



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103664/2020

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Judgment issued in Glasgow on 18 December 2020

Employment Judge M Kearns

10 **Unite the Union**

Claimant
Written Submissions

15 **Marmac Services Limited (in liquidation)**

Respondent

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

20 The Judgment of the Employment Tribunal was that the claimant's claim is well
founded. The Employment Tribunal makes a protective award under Section 189 of
the Trade Union and Labour Relations (Consolidation) Act 1992 in favour of all the
employees of the respondent who were made redundant on or within 90 days of 29
25 May 2020 and orders the respondent to pay remuneration to the employees for the
protected period of 30 days from 29 May 2020.

REASONS

Applicable Law

1. Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992
("TULRCA") provides (so far as relevant):-

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'Duty of employer to consult ... representatives

- (1) *Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90*

days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.

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(1A) The consultation shall begin in good time and in any event –

(a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and

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(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.'

2. Section 189 states so far as material:

'Complaint ... and protective award

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(1) Where an employer has failed to comply with a requirement of s.188 or s.188A, a complaint may be presented to an employment tribunal on that ground –

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(a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;

(b) in the case of any other failure relating to employee representatives, by any of the representatives to whom the failure related;

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(c) in the case of a failure relating to representatives of a trade union, by the trade union, and

(d) *in any other case, by any of the affected employees, or by any of the employees who have been dismissed as redundant.*

5 (1B) *On a complaint under subsection (1)(a) it shall be for the employer to show that the requirements in s.188A have been satisfied.*

(2) *If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.*

10 (3) *A protective award is an award in respect of one or more descriptions of employees –*

(a) *who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and*

(b) *in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of s.188,*

15 *ordering the employer to pay remuneration for the protected period.*

(4) *The protected period –*

20 (a) *begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and*

(b) *is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of s.188;*

25 *but shall not exceed 90 days ...'*

Discussion and Decision

3. The claimant is an independent trade union formally recognised by the respondent for the purposes of collective bargaining for the following classes of employees: (1) electrical apprentices; (2) electrical engineers; (3) apprentice plumbers; (4) plumbers; (5) administrative staff.
4. Where the failure by an employer to comply with section 188 is a failure relating to representatives of a trade union, title to sue is conferred on the union under section 189(1)(c) on behalf of all employees in respect of whom the union is recognised (whether they were union members or not). Employees in that category cannot bring individual claims, but can instead rely on the Judgment in favour of the union.
5. On 29 May 2020, the directors of the respondent company petitioned the Court to place the company into liquidation. At the same time, they dismissed all 45 employees by reason of redundancy. On 3 June 2020 Eileen Blackburn Insolvency Practitioner, of 56 Palmerston Place Edinburgh EH12 5AY was appointed interim liquidator to the respondent.
6. By interlocutor dated 26 August 2020 the Court granted leave for these proceedings to be brought/continued against the respondent.
7. The respondent failed to consult with the representatives of the affected employees in accordance with the provisions of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992. The claimant seeks a protective award of 30 days' pay in respect of the employees. The respondent does not defend the claim. In these circumstances, the application succeeds.

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Employment Judge: Mary Kearns
Date of Judgment: 23rd December 2020
Entered in Register: 21st January 2021
Copied to Parties

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