



EMPLOYMENT TRIBUNALS

Claimants:

- 1) Alec Birch
- 2) Paul Fisher
- 3) David Gawronek
- 4) Steven Ince
- 5) Barry McHugh
- 6) Peter Parkinson

Respondent: Fox Fabrication & Construction Ltd (in voluntary liquidation)

REMEDY JUDGMENT

Employment Tribunals Rules of Procedure 2013, Rule 21

The liability judgment in these proceedings having been given on 29 January 2020 and sent out on 31 January 2020, and on the information before the Regional Employment Judge in circumstance where no in person hearings are proceeding because of the Covid-19 pandemic,

The judgment of the Tribunal is that:

- 1) The Remedy Hearing listed on 12 May 2020 is vacated.
- 2) Under Section 189(1)(d), (2), (3) and (4) of the Trade Union and Labour Relations (Consolidation) Act 1992 the Tribunal makes a protective award in respect of each of the claimants and the respondent is ordered to pay remuneration to them for a protected period of 90 days beginning on 6 September 2019.
- 3) 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 10 January 2020 the claimants claimed a protective award in respect of breach of the collective consultation requirements. No

response was presented to the claims by the respondent. A liability judgment was made in favour of the claimants at a hearing on 29 January 2020 and the proceedings were listed for Remedy Hearing on 12 May 2020.

2. On a full consideration of the file of proceedings and in the circumstances such that no in person hearings are being held currently and may not be held for several weeks or months, it was possible to issue this Remedy 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 claimants were employed as ground workers by the respondent which carried on business from Unit 5, Towngate Works, Dark Lane, Mawdesley L40 2QU, employing over 20 employees. There was no independent trade union recognised for collective bargaining, consultation or negotiation with the workforce.

4. On 6 September 2019, the claimants and other employees were made redundant and notified that the respondent was going into liquidation. The company was formally put into creditors voluntary liquidation on 25 September 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. The dismissals were put into effect at once on 6 September 2019.

6. In these circumstances, the Tribunal makes an award under Section 189 in favour of the claimant for the maximum protected period of 90 days commencing on 6 September 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 respondent.

**Case No. 2400173/2020
2400174/2020
2400175/2020
2400176/2020
2402177/2020
2400178/2020
Code P**

Regional Employment Judge Parkin

Date: 23 April 2020

JUDGMENT SENT TO THE PARTIES ON
1 May 2020

FOR THE TRIBUNAL OFFICE

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Claimants: Mr A Birch & Others

Respondent: Fox Fabrication & Construction Limited (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 the refrom 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.