contends that the only way that the respondent could comply with the subsection would have been by sending it by post to the union at its head or main office.

In the absence of any direct authority we therefore have to determine what Parliament's intention was and what the true effect of the subsection is.

It is helpful to set out the subsection here:

"*That information (*eg that stipulated by the preceding subsection*) shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or in the case of representatives of a trade union sent by post to the union at the address of its head or main office"*.

It is to be noted therefore that at the beginning of the subsection reference is made to appropriate representatives. A trade union if of course one of the types of appropriate representatives. Giving the words used their ordinary meaning and sense, we conclude that the subsection permits two methods of giving the information to all classes of appropriate representatives. That is by delivering the information (by handing it over) or by posting it. We direct ourselves that the definition of 'deliver' in the Concise Oxford English Dictionary includes "bring and hand over to the appropriate recipient".

We conclude that the only divergence or different treatment as between a trade union and any other appropriate representative is what postal address is to be used if the employer opts for the posting option as opposed to the delivering option. If the posting is to a non-union representative it will be to such address as that representative notifies to the employer, but if the representative is a union then it must be to that union's head office or main office. We consider that the likely reason for that difference of treatment in terms of posting is that a non-union representative is likely to be an ad hoc grouping which may well not have very much structure or organisation with the result that an employer would not automatically know where it should post information to. A union on the other hand, obviously being a permanent and organised body with a detailed structure and a head or main office, is

in a different category. The subsection relieves the employer of making what may well be an unnecessary enquiry and simply provides a default position.

We do not therefore accept that the reference to posting to the union should be treated as a stand-alone provision, sitting as it does within a subsection which gives various methods for the provision of the information. In our judgment it cannot have been Parliament's intention that if the employer is dealing with a non-union representative it can give or post the information but if it is dealing with a union representative it can only post it.

Accordingly we find that the respondent did comply with the subsection because it delivered the information by handing it directly to Mr Betts-Foster on 3 October 2018.

8.2. Was the respondent in breach of it's obligations under section 188(2) of the 1992 Act?

That section defines consultation in a collective redundancy case as including consultation about ways of avoiding dismissals, reducing the number of employees dismissed and mitigating the consequences of the dismissals "and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives".

Both counsel have reminded us of the guidance given in the cases of **Ex parte Price** and **Ex parte Bryant**. We have also been directed to what is said in the case of **Junk**.

Against that backdrop, the words attributed to Mr Dawson in the agreed minutes of the consultation meeting held on 29 October 2018 that "this was a consultation and not a negotiation", (page 108) at first blush appear to put the respondent in a difficult position. This is a matter we will return to.

With regard to the 2012 "Variations to current terms and conditions of employment document", we take the view that this can neither add to, nor subtract from the statutory duty which the ECJ have interpreted as including an obligation to negotiate.

Returning to Mr Dawson's minuted comments, we consider that it is necessary for us to look at the whole picture. To that end we have carefully considered the minuted discussions at the five consultation meetings and the two further representative's meetings or failure to agree meetings. Having done so we note that when enhancement of redundancy terms was raised by the union, Mr Dawson would habitually adjourn the meeting in order to consider the proposal. Further and unbeknown to the union at the time, Mr Dawson would also discuss the feasibility of the union's proposal at group level and specifically with Mr Skertchly, the chief financial officer.

We also note that Mr Dawson did explain the respondent's rationale for rejecting the enhanced redundancy proposal. For example during the course of the 15 October 2018 consultation meeting (page 96).

We have noted that Mr Young has candidly accepted when giving evidence that he felt that Mr Dawson had a clear preference throughout the process for the payment of a performance incentive bonus because that was thought to have mutual benefit. However it is also the case that the union were

expressing the view that there would be no movement on their side (the comment made by Mr Cooke at the 24 October 2018 consultation meeting) (page 105).

Mr Dawson accepted that he had not "modelled" the cost of putting into effect the union's proposal or provided that level of information to the union. However he explained that that was because he had a pot of money and the union knew the size of that pot, albeit, as he put it, not to two decimal places.

Looking at the matter in the round, we do not find that Mr Dawson's "consultation but not a negotiation" comment signifies a closed mind. That is because there were exchanges of views and because there was the group dimension. Whilst the claimant union seeks to portray the respondent as being intransigent, we find that the union were themselves being intransigent - the "no movement" position expressed by Mr Cooke. In any event, it was accepted in **Ex parte Price** that the process of consultation did not mean that the consultor was obliged to adopt the views expressed by the body being consulted. Having set out and approved the guidance given in **Ex parte Bryant**, Glidewell LJ continued:

"Another way of putting the point more shortly is that fair consultation involves giving the body consulted a fair and proper opportunity to understand fully the matters about which it is being consulted, and to express it's views on those subjects, with the consultor thereafter considering those views properly and genuinely".

Applying that test to the case before us we find that the respondent was not in breach of its obligations under section 188(2) and accordingly the union's complaint is not well founded either on this point or the section 188(5) point and so it is dismissed.

Employment Judge Little

Date 7th January 2020