



EMPLOYMENT TRIBUNALS

Claimants: Mr M Russell
Mr R Holland & others

Respondents: (R1) Pochins Limited (in administration)
(R2) The Secretary of State for BEIS

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The complaints seeking a protective award under section 189 Trade Union and Labour Relations (Consolidation) Act 1992 are well founded. The first respondent failed in its duty to consult the claimants under section 188 of that Act.
2. The first respondent is ordered to pay to each claimant identified in the schedule to this judgment remuneration for the protected period of ninety days starting on 5 August 2019.
3. The recoupment regulations apply.

Regional Employment Judge Franey
25 January 2021

JUDGMENT SENT TO THE PARTIES ON
29 January 2021

FOR THE TRIBUNAL OFFICE

SCHEDULE

CASE NUMBER	CLAIMANT
2413720/2019	MR M RUSSELL
2414254/2019	MR R HOLLAND
2414255/2019	MR M BANNAGHAN
2414256/2019	MR NJ BOSSON
2414257/2019	MR M BOULTON
2414258/2019	MRS L BROOKS
2414259/2019	MR D CARR
2414260/2019	MRS C COPE
2414261/2019	MR N CORNWALL
2414262/2019	MRS M DAVIES
2414263/2019	MR A DAWE
2414264/2019	MR B EDWARDS
2414265/2019	MR N FRANKLIN
2414266/2019	MR D FRANKLIN
2414267/2019	MR C GLEN
2414268/2019	MR S GLYNN
2414269/2019	MR I GRANT
2414270/2019	MISS P GRANT-HANLON
2414271/2019	MR C GRIFFITH
2414272/2019	MRS R GRIFFITH
2414273/2019	MR M HARDING
2414274/2019	MISS K HARDING
2414275/2019	MR L HAWTHORNE
2414276/2019	MR R HOLLAND
2414277/2019	MR J HOLMES
2414278/2019	MR T HOUGH
2414279/2019	MR N HULSE
2414280/2019	MR T JONES
2414281/2019	MR WP LANDMAN
2414282/2019	MR J LATHAM
2414283/2019	MR J LOWTHER
2414284/2019	MR J MAGENHEIMER
2414285/2019	MR M MASON
2414286/2019	MR L MATHESON
2414287/2019	MR C MCRITCHIE

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2414254/2019
& others
(see schedule attached)

2414288/2019	MRS J MOODY
2414289/2019	MRS M MORLEY
2414290/2019	MR E MURPHY
2414291/2019	MR A PERRIN
2414292/2019	MR S PETRIE
2414293/2019	MR M PRITCHARD
2414294/2019	MR K ROBERTS
2414295/2019	MRS S ROWLINSON
2414296/2019	MR D SAFFILL
2414297/2019	MR P SAUCE
2414298/2019	MRS C SHERRATT
2414299/2019	MR D SHORE
2414300/2019	MR I SHORT
2414301/2019	MR S TAYLOR
2414302/2019	MRS S TENCH
2414303/2019	MRS G URQUHART
2414304/2019	MR I WALLEY
2414305/2019	MRS S WHITTAKER
2414306/2019	MRS AJ WILLETTS
2414307/2019	MR C WILLIAMS
2414308/2019	MR J WOOD
2414309/2019	MR D WOOD

Claimant: Mr M Russell

Respondent: Pochin's Ltd (In Administration)

**ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)**

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

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 less of:

- (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 referred to 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 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.

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.