



EMPLOYMENT TRIBUNALS

Claimants: Mr G Descoteaux

Respondents: Late Rooms Limited (in Administration)

RULE 21 JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The time for presenting a response having expired , and no valid response having been presented by the respondent within the prescribed time limit , it is the judgment of the tribunal that:

1. The respondent failed to consult with the claimant as a person who may be affected by proposals to dismiss, or measures taken in connection with the dismissal of, 20 or more employees, in breach of s.188(1) of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. The claimant is entitled to , and the Tribunal orders the respondent to pay, a protective award. That award is an award of remuneration for the protected period of 90 days from 2 August 2019.
3. If the claimant wishes to pursue any claim for notice pay, he must by no later than **29 January 2021** provide to the Tribunal the following further information, and provide documentary evidence in support thereof:
 - a) His gross monthly salary in his employment with the respondent;
 - b) A copy of any contract, or other written evidence of his entitlement to three months notice;
 - c) His gross monthly salary in his new employment;
 - d) All payslips or other documents relating to payments made by, or on behalf of the respondent, the claimant's new employer, or the Secretary of State, following the termination of his employment;
 - e) In any event a full breakdown of all payments received by the claimant for the period of three months after the termination of his employment.

NOTE AND REASONS

- 1.This claim arises from the Administration of the respondent, and the necessary consent to the claim proceeding has been given.
- 2.No response to the claim has been received, and the claim therefore succeeds.

3.A protective award is a two stage process. The Tribunal at this stage makes no financial awards but gives a judgment that the claimant is entitled to a protective award in the terms set out above. The claimant must then seek payment of his individual award from the respondent (or the Secretary of State) , quantifying the same.

4.Failure to pay, or any dispute as to the amount payable, then becomes a matter for a further separate claim under s.192 of the Trade Union and Labour Relations (Consolidation) Act 1992 for payment of the award.

5.In relation to the claimant's claim for notice pay, the Tribunal has been seeking the necessary information and evidence to enable it to calculate any award to which the claimant may be entitled for notice pay. Unfortunately the claimant has not provided the Tribunal with sufficiently clear information or evidence, choosing to provide details of payments received into his bank account. This is not sufficient. The claimant obtained another post soon after his dismissal. He has told the Tribunal that his gross monthly salary in that post is £4166. He has not, however, informed the Tribunal, or provided any evidence of, his gross salary with the respondent. Nor, whilst he has asserted an entitlement to a three month notice period, has he adduced any evidence of that entitlement.

6.The claimant has indicated that he is primarily concerned to receive a protective award. He has not, however, withdrawn his claim for notice pay, and it remains live. If he intends to pursue, the Tribunal must have the information referred to above.

7.It is also noted that the claimant received payments into his bank account from "INSS RPS". That may well be the Redundancy Payments Service, and the claimant may have , as he is entitled to , have made claims against the Secretary of State. If so, the Tribunal also needs to know what payments have been received, and in respect of what entitlements. Whilst the Secretary of State would not meet any claim for more than statutory notice pay, at the appropriate cap, if any such payment has been received, the Tribunal needs to know and take it into account in calculating what further sums to award.

Employment Judge Holmes

Dated: 13 January 2021

JUDGMENT SENT TO THE PARTIES ON

15 January 2021

FOR THE TRIBUNAL OFFICE