



EMPLOYMENT TRIBUNALS

Between:

Mr M Fichna and 13 others
Claimants

and Snows Timber Ltd (in Administration)
First Respondent

Secretary of State for Business, Energy
and Industrial Strategy
Second Respondent

JUDGMENT

1. The First Respondent having consented by its administrators to the claim and not wishing to defend the same, the claims of failure to consult pursuant to section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 succeed:- The Tribunal Orders the First Respondent Snows Timber Limited (in Administration) to pay a protective award to each of the Claimants who were dismissed on or after 18 November 2019, and who have presented claims to the Tribunal under consolidated claim number 2600691/2020, for a protected period of 90 days beginning on 18 November 2019, that being the first date of the dismissals.
2. The claim against the Second Respondent is dismissed as he cannot be liable for the dismissals and any application based upon s189 of the Employment Rights Act 1996 is premature.

REASONS

1. The administrators (RSM Restructuring Advisory LLP) for the First Respondent on 18 November 2019 dismissed the vast majority of the workforce, amounting to 74 employees, as the business had gone into administration. There was no consultation with any of the employees and no recognised trade union.
2. A small number of employees were retained by the administrators to assist with the administration including 2 of the Claimants, the last of whom (Nicholas Wells) was dismissed on 20 December 2019. Applying the provisions of s188 TULCRA onwards it follows that there was a protected period which

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commenced on 18 November 2019. The provisions in terms of consultation were not complied with at all

3. The First Respondent did not invite the employees to appoint elected representatives for the purposes of consultation and it did not consult them individually in the alternative. It follows that there was a complete failure to comply with the provisions of TULCRA.
4. All of the employees who have brought the above numbered claim following consolidation of their individual claims were employed at establishments where more than 20 individuals were dismissed within a 90 day period commencing 18 November 2019 and are entitled to a protective award pursuant to s190. Applying the 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, it is just and equitable to make a protective award of 90 days pay for all Claimants who have presented claims as listed on the attached schedule.

Employment Judge Britton

Date: 10 July 2020

Sent to the parties on:

Case numbers: 2600691/2020 & others

Multiple Schedule

Case Number Case Name

2600691/2020 Mr Mark Fichna -v- Snows Timber Limited (in Administration) & Others
2600692/2020 Mr Junior Anderson -v- Snows Timber Limited (in Administration) & Others
2600693/2020 Miss Sophie Buchanan -v- Snows Timber Limited (in Administration) & Others
2600694/2020 Mr Alexander Burden -v- Snows Timber Limited (in Administration) & Others
2600695/2020 Mr Adrian Goodman -v- Snows Timber Limited (in Administration) & Others
2600696/2020 Mr Mark Hardy -v- Snows Timber Limited (in Administration) & Others
2600697/2020 Mr Garreth Harpham -v- Snows Timber Limited (in Administration) & Others
2600698/2020 Mrs Holly Hibbert -v- Snows Timber Limited (in Administration) & Others
2600699/2020 Miss Charity McLean -v- Snows Timber Limited (in Administration) & Others
2600700/2020 Mr Lyndon Naylor -v- Snows Timber Limited (in Administration) & Others
2600701/2020 Mr David Shaw -v- Snows Timber Limited (in Administration) & Others
2600702/2020 Mr Alistair Thomson -v- Snows Timber Limited (in Administration) & Others
2600703/2020 Mr Nicholas Wells -v- Snows Timber Limited (in Administration) & Others
2600704/2020 Miss Kelsie Wood -v- Snows Timber Limited (in Administration) & Others