



EMPLOYMENT TRIBUNALS

Claimants: Miss J Adams and 100 Others
Ms M Owen
Ms L Baxter and 5 Others
GMB
GMB
Mr P Joyce

Respondent: FFP Realisations 2018 Limited – (In Administration),
(Formerly Fogarty (Filled Products) Limited
(In Administration)
Secretary of State for Business, Innovation and Skills

Heard at: Boston Court House **On:** Friday 29 November 2019

Before: Employment Judge P Britton (sitting alone)

Representatives

Claimants: Adams Group of Claimants and Ms M Owen –
Ms N Toner, Solicitor
Mrs Baxter Group of Claimants, GMB and Mr P Joyce –
Mr D Tolcher, Solicitor

Respondent: (R1) No representation as not defended
by the Administrators
(R2) No Appearance albeit response sent in

JUDGMENT

1. The claims of failure to consult pursuant to section 188 of the Trade Union and Labour Relations (Consolidation Act 1992) succeed:-

1.1 The Tribunal orders the first Respondent to pay all the hourly paid employees otherwise known as Process Operatives and as covered by the recognition agreement between the original first Respondent and the GMB remuneration for a protected period of 90 days beginning on **29 OCTOBER 2018**.

1.2 Otherwise the Tribunal orders that the first Respondent will pay to each of the Claimants who have presented claims to the Tribunal, who are not covered by the recognition agreement, remuneration for a protected period of 90 days beginning on **29 OCTOBER 2018**.

REASONS

1. It is not in dispute by the administrators (Grant Thornton) for the first Respondent that on 29 October 2018 the vast majority of the workforce, that is to say over 100 employees, were there and then made redundant as the business had gone into administration. There was no consultation period including with the GMB.

2. A small number of the workforce, approximately 25, were retained by the administrators to assist in the winding down process. Their employment ended on 18 January 2019. Applying the provisions of in particular section 188 TULCRA onwards it follows there was a protected period which commenced on 29 October 2018. The provisions in terms of consultation were not complied with at all. That meant, and I have heard sworn evidence to that effect from Mr John Cannon, a GMB representative at the work site, that albeit the GMB had a recognition agreement for hourly paid employees with the Respondent, it was not consulted at all.

3. In relation to employees not covered by that recognition agreement, and that would include all the salaried employees who have brought claims before the Tribunal, the Respondent did not invite them to appoint elected representatives for the purposes of consultation and it did not consult them individually in the alternative. It follows that again there was a complete failure to comply with the provisions as to consultation to which I have referred.

4. Thus it follows that all employees who have brought claims before the Tribunal are entitled to a protective award pursuant to section 190. And thence finally applying the well-known dicta in **Susie Radin Limited v GMB and others** [2004] EWCA Civ 180 and in particular at paragraph 45 of the judgment of Peter Gibson LJ, I therefore find that it is just and equitable to make a protective award of 90 days pay for all Claimants who have presented claims before me or are covered by the GMB recognition agreement as per the presentation of the claims by the GMB.

5. The final point. The Secretary of State was joined as a party to these proceedings a considerable time ago on the basis that clearly he would have an interest in a protective award as it invariably will be the case that it will be the Secretary of State who has to pay the bill. The Secretary of State put in a holding response on 9 July 2019 reserving its position so to speak. It was notified along with all the other parties of today's hearing on 14 November 2019, it has not attended and it has not made any representations.

Employment Judge Britton

Date: 14 January 2020

JUDGMENT SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

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

2600265/2019 Miss Joy Adams -v- FFP Realisations 2018 Limited- In Administration & Others
2600266/2019 Mr Alaa Aljuda -v- FFP Realisations 2018 Limited- In Administration & Others
2600267/2019 Mrs Jane Andersen -v- FFP Realisations 2018 Limited- In Administration & Others
2600268/2019 Ms Zandra Asquith -v- FFP Realisations 2018 Limited- In Administration & Others
2600269/2019 Mrs Vicki Atkins -v- FFP Realisations 2018 Limited- In Administration & Others
2600270/2019 Ms Bethany Barkway -v- FFP Realisations 2018 Limited- In Administration & Others
2600271/2019 Mrs Lesley Bashford -v- FFP Realisations 2018 Limited- In Administration & Others
2600272/2019 Ms Mary Baxter -v- FFP Realisations 2018 Limited- In Administration & Others
2600273/2019 Mr Lee Beasley -v- FFP Realisations 2018 Limited- In Administration & Others
2600274/2019 Mr Stephen Bee -v- FFP Realisations 2018 Limited- In Administration & Others
2600275/2019 Ms Linda Bell -v- FFP Realisations 2018 Limited- In Administration & Others
2600276/2019 Mrs Michalina Binkowska -v- FFP Realisations 2018 Limited- In Administration & Others
2600277/2019 Mr Stephen Blades -v- FFP Realisations 2018 Limited- In Administration & Others
2600278/2019 Mr Lewis Bloom -v- FFP Realisations 2018 Limited- In Administration & Others
2600279/2019 Mr Colin Bond -v- FFP Realisations 2018 Limited- In Administration & Others
2600280/2019 Mr Mark Bracey -v- FFP Realisations 2018 Limited- In Administration & Others
2600281/2019 Mrs Janice Bradley -v- FFP Realisations 2018 Limited- In Administration & Others
2600282/2019 Mr Keith Bradley -v- FFP Realisations 2018 Limited- In Administration & Others
2600283/2019 Miss Cheryl Bray -v- FFP Realisations 2018 Limited- In Administration & Others
2600284/2019 Mr Mariusz Brylinski -v- FFP Realisations 2018 Limited- In Administration & Others
2600285/2019 Mr Neil Butler -v- FFP Realisations 2018 Limited- In Administration & Others
2600286/2019 Mr Clifford Cadwallander -v- FFP Realisations 2018 Limited- In Administration & Others
2600287/2019 Mr Richard Chapman -v- FFP Realisations 2018 Limited- In Administration & Others
2600288/2019 Mr Steven Clare -v- FFP Realisations 2018 Limited- In Administration & Others
2600289/2019 Mrs Lindy Clay -v- FFP Realisations 2018 Limited- In Administration & Others
2600290/2019 Mrs Louise Clayton -v- FFP Realisations 2018 Limited- In Administration & Others
2600291/2019 Mrs Sharon Cuppleditch -v- FFP Realisations 2018 Limited- In Administration & Others
2600292/2019 Mr Jason Davis -v- FFP Realisations 2018 Limited- In Administration & Others
2600293/2019 Mr Andrew Davison -v- FFP Realisations 2018 Limited- In Administration & Others
2600294/2019 Mr John Dawson -v- FFP Realisations 2018 Limited- In Administration & Others
2600295/2019 Mr Matthew Dawson -v- FFP Realisations 2018 Limited- In Administration & Others
2600296/2019 Mr Steven Dodson -v- FFP Realisations 2018 Limited- In Administration & Others
2600297/2019 Mr Ruslans Dukalskis -v- FFP Realisations 2018 Limited- In Administration & Others
2600298/2019 Mr Peter Epton -v- FFP Realisations 2018 Limited- In Administration & Others
2600299/2019 Mr Benjamin Evison -v- FFP Realisations 2018 Limited- In Administration & Others
2600300/2019 Ms Denise Featherstone -v- FFP Realisations 2018 Limited- In Administration & Others
2600301/2019 Miss Annice Gardner -v- FFP Realisations 2018 Limited- In Administration & Others

Case No: 2600265/2019 & Others (see schedule)

2600302/2019 Mr Tomas Gegelevicius -v- FFP Realisations 2018 Limited- In Administration & Others
2600303/2019 Mr David Geoghegan -v- FFP Realisations 2018 Limited- In Administration & Others
2600304/2019 Mrs Juanita Goy -v- FFP Realisations 2018 Limited- In Administration & Others
2600305/2019 Mrs Sarah Grundy -v- FFP Realisations 2018 Limited- In Administration & Others
2600306/2019 Mr Steven Hamilton -v- FFP Realisations 2018 Limited- In Administration & Others
2600307/2019 Mr Martyn Harrison -v- FFP Realisations 2018 Limited- In Administration & Others
2600308/2019 Mr Darren Hipwell -v- FFP Realisations 2018 Limited- In Administration & Others
2600309/2019 Mr Frank Homewood -v- FFP Realisations 2018 Limited- In Administration & Others
2600310/2019 Ms Ayshea Howland -v- FFP Realisations 2018 Limited- In Administration & Others
2600311/2019 Mrs Jovita Iljiniene -v- FFP Realisations 2018 Limited- In Administration & Others
2600312/2019 Mr Raitis Jakovlevs -v- FFP Realisations 2018 Limited- In Administration & Others
2600313/2019 Ms Kristina Jundaite -v- FFP Realisations 2018 Limited- In Administration & Others
2600314/2019 Miss Areta Katiliute -v- FFP Realisations 2018 Limited- In Administration & Others
2600315/2019 Mr Paul King -v- FFP Realisations 2018 Limited- In Administration & Others
2600316/2019 Mr Sergejs Kozlovs -v- FFP Realisations 2018 Limited- In Administration & Others
2600317/2019 Miss Larisa Krama -v- FFP Realisations 2018 Limited- In Administration & Others
2600318/2019 Mr John Kruszelnicki -v- FFP Realisations 2018 Limited- In Administration & Others
2600319/2019 Mr Alan Leachman -v- FFP Realisations 2018 Limited- In Administration & Others
2600320/2019 Mrs Gemma MacRae -v- FFP Realisations 2018 Limited- In Administration & Others
2600321/2019 Ms Alison Maddison -v- FFP Realisations 2018 Limited- In Administration & Others
2600322/2019 Mrs Katarzyna Majewska -v- FFP Realisations 2018 Limited- In Administration & Others
2600323/2019 Mr Craig Manning -v- FFP Realisations 2018 Limited- In Administration & Others
2600324/2019 Mr Richard Marsland -v- FFP Realisations 2018 Limited- In Administration & Others
2600325/2019 Mr Simon Massam -v- FFP Realisations 2018 Limited- In Administration & Others
2600326/2019 Mr Arturas Medeliauskas -v- FFP Realisations 2018 Limited- In Administration & Others
2600327/2019 Miss Rimante Mockunaite -v- FFP Realisations 2018 Limited- In Administration & Others
2600328/2019 Miss Sanda Munce -v- FFP Realisations 2018 Limited- In Administration & Others
2600329/2019 Mrs Sherri Newman -v- FFP Realisations 2018 Limited- In Administration & Others
2600330/2019 Mr Toms Ozols -v- FFP Realisations 2018 Limited- In Administration & Others
2600331/2019 Mr Paul Painton -v- FFP Realisations 2018 Limited- In Administration & Others
2600332/2019 Mr Robert Patton -v- FFP Realisations 2018 Limited- In Administration & Others
2600333/2019 Miss Laura Peterikova -v- FFP Realisations 2018 Limited- In Administration & Others
2600334/2019 Ms Jessica Pike -v- FFP Realisations 2018 Limited- In Administration & Others
2600335/2019 Ms Laura Pupkevica -v- FFP Realisations 2018 Limited- In Administration &

Case No: 2600265/2019 & Others (see schedule)

Others

2600336/2019 Mr Mark Revill -v- FFP Realisations 2018 Limited- In Administration & Others

2600337/2019 Mr Ruslans Rjazanovs -v- FFP Realisations 2018 Limited- In Administration & Others

2600338/2019 Mr Brannon Rodgers -v- FFP Realisations 2018 Limited- In Administration & Others

2600339/2019 Mr Charles Rolfe -v- FFP Realisations 2018 Limited- In Administration & Others

2600340/2019 Mr Steven Rose -v- FFP Realisations 2018 Limited- In Administration & Others

2600341/2019 Mr Daniel Rowe -v- FFP Realisations 2018 Limited- In Administration & Others

2600342/2019 Mr Stuart Shaw -v- FFP Realisations 2018 Limited- In Administration & Others

2600343/2019 Mr Danas Simonaitis -v- FFP Realisations 2018 Limited- In Administration & Others

2600344/2019 Miss Gita Slosberga -v- FFP Realisations 2018 Limited- In Administration & Others

2600345/2019 Mr Aleksandrs Smirnovs -v- FFP Realisations 2018 Limited- In Administration & Others

2600346/2019 Ms Mandy Smith -v- FFP Realisations 2018 Limited- In Administration & Others

2600347/2019 Mr Kevin Spiller -v- FFP Realisations 2018 Limited- In Administration & Others

2600348/2019 Mr Stephen Stewart -v- FFP Realisations 2018 Limited- In Administration & Others

2600349/2019 Mr Paul Teft -v- FFP Realisations 2018 Limited- In Administration & Others

2600350/2019 Mr Danny Tempest -v- FFP Realisations 2018 Limited- In Administration & Others

2600351/2019 Mrs Susan Thomas -v- FFP Realisations 2018 Limited- In Administration & Others

2600352/2019 Mr Stephen Todd -v- FFP Realisations 2018 Limited- In Administration & Others

2600353/2019 Miss Agnieszka Tomaszewska -v- FFP Realisations 2018 Limited- In

Administration & Others

2600354/2019 Mrs Diane Turner -v- FFP Realisations 2018 Limited- In Administration & Others

2600355/2019 Mrs Judita Vaisviliene -v- FFP Realisations 2018 Limited- In Administration & Others

2600356/2019 Mrs Agata Valinciene -v- FFP Realisations 2018 Limited- In Administration & Others

2600357/2019 Mr Gerrit van Haren -v- FFP Realisations 2018 Limited- In Administration & Others

2600358/2019 Ms Ilze Vingre -v- FFP Realisations 2018 Limited- In Administration & Others

2600359/2019 Mr Michael Warrington -v- FFP Realisations 2018 Limited- In Administration & Others

2600360/2019 Mrs Gaylene Waterfall -v- FFP Realisations 2018 Limited- In Administration & Others

2600361/2019 Mrs Marilyn Watton -v- FFP Realisations 2018 Limited- In Administration & Others

2600362/2019 Ms Penny West -v- FFP Realisations 2018 Limited- In Administration & Others

2600363/2019 Mrs Sarah Woolsey -v- FFP Realisations 2018 Limited- In Administration & Others

2600364/2019 Miss Rima Zabarauskaite -v- FFP Realisations 2018 Limited- In Administration & Others

2600365/2019 Miss Patrycja Zawadzka -v- FFP Realisations 2018 Limited- In Administration & Others

2600444/2019 Ms Michele Owen -v- FFP Realisations 2018 Limited - In Administration & Others

2601534/2019 Midland And East Coast Region GMB -v- FFP Realisations 2018 Limited - In Administration

2601535/2019 Mr Philip Joyce -v- FFP Realisations 2018 Limited - In Administration

2602731/2018 Mrs Linda Baxter -v- Fogarty (Filled Products) Ltd (in Administration)

2602732/2018 Gillian Chamberlain -v- Fogarty (Filled Products) Ltd (in Administration)

2602733/2018 Stuart Green -v- Fogarty (Filled Products) Ltd (in Administration)

2602734/2018 Philip Joyce -v- Fogarty (Filled Products) Ltd (in Administration)

Case No: 2600265/2019 & Others (see schedule)

2602735/2018 Yvonne Nash -v- Fogarty (Filled Products) Ltd (in Administration)
2602736/2018 Miss Pat Harding -v- Fogarty (Filled Products) Ltd (in Administration)
2602737/2018 Midland&East Coast Region GMB -v- Fogarty (Filled Products) Ltd (in Administration)