



EMPLOYMENT TRIBUNALS

Claimant **MR RUSSELL BETTANY**

First Respondent: **SP GROUP (IN ADMINISTRATION)**
Second Respondent: **SECRETARY OF STATE FOR BUSINESS,
INNOVATION & SKILLS**

Heard at: **Birmingham Employment Tribunal on 30 JUNE 2020**
Before: **Employment Judge McCluggage**
Appearances:
For the Claimant: **Ms Talwar (solicitor)**
For the 1st Respondent: **No appearance**
For the 2nd Respondent: **No appearance**

JUDGMENT

1. The claim for a protective award is well-founded and succeeds.
2. The tribunal declares that the Claimant is entitled to a protective award amounting to 90 days' pay.
3. The protective award is assessed on the basis of gross basic pay per week of £383.94, with the award calculated as 90 days x £76.79, amounting to £6,911.10.
4. The Second Respondent has liberty to apply if he considers that this calculation is erroneous.
5. The claim for unfair dismissal is dismissed upon withdrawal by the Claimant.

REASONS

1. This case was listed for case management today.
2. The Claimant's solicitor informed me that the Liquidators of the First Respondent company had given their consent to the proceedings on 26 June 2020 which had been forwarded to the Tribunal. In fact, upon perusal of the Tribunal file, I found a letter from the Liquidators dated 4 September 2019 which gave consent at this earlier time.

3. However, the First Respondent has not filed an ET3 and the Second Respondent is neutral in relation to the protective award sought.
4. The Insolvency Service has already paid the Claimant sums in respect of redundancy, notice pay and holiday pay.
5. Given payment of a redundancy award, the Claimant wished to withdraw his claim for unfair dismissal.
6. The Second Respondent had submitted a detailed Grounds of Response which I took into account. It was apparent that the Second Respondent had no positive case to advance on whether a Protective Award should be made and for how long.
7. Given there was no opposition to the Protective Award and no mitigation presented to the 90 days' sought I exercised my discretion to treat today's preliminary hearing as a final hearing pursuant to rule 48 of the Tribunal Rules. Having regard to the Overriding Objective and the circumstances that neither of the Respondents were going to adduce evidence in opposition to the facts set out in the ET1 or to otherwise participate, this course of action seemed best served to deal with the case in a way which was proportionate to the issues.
8. The duty of an employer to consult employees where there is a proposal to dismiss as redundant 20 or more employees is set out in section 188 of the Trade Union and Labour Relations (Consolidation) Act 1989 ('TULRCA')
9. I concluded from the facts set out in the ET1 that there was no consultation whatsoever in this case.
10. Pursuant to section 189(2) of TULRCA where a complaint is well-founded the tribunal shall make a declaration to that effect and may also make a protective award. That award is to be just and equitable having regard to the seriousness of the employer's default but shall not exceed 90 days.
11. The purpose of a protective award is to provide a sanction for breach of section 188 not to provide factual compensation to an employee affected by the breach: Susie Radin Limited v. GMB [2004] EWCA Civ 180. Where there is no consultation, the maximum award is the starting point, to be reduced if there is mitigation.
12. Given there is no mitigation in this case, it is appropriate to award the full 90 days.
13. I note from available documentation that the Insolvency Service has already accepted that the Claimant's gross pay amounts to £383.94 per week (see letters dated 10 December 2018) dealing with payments from the National Insurance Fund. I saw no reason to depart from such a sum now.

14. Hence I assess the award as sought in the Claimant's Schedule of Loss which is consistent with such a figure.

15. The actual payment of the sum from the National Insurance Fund is a matter for the Secretary of State to be carried out pursuant to his duties under section 184 of the Employment Rights Act 1996 and associated legislation.

Employment Judge **McCluggage**
Date: 30 June 2020