



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Mrs Ginette Polychronopulos
And 38 Others

AND

Respondents

Heritage Window Systems Limited
(In Administration)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth
Public Hearing by Telephone

ON

24 April 2020

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimants: Mrs G Polychronopulos

For the Respondent: Does Not Dispute the Claims and Did not attend

JUDGMENT

The judgment of the Employment Judge sitting alone is that:

1. The complaint that the respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded.
2. The tribunal makes a protective award in respect of the 39 claimants named on the attached schedule who were employees of the respondent and who were dismissed as redundant on or after 31 July 2019 and orders the respondent to pay those employees remuneration for the protected period of 90 days beginning on the date of dismissal. The tribunal declares that each such employee is entitled to an award in respect of 90 days, irrespective of the date of termination of his or her employment.

REASONS

1. This is a claim for a protective award brought by the 39 employees who are named on the attached Schedule which number includes Mrs Ginette Polychronopoulos who has also acted as their representative.
2. This has been a remote hearing on the papers heard by an Employment Judge sitting alone to which the parties have consented and not objected. The respondent's Administrator gave consent on 15 November 2019 for these proceedings to continue. The form of remote hearing was an audio conference hearing by telephone. A face to face hearing was not held because it is in the interests of justice and in accordance with the overriding objective to minimise expenditure on time and costs. The documents which I considered are the pleadings and any subsequent orders in this case, and any other documents specifically brought to my attention.
3. The respondent has already entered a response confirming that it does not dispute these claims.
4. I have received and considered witness statements from Mrs Polychronopoulos, Mrs Angela Butler and Mr Brett James. I have considered the evidence before me, both oral and documentary, and I have considered any legal and factual submissions made by and on behalf of the respective parties. I find the following facts proven on the balance of probabilities.
5. The respondent company Heritage Window Systems Ltd entered administration on 29 July 2019. On 31 July 2019 the joint administrators addressed all employees of the respondent and informed them that they were made redundant with immediate effect. Three employees were not made redundant with immediate effect. These are Mrs Polychronopoulos, Ms Lenka Collard, and Mr D Gow, and these three were retained until 8 August 2019, when they were then made redundant on that date.
6. The respondent did not recognise any independent trade union. There were no employee or workplace representatives in place, and the respondent did not arrange any elections for the same.
7. The respondent failed to undertake any consultation with the claimants prior to the dismissals.
8. Having found the above facts, I now apply the law.
9. The relevant law is in the Trade Union and Labour Relations (Consultation) Act 1992 ("TULRCA").
10. Section 188(1) of TULRCA provides as follows: "Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals". S188(1A) provides that "The consultation shall begin in good time and in any event – (a) where the employer is proposing to dismiss 100 or more

- employees as mentioned in subsection (1), at least 90 days, and (b) otherwise, at least 30 days, before the first of the dismissals takes effect.
11. S 188(1B) provides that: “For the purposes of this section the appropriate representatives of any affected employees are – (a) if the employees of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or (b) in any other case, whichever of the following employee representatives the employer chooses:- (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf; (ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1).”
 12. S 188(2): provides that; “The consultation shall include consultation about ways of – (a) avoiding the dismissals, (b) reducing the numbers of employees to be dismissed, and (c) mitigating the consequences of the dismissals, and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.”
 13. Section 188(4) provides: “For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives – (a) the reasons for his proposals, (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant, (c) the total number of employees of any such description employed by the employer at the establishment in question, (d) the proposed method of selecting the employees who may be dismissed, (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which any dismissals are to take effect, (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with the obligation imposed by or by virtue of any enactment) to employees who may be dismissed, (g) the number of agency workers working temporarily for and under the supervision and direction of the employer, (h) the parts of the employer’s undertaking in which those agency workers are working, and (i) the type of work are those agency workers are carrying out.”
 14. Section 188(5) provides: “That information 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.”
 15. In this case the respondent did not recognise an independent trade union; there were no employee or workplace representatives in place; the respondent did not arrange the election of employee representatives; and the respondent failed to consult with the individual employees in respect of the redundancies.
 16. Accordingly, I make the protective award explained above.

Employment Judge N J Roper

Dated: 24 April 2020

Judgment sent to parties: 28 April 2020

FOR THE TRIBUNAL OFFICE

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

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Regulation 5(2)(b), SI 2010 No 2429 Reg.5.

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 lesser of:

- (i) 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
- (ii) 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 protective period falling before the date described in (i) above.

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.

Schedule of Claimants

Case No.	Year	Title	First name	Last name
1403948	2019	Mr	Adrian	Blakemore
1403949	2019	Mr	Piotr	Konic
1403950	2019	Mr	Jake	Batty
1403951	2019	Mr	Kevin	Taylor-Milton
1403952	2019	Mr	Trevor	Wiltshire
1403953	2019	Mr	Terry	Smith
1403954	2019	Mr	Andrew	Johnson
1403955	2019	Mr	Matthew	Kurda
1403956	2019	Mr	Ian	Pyrke
1403957	2019	Mr	Craig	Warren
1403958	2019	Mr	Paul	Tanner
1403959	2019	Mr	Thomas	Stephens
1403960	2019	Mr	Reece	Sando
1403961	2019	Mr	David	Roca
1403962	2019	Mr	Harley	Hubbarde
1403963	2019	Mr	Michal	Glowacki
1403964	2019	Mr	Krzysztof	Brzezinski
1403965	2019	Mr	Krzysztof	Ryzlewicz
1403966	2019	Mr	David	Gower
1403968	2019	Mr	Mark	Matthews
1403969	2019	Mr	Jason	Duggan
1403970	2019	Mr	Colin	Alexander
1403971	2019	Mr	Simon	Kaines
1403972	2019	Mr	Lukasz	Kowalski
1403973	2019	Mrs	Lenka	Collard
1403974	2019	Mr	Brett	James
1403975	2019	Mr	Andrejs	Burjaks
1403976	2019	Mr	Nigel	Stephens
1403977	2019	Mr	Damian	Kurda
1403978	2019	Mr	Stephen	Hayes
1403979	2019	Mr	James	Stockton-Chalk
1403980	2019	Mr	Brett	Dockerty
1403981	2019	Mr	Christoper	Green
1403982	2019	Mr	Brian	Boulton
1403983	2019	Mr	Veronica	Tarr
1403984	2019	Ms	Richard	Wainwright
1403985	2019	Mrs	Angela	Butler
1403986	2019	Mr	Bradley	Sando