



EMPLOYMENT TRIBUNALS

Claimants: (1) Mrs J Webb
(2) Mr M Foster-Thomas

Respondent: Ampersand Care Limited (in liquidation)

Interested Party: Secretary of State for Business, Energy and Industrial Strategy

JUDGMENT

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.

The Tribunal makes a protective award in respect of the claimants who were dismissed as redundant on or after 2/7/2018 and orders the respondent to pay those employees remuneration for the protected period of 90 days beginning on 2/7/2018.

REASONS

1. On 19/12/2019 the claimants requested the claims would be dealt with by means of written representations, rather than attending the hearing in person.
2. The respondent entered into a creditors voluntary liquidation on 19/7/2018. It did not present a response.
3. The Secretary of State was added to the proceedings as an interested party on 26/2/2019. It presented a response to the claims on 2/1/2020 and confirmed it had no objection to the claim being decided on the papers.
4. The claimants claim a protective award as a result of the respondent's failure to comply with its collective consultation obligations in respect of collective redundancies.
5. The Tribunal has taken into account the Secretary of State's written submissions; however, judgment is entered in the claimants' favour.

Employment Judge Wright

Date: 4/5/2020

**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.

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