



# EMPLOYMENT TRIBUNALS

**BETWEEN**

**Claimants**

Mr A Green and 26 Others

AND

**Respondents**

Freshways Dairystix Limited

(In Voluntary Creditors' Liquidation) (1)

The Secretary of State for Business Enterprise and Industrial Strategy (2)

## JUDGMENT OF THE EMPLOYMENT TRIBUNAL

**HELD AT** Exeter

**ON**

2 November 2020

**EMPLOYMENT JUDGE** N J Roper

**MEMBERS**

### Representation

**For the Claimants:**

**Mr R Wakeling, Solicitor**

**For the First Respondent:**

**Did not attend**

**For the Second Respondent:**

**Did not attend, Written Representations**

### JUDGMENT

**The judgment of the Employment Judge sitting alone is that:**

1. 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.

2. The tribunal makes a protective award in respect of all 27 claimants on the schedule below who were employees of the respondent at its premises at Holland Road, Langage Business Park, Plympton, Plymouth who were dismissed as redundant on 19 July 2018 and 26 July 2018 and orders the first respondent to pay those employees remuneration for the protected period of 90 days beginning on either 19 July 2018 and 26 July 2018 as the case may be. For the avoidance of doubt, the tribunal declares that each such employee is entitled to an award in respect of 90 days, irrespective of the date of termination of his or her employment.

3. The claimants' remaining claims for breach of contract, unfair dismissal, accrued but unpaid holiday pay, and failure by the respondent to issue a written statement of the particulars of their employment, are all hereby dismissed upon withdrawal by the claimants on a date 21 days after the date this judgment is sent to the parties, unless written representations are received to the contrary by any one or more of the claimants before that date.

### **REASONS**

1. This is a claim for a protective award brought by the 27 claimants listed on the attached schedule below ("the Claimants"). I have heard from Mrs Katheryn Pollard, and I have also accepted a statement from Mrs Maria Triston, who was not here to be questioned on her evidence, but whose evidence was repeated as true by Mrs Pollard. No one attended from the first respondent, and the second respondent had previously submitted written submissions for the purposes of this hearing.
2. I have considered the evidence before me, both oral and documentary, and I have considered the legal and factual submissions made by and on behalf of the respective parties. I find the following facts proven on the balance of probabilities.
3. The first respondent company Freshways Dairystix Limited was a manufacturer of packaged dairy products trading from a site at Holland Road, Langage Business Park, Plympton, Plymouth, Devon, PL7 5HJ. Approximately 17 employees were dismissed summarily by reason of redundancy on 19 July 2018. Approximately 30 other employees were then dismissed summarily by reason of redundancy on 26 July 2018. In total 47 employees were dismissed by reason of redundancy with immediate effect on either 19 July 2018 or 26 July 2018.
4. There was no independent trade union which was recognised by the first respondent for the purposes of collective bargaining, consultation and negotiation.
5. There were no elected employee representatives in place, and the first respondent did not elect employee representatives for the purposes of consultation leading to the aforesaid dismissals.
6. The first respondent failed to undertake any or any adequate consultation with the Claimants prior to the dismissals.
7. The first respondent company then entered voluntary creditors' liquidation on 21 August 2018.
8. Having found the above facts, I now apply the law.
9. The relevant law is in the Trade Union and Labour Relations (Consultation) Act 1992 ("TULRCA").
10. Section 188(1) of TULRCA provides as follows: "Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or

- may be affected by measures taken in connection with those dismissals". S188(1A) provides that "The consultation shall begin in good time and in any event – (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and (b) otherwise, at least 30 days, before the first of the dismissals takes effect.
11. S 188(1B) provides that: "For the purposes of this section the appropriate representatives of any affected employees are – (a) if the employees of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or (b) in any other case, whichever of the following employee representatives the employer chooses:- (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf; (ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1)."
  12. S 188(2): provides that; "The consultation shall include consultation about ways of – (a) avoiding the dismissals, (b) reducing the numbers of employees to be dismissed, and (c) mitigating the consequences of the dismissals, and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives."
  13. Section 188(4) provides: "For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives – (a) the reasons for his proposals, (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant, (c) the total number of employees of any such description employed by the employer at the establishment in question, (d) the proposed method of selecting the employees who may be dismissed, (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which any dismissals are to take effect, (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with the obligation imposed by or by virtue of any enactment) to employees who may be dismissed, (g) the number of agency workers working temporarily for and under the supervision and direction of the employer, (h) the parts of the employer's undertaking in which those agency workers are working, and (i) the type of work are those agency workers are carrying out."
  14. Section 188(5) provides: "That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or in the case of representatives of a trade union sent by post to the union at the address of its head or main office."
  15. In this case there was no independent trade union, and no employee representatives were in place or elected prior to the dismissals. The first respondent dismissed as redundant 20 or more employees at one

- establishment within a period of 90 days or less. The first respondent failed to comply with the requirements of section 188 of TULRCA.
16. The tribunal therefore makes a protective award in respect of all 27 claimants on the attached schedule who were dismissed as redundant on 19 July 2018 and 26 July 2018 and orders the respondent to pay those employees remuneration for the protected period of 90 days beginning on either 19 July 2018 and 26 July 2018 as the case may be.

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Employment Judge N J Roper  
Dated 2 November 2020

Judgment sent to Parties on  
2 November 2020

For the Tribunal Office

**Schedule of Claimants**

	<b>Case no.</b>	<b>Claimant</b>
<b>1.</b>	1404242/2018	Mr A Green
<b>2.</b>	1404243/2018	Ms B Pruska
<b>3.</b>	1404245/2018	Mr C Harris
<b>4.</b>	1404246/2018	Ms C Marin
<b>5.</b>	1404247/2018	Ms D Spence
<b>6.</b>	1404248/2018	Mr D Gornea
<b>7.</b>	1404250/2018	Ms G Wood
<b>8.</b>	1404252/2018	Mr J Crowther
<b>9.</b>	1404253/2018	Mr J Sowden
<b>10.</b>	1404254/2018	Ms K Stepien
<b>11.</b>	1404255/2018	Mr K Herbert
<b>12.</b>	1404256/2018	Ms K Pollard
<b>13.</b>	1404257/2018	Ms L Stanciu
<b>14.</b>	1404258/2018	Mr L Taylor
<b>15.</b>	1404259/2018	Ms M Kozłowska
<b>16.</b>	1404260/2018	Ms M Treston
<b>17.</b>	1404262/2018	Mr M Green
<b>18.</b>	1404263/2018	Mr N Baker
<b>19.</b>	1404264/2018	Ms P Kent
<b>20.</b>	1404265/2018	Mr R Horton
<b>21.</b>	1404266/2018	Ms S Cox
<b>22.</b>	1404267/2018	Mr S Turpin
<b>23.</b>	1404268/2018	Mr T Kent
<b>24.</b>	1404724/2018	Ms J Arscott
<b>25.</b>	1404725/2018	Ms J Cox
<b>26.</b>	1404726/2018	Mr S Treston
<b>27.</b>	1404727/2018	Ms V Foster

**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.