



# EMPLOYMENT TRIBUNALS

**Claimants:** (1) Mrs Nina Julian  
(2) Miss Poppy Keam  
(3) Mrs Lewis Edmunds  
(4) Mrs Michele Holland

**Respondent:** St Christopher's School (Canterbury) Ltd (in voluntary liquidation)

**Heard at:** Croydon Employment Tribunal **On:** 19 October 2020

**Before:** Employment Judge Michell (sitting alone)

## Appearances

For the claimant: Mr Simon Pettet (NASUWT representative)

For the respondent: No appearance or representation (written submissions).

## JUDGMENT

### Claim under s.189 of the Trade Union & Labour Relations (Consolidation) Act 1992

1. The claimants' complaints that the respondent failed to comply with its duties of consultation as set out in Section 188(1) of the Trade Union & Labour Relations (Consolidation) Act 1992 are each well founded.
  
2. The claimants are each awarded a protective award with a protected period of 90 days (which period commenced on 31 August 2018 and ended on 27 December 2018). The award, reckoned by reference to the claimants' gross weekly wage, yields the following amounts:
  - a. The first claimant (Mrs Nina Julian): £5,178.08
  - b. The second claimant (Miss Poppy Keam): £4,561.58
  - c. The third claimant (Mrs Lewis Edmunds): £1,666.54
  - d. The fourth claimant (Mrs Michele Holland): £5,496.68

**Claim for notice pay**

3. The claimants are each awarded an amount representing their contractual right to notice pay for one full half term i.e. from 31 August 2018 to 28 October 2018 (less the statutory notice pay each of them have already received from the Insolvency Service). The award, reckoned by reference to the claimants' net weekly wage, yields the following amounts:

- |   |           |
|---|-----------|
| a. The first claimant (Mrs Nina Julian):      | £1,472.73 |
| b. The second claimant (Miss Poppy Keam):     | £861.60   |
| c. The third claimant (Mrs Lewis Edmunds):    | £402.93   |
| d. The fourth claimant (Mrs Michele Holland): | £1,563.52 |

**Employment Judge Michell**

19 October 2020

**Written reasons**

Written reasons for this decision will not be provided unless asked for by either party by a written request made within 14 days of the sending of this written record of the decision.

**Regulation 5 statement**

The respondent is hereby advised of its duties under Regulation 6 of SI 1996/2349 to give certain information to the Secretary of State within the time specified in Regulation 6(2)&(3). In relation to remuneration under the protective award, Regulations 7 & 8 make certain provisions for relevant awards to be postponed pending any recoupment by the Secretary of State. The respondent is referred to the terms of Regulations 7 & 8 below, which in so far as may be material provide as follows:

**7 Postponement of awards**

- (1) This Regulation shall have effect for the purpose of postponing relevant awards in order to enable the Secretary of State to initiate recoupment under Regulation 8 below.
- (2) Accordingly—
  - (a) so much of the monetary award as consists of the prescribed element;
  - (b) payment of any remuneration to which an employee would otherwise be entitled under a protective award,

shall be treated as stayed ... as respects the relevant employee until—

- (i) the Secretary of State has served a recoupment notice on the employer; or
  - (ii) the Secretary of State has notified the employer in writing that he does not intend to serve a recoupment notice.
- (3) The stay ...under paragraph (2) above is without prejudice to the right of an employee under section 192 of the 1992 Act to present a complaint to an employment tribunal of his employer's failure to pay remuneration under a protective award and Regulation 3(2)...has effect as respects any such complaint and as respects any order made under section 192(3) of that Act.

## **8 Recoupment of benefit**

(1) Recoupment shall be initiated by the Secretary of State serving on the employer a recoupment notice claiming by way of total or partial recoupment of jobseeker's allowance [, income-related employment and support allowance] [universal credit] or income support the appropriate amount, computed, as the case may require, under paragraph (2) or (3) below.

(2) In the case of monetary awards the appropriate amount shall be whichever is the less of the following two sums—

(a) the amount of the prescribed element (less any tax or social security contributions which fall to be deducted therefrom by the employer); or

(b)

[(i)] 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 period to which the prescribed element is attributable [or

(ii) in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person's earned income for that period was the same as immediately before the period to which the prescribed element is attributable.]

(3) In the case of remuneration under a protective award the appropriate amount shall be whichever is the less of the following two sums—

(a) 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 required under Regulation 6 above; or

(b)

[(i)] 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 protected period falling before the date described in (a) above [or

(ii) in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the protected period falling before the date described in (a) above, any amount paid by way of or on account of universal credit for the UC period that

**Case Numbers: 2304107/2018; 2304108/2018; 2304109/2018 & 2304110/2018  
(CVP)**

would not have been paid if the person's earned income for that period was the same as immediately before the protected period.]

(4) A recoupment notice shall be served on the employer by post or otherwise and copies shall likewise be sent to the employee and, if requested, to the Secretary of the Tribunals.

(5) The Secretary of State shall serve a recoupment notice on the employer, or notify the employer that he does not intend to serve such a notice, within the period applicable, as the case may require, under paragraph (6) or (7) below, or as soon as practicable thereafter.

(6) In the case of a monetary award the period shall be—

(a) in any case in which the tribunal at the hearing announces to the parties the effect of its decision as described in Regulation 4(4) above, the period ending 21 days after the conclusion of the hearing or the period ending 9 days after the decision has been sent to the parties, whichever is the later; or

(b) in any other case, the period ending 21 days after the decision has been sent to the parties.

(7) In the case of a protective award the period shall be the period ending 21 days after the Secretary of State has received from the employer the information required under Regulation 6 above.

(8) A recoupment notice served on an employer shall operate as an instruction to the employer to pay, by way of deduction out of the sum due under the award, the recoupable amount to the Secretary of State and it shall be the duty of the employer to comply with the notice. The employer's duty under this paragraph shall not affect his obligation to pay any balance that may be due to the employee under the relevant award.

(9) The duty imposed on the employer by service of the recoupment notice shall not be discharged by payment of the recoupable amount to the employee during the postponement period or thereafter if a recoupment notice is served on the employer during the said period.

(10) Payment by the employer to the Secretary of State under this Regulation shall be a complete discharge in favour of the employer as against the employee in respect of any sum so paid but without prejudice to any rights of the employee under Regulation 10 below.

(11) The recoupable amount shall be recoverable by the Secretary of State from the employer as a debt.

[(12)] For the purposes of paragraphs (2)(b)(ii) and (3)(b)(ii), 'earned income' has the meaning given in regulation 52 of the Universal Credit Regulations 2013.]