Case No: 2601870/2020 (A)

EMPLOYMENT TRIBUNALS

Between:

Mrs M Easson **Claimant**	**and**	K3 Business Technologies Ltd (In administration) **Respondent**

RECORD OF A CLOSED TELEPHONE PRELIMINARY HEARING

Heard at: Nottingham **On:** Friday 15 January 2021

Before: Employment Judge P Britton (sitting alone)

Representation
For the Claimant: In person
For the Respondent: No appearance

JUDGMENT

1. Pursuant to rule 70 of the Employment Tribunal's (Constitution & Rules of Procedure 2013 and Sch 1 (TULCRA), the Judgment issued in this matter on 21 August 2020 is revoked it having been made in error and in fact being a nullity and thus it being in the interests of justice that it should be revoked.

2. For the avoidance of doubt, the claims which proceed are first for non-payment of wages including outstanding holiday pay and second for a protective award pursuant to s188-190 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULCRA).

3. Orders for the future of the proceedings are hereinafter set out.

REASONS

1. The Claim (ET1) was presented to the Tribunal by the Claimant on 11 June 2020. She had prepared it herself. Set out was how she was employed by the Respondent as a Project Manager between 1 October 2018 and 24 April 2020. As to that dismissal, she pleaded how on 21 April 2020 she and the other employees took part in a conference call with RSM Restructuring Advisory LLP (RSM) who informed them that the Respondent was now in administration. On the 24 April 2020, she received a letter confirming dismissal with immediate effect because of redundancy in turn because of the administration.

2. She claimed outstanding wages and holiday pay, both of which she quantified, but also for what was stated to be 45 days of redundancy pay. She had also ticked the box for unfair dismissal.

3. It is clear from my discussion today with her that there were over 150 redundancies as a consequence of the administration and that her reference to 45 days was because she understood that was what should have been the consultation period. She did not understand what is meant by a protective award as per s188-190 of TULCRA and to which I shall return.

4. As to the unfair dismissal, she lacks the necessary 2 years qualifying service to bring such a claim and so the tribunal sent her its standard letter on 15 June 2020 requiring her to show cause by the 29 June as why that claim should not be struck out. She did not reply. But subsequently when asked to provide quantification of her claim on 13 August, in her reply it was clear that she was not pursuing that head of claim. She has confirmed that today.

5. In any event, the ET1 was sent to the Respondent at the address in Salford given in the ET1 by the tribunal on 15 June making clear that for the time being its Response (ET3) should plead to the claims other that for unfair dismissal. The Salford address was the registered office of the Respondent prior to the administration. The Respondent failed to file a Response.

6. Thus on the 26 August 2020, Employment Judge Ahmed issued what is known as a default judgement for the unpaid wages (£2505.22 gross) and the unpaid holiday pay (£426. 60 gross). He had identified that the remaining claim was for a protective award and adjourned that for further consideration and directions until today: hence my involvement.

7. However, in my preparation and having noted the reference to administrators in the ET1, I undertook a search of Companies House. It shows that the Respondent was placed in administration on 21 April 2020. It gave the names of the administrators as Christopher Ratten and Jeremy Woodside. They are both stated to be with RSM and their address is given as 9th Floor, 3 Hardman Street, Manchester, M3 3 HF. Furthermore, post their appointment, the registered office of the Respondent was changed from the Salford address to their address in Manchester.

8. Thus, the following applies. First as a matter of law, the Claimant cannot bring the proceedings without the consent of those administrators or otherwise the Court which made the administration order. The Tribunal thus should have issued its standard letter to that effect to her. But in these troubled times the oversight is understandable given the acute pressure upon the Tribunal and its secretariat. Usually also the Tribunal, particularly if the matter is referred to a Judge, will order the proceedings to be sent to the administrators asking them if they consent to the proceedings and if so will they be defending. This approach is particularly applicable with

unrepresented claimants such as the Claimant and accords with the overriding objective. But for the same reason this did not happen.

9. So, the judgment is a nullity and with the consent of EJ Ahmed I revoke it.

10. As to the claims, first the Claimant has received payment from the Insolvency Fund administered by the Secretary of State for Business, Energy and Industrial Strategy (BEIS). This of course would be as per s184 of the Employment Rights Act 1996 (the ERA). The amounts are capped. Thus, there may still be a balance due from the Respondent and the Claimant will clarify as soon as possible.

11. As to the protective award, she explained that she reported into "the office" at Didcot and attended meetings thereat. This appears to be the main office and thus may be the establishment for the purposes of s188-190 of TULCRA.

12. There was no trade union involved in the consultation as far as she is aware or any employee representatives appointed. Thus her claim can be pursued by her as a protective award. The award would start at 90 days' pay, the onus being on the Respondent to show mitigation so as to reduce the period. Thus, her claim starts at 90 days' pay and not 45. Furthermore, it is not a redundancy payment but a protective award. This she did not understand before today. The amount does not need quantifying. This is because if the award is made, as usually the Secretary of State for BEIS picks up that part of the award as capped at s184 of the ERA, he requests that the Judgment refers as per s190 of TULCRA just to ie 90 days, leaving him to calculate as per a day's pay which he obviously can do from the information as in this case already supplied, and of course the pay being capped to £585 per week pro rata for a day's pay.

13. This the Claimant now understands.

ORDERS

Made pursuant to the Employment Tribunal Rules 2013

1. The Claim and this judgment and reasons will now be sent to the administrators, namely Christopher Ratten and Jeremy Woodside, at RSM Restructuring Advisory LLP 9th Floor, 3 Hardman Street, Manchester, M3 3 HF.

2. They will be asked to confirm **within 14 days** as to whether they consent to the proceedings and whether the Respondent wishes to defend. If it does consent, then they will then be formally served the pleadings with a response deadline in the usual way.

3. If they do not consent, then the Claimant will be sent the Tribunal's standard letter as to administration whereby the pleadings are stayed whilst she obtains leave of the relevant Court.

4. The Secretary of State for BIES **is to be served** the proceedings and this judgment and reasons, him being an interested party, care of the

Insolvency Service at Birmingham. It would be helpful if he could confirm as to whether there have been other protective award claims against the Respondent and as to what the Sec of State has done so far in relation to them.

5. Once all the above has occurred, the Tribunal will assess if necessary the way forward.

NOTES

(i) The above Order has been fully explained to the parties and all compliance dates stand even if this written record of the Order is not received until after compliance dates have passed.

(ii) Failure to comply with an order for disclosure may result on summary conviction in a fine of up to £1,000 being imposed upon a person in default under s.7(4) of the Employment Tribunals Act 1996.

(iii) The Tribunal may also make a further order (an "unless order") providing that unless it is complied with, the claim or, as the case may be, the response shall be struck out on the date of non-compliance without further consideration of the proceedings or the need to give notice or hold a preliminary hearing or a hearing.

(iv) An order may be varied or revoked upon application by a person affected by the order or by a judge on his/her own initiative. Any further applications should be made on receipt of this Order or as soon as possible. The attention of the parties is drawn to the Presidential Guidance on 'General Case Management':

https://www.judiciary.gov.uk/wp-content/uploads/2013/08/presidential-guidance-general-case-management-20170406-3.2.pdf

(iv) The parties are reminded of rule 92: "*Where a party sends a communication to the Tribunal (except an application under rule 32) it shall send a copy to all other parties, and state that it has done so (by use of "cc" or otherwise). The Tribunal may order a departure from this rule where it considers it in the interests of justice to do so.*" If, when writing to the tribunal, the parties do not comply with this rule, the tribunal may decide not to consider what they have written.

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Employment Judge P Britton

Date: 21 January 2021

Sent to the parties on:

22 January 2021

For the Tribunal: