



EMPLOYMENT TRIBUNALS

Claimants: Mr J Benbow & others (See Schedule)

Respondent: Eversmart Ltd (In creditors' voluntary liquidation)

JUDGMENT

Employment Tribunals Rules of Procedure 2013, Rule 21

The respondent not having presented a response to the claims, and on the information before the Judge,

The judgment of the Tribunal is that:

- 1) The hearing listed on 24 April 2020 is vacated.
- 2) 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 20 Brindley Road, Stretford, Manchester M16 9HQ in respect of the whole workforce employed there.
- 3) Under Section 189(1)(d), (2), (3) and (4), the Tribunal makes a protective award in respect of the claimants named in the schedule and the respondent is ordered to pay remuneration to each claimant for a protected period of 90 days beginning on 4 September 2019.
- 4) The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.

REASONS

1. By a claim form presented on 23 November 2019, the claimants claimed a protective award in respect of breach of the collective consultation requirements. No response was presented to the claims by respondent.

2. On a full consideration of the file of proceedings it was possible to issue this Judgment under Rule 21 without a hearing. Code P under the case number above reflects this.

3. On the information provided, the Tribunal makes the following findings. The respondent carried on business as an energy trader and employing over 20 employees including the claimants at Manchester. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce.

4. The employees were notified on 4 September 2019 that the respondent was ceasing trading due to financial difficulties. The respondent company was formally put into creditors voluntary liquidation on 22 October 2019.

5. There was no proper warning or notice given to or consultation with the workforce. No employee representatives had been elected or appointed for any such consultation within Section 188A of the 1992 Act. The dismissals of the whole workforce were put into effect at once.

6. In these circumstances, the respondent is in breach of the duty under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of the claimant for the maximum protected period of 90 days commencing on 18 May 2018.

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: 23 April 2020

JUDGMENT SENT TO THE PARTIES ON
24 April 2020

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Multiple Schedule

Case Number	Case Name
2414836/2019	Mr Jordan Benbow -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414837/2019	Mr Jordan Benbow -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414838/2019	Mr Steve Maddran -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414839/2019	Mr Lee Slate -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414840/2019	Mr Lee Somerville -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414841/2019	Mr Conor Martin -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414842/2019	Mr Danny Tolley -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414843/2019	Mr Callum Rogers -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414844/2019	Mr Dom Burrows -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414845/2019	Mr Michael Comer -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414846/2019	Mr James Ollerenshaw -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414847/2019	Mr Michael Reilly -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414848/2019	Ms Sadiyah Raja -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414849/2019	Ms Laquita Lindo -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414850/2019	Mr Brandon Decosra -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414851/2019	Mr Robert Ireland -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414852/2019	Mr Wajid Mohammed -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414853/2019	Mr Ranim Khiami -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414854/2019	Mr Andrew Evans -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414855/2019	Mr Pamwan Johnson Osemwenkhae -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414856/2019	Mr Kazim Waite-Jackson -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414857/2019	Mr Nicholas Espiga-Ventura -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414858/2019	Mr Jordell Jackson -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414859/2019	Ms Denisa Kanalosova -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414860/2019	Mr van Cabajar -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414861/2019	Mr Thomas Williams -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414862/2019	Mr Reece Kapoor -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414863/2019	Mr Mohammad Anjam -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414864/2019	Mr Aaron Rogers -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414865/2019	Mr Lee Glover -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414866/2019	Mr Luke Gannon -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414867/2019	Mr Stephen Finnerty -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414868/2019	Mr Jennifer Mangan -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414869/2019	Ms Jo Gale -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414870/2019	Mr Christopher James Wardle -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414871/2019	Mr Benjamin Ireland -v- Eversmart Ltd (In Creditors Voluntary Liquidation)
2414872/2019	Mr Antony Crolla -v- Eversmart Ltd (In Creditors Voluntary Liquidation)

Claimants: Mr J Benbow & Others

Respondent: Eversmart Ltd (In Creditors 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.