



EMPLOYMENT TRIBUNALS

Claimants: 1. The British Airline Pilots Association
2. Mr S Backhouse & Others (see Schedule)

Respondents: 1. Thomas Cook Airlines Limited (in Liquidation)
2. The Secretary of State for Business, Energy and Industrial Strategy

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The first respondent not having presented a response to the claims and the second respondent making legal submissions prior to the rule 21 Judgment, and on the information before the Judge, the judgment of the Tribunal is that:

1. The claimants' complaints under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") of a failure by the first respondent to comply with the requirements of section 188 of the 1992 Act are well-founded.
2. The Tribunal orders the first respondent by way of a protective award under section 189(3) of the 1992 Act to pay to the claimants a payment equivalent to remuneration for the period of 90 days beginning on 23 September 2019.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.
4. CASE NUMBER 2408776/2020 AND OTHERS: The claims were not brought within three months of the date of dismissal. It was not reasonably practicable for the claimants to bring their claims within the original three month time limit. The claims were brought within such further period as the Tribunal considers reasonable, in accordance with section 189(5) of the Trade Union and Labour Relations (Consolidation) Act 1992.

REASONS

1. The claimants claimed a protective award in respect of breaches of the collective consultation requirements under the 1992 Act. No response was presented to the claim by the first respondent. On 14 February 2020, the Official Receiver confirmed that the first respondent would not be contesting the protective award claims.
2. The respondent is in compulsory liquidation and by order of the High Court dated 13 December 2019 for case numbers 2416664/2019 and 4114616/2019 permission was granted for the claims to proceed. For case number 2408776/2020 and others the High Court gave identical permission on 30 November 2020.
3. On full consideration of the file of proceedings it was possible to issue this Judgment under rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 in respect of the claims for protective awards without a hearing. Code P under the case numbers reflects this.
4. On the information provided, the Tribunal makes the following findings:
5. The first respondent employed over 20 employees at the following sites where the claimants were employed:
 - (a) Birmingham Airport;
 - (b) Bristol Airport;
 - (c) Gatwick Airport;
 - (d) Manchester Airport;
 - (e) Newcastle Airport;
 - (f) Glasgow Airport.
6. The British Airline Pilots Association (“BALPA”) was the trade union recognised for collective bargaining, consultation and negotiation for the pilot workforce at these sites. The individual claimants in case numbers 2416664/2019 and 4114616/2019 were members of the BALPA union. The individual claimants in case number 2408776/2020 and others were not members of the BALPA union but were part of the same bargaining unit. As these claimants were not members of the recognised trade union, they have brought individual claims that have been consolidated with the claims of the recognised trade union.
7. The first respondent went into compulsory liquidation on 23 September 2019. At 1:47am on 23 September 2019 the Official Receiver was appointed. Later that day the claimants were notified of termination of employment with immediate effect.

8. There was no proper warning or notice given to or consultation with the recognised trade union, BALPA, or the individual pilots. In addition, no employee representatives had been elected or appointed for any such consultation within section 188A of the 1992 Act.

9. In the circumstances, the first respondent is in breach of the duty under section 188 of the 1992 Act and the Tribunal makes an award under section 189 in favour of the claimants for the maximum protected period of 90 days commencing on 23 September 2019.

10. The first respondent is advised of the provisions of regulation 6 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within ten days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the first respondent must comply with the provisions of regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:

- (a) The name, address and national insurance number of every employee to whom the award relates; and
- (b) The date of termination of the employment of each such employee.

11. The first respondent will not be required to make any payment under the protective awards made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the first respondent.

Employment Judge Ainscough

Date: 3 March 2021

JUDGMENT AND REASONS SENT TO
THE PARTIES ON
4 March 2021

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AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE

Schedule

2416664	2019	British Airline Pilots Association (BALPA)
4114616	2019	British Air Line Pilots Association (BALPA)
2408776	2020	Backhouse S Mr
2408777	2020	Bowall S Mr
2408778	2020	Hebblewhite D Mr
2408779	2020	Jensen C Mrs
2408780	2020	Hawkes D Mr
2408781	2020	McGregor I Mr
2408782	2020	Longley C Mr
2408783	2020	Osborne-Crone M Mr
2408784	2020	Howarth M Mr
2408785	2020	Parker M Mr
2408786	2020	McClymont D Mr
2408787	2020	Foreman M Mr
2408788	2020	Brennan M Mr
2408789	2020	Newall M Mr
2408790	2020	Wilson M Mr
2408791	2020	Smith R Mr
2408792	2020	Evans S Mr
2408793	2020	Foat L Mr