

Case Nos: 2416652/2019 & others  
2204484/2019  
2401169/2020  
2416725/2019  
2416778/2019  
2400264/2020 & others  
2400491/2020 & others  
2400514/2020  
2400516/2020  
Code P



# EMPLOYMENT TRIBUNALS

- Claimants:**
1. The Transport Salaried Staff Association & Others
  2. Mr Sagrolikar
  3. Mr J Jakobsen
  3. Ms McGinn
  4. Mr M Hutton
  5. Unite the Union & Others
  6. Mr Atkin & Others
  7. Miss Law
  8. Mr Matthews

- Respondents:**
1. Thomas Cook Airlines Limited (in Compulsory Liquidation)
  2. Thomas Cook Group PLC (in Compulsory Liquidation)
  3. Thomas Cook UK Travel Limited (in Compulsory Liquidation)
  4. Thomas Cook Tour Operations Limited (in Compulsory Liquidation)
  5. Thomas Cook UK Limited (in Compulsory Liquidation)
  6. Thomas Cook Aircraft Engineering Limited (in Compulsory Liquidation)
  7. The Secretary of State for Business, Energy and Industrial Strategy

## JUDGMENT

### Employment Tribunals Rules of Procedure 2013 – Rule 21

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

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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 to sixth respondents to comply with the requirements of section 188 of the 1992 Act are well-founded.
2. The Tribunal orders the first to sixth respondents 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.

## **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 to sixth respondents. The Official Receiver subsequently confirmed that the first to sixth respondent would not be contesting the protective award claims.
2. The first to sixth respondents are in compulsory liquidation and by order of the High Court dated 1 July 2020 for case number 2204484/2019 and 2416652/2019 and others permission was granted for the claims to proceed. Identical permission was given by the High court on 2 July 2020, 9 August 2020, 6 October 2020 and 27 November 2020 for case numbers 2416725/2019, 2401169/2020, 2416778/2019 and 2400264/2020 and others, respectively.
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 to sixth respondents employed over 20 employees at the following sites:
  - (a) Peterborough Westpoint;
  - (b) Manchester Cardinal House;

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- (c) London Aldersgate;
- (d) East Midlands Airport;
- (e) Newcastle Airport;
- (f) Gatwick Airport;
- (g) Stansted Airport;
- (h) Manchester Airport.
- (i) Birmingham Airport

Case numbers 2416652/2019, 2416653/2019, 2416654/2019 & others (see Schedule)

4. The Transport Salaried Staff Association was a recognised trade union for:
- (a) all salaried staff;
  - (b) role levels 1-5 (and/or grade A-D);
  - (c) those who worked within the following business areas at Peterborough (Westpoint), Manchester (Cardinal House) and London (Aldersgate) in:
    - (i) UK retail central operations and Head Office retail support;
    - (ii) Sales centre/UK contact centre;
    - (iii) Corporate and group – HR, comms and PR, audit, finance, marketing and customer insight, property and procurement, central distribution, support functions and financial services and health and safety.

Case number 2204484/2019

5. The claimant, Mr Sagrolikar, was not a member of the recognised trade union and was not part of the bargaining unit at the London Aldersgate site. This claimant worked for Thomas Cook Group PLC

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Case number 2416725/2019

6. The claimant, Ms V McGinn, was not a member of the recognised trade union and was not part of the bargaining unit at the London Aldersgate site. This claimant worked for Thomas Cook Group PLC.

Case number 2401169/2020

7. The claimant Mr J Jakobsen was not a member of the recognised trade union nor was he part of the bargaining unit at the Manchester Airport site. This claimant worked for Thomas Cook Airlines Limited.

Case number 2416778/2019

8. The claimant Mr M Hutton was not a member of the recognised trade union nor was he part of the bargaining unit at the Manchester Cardinal House site. This claimant worked for Thomas Cook Airlines Limited.

Case numbers 2400264/2020, 2400486/2020, 2400521/2020, 2400522/2020, 2400398/2020 and others (see Schedule)

9. The application to amend of 7 August 2020 is granted.

10. Unite the Union was a recognised trade union at the following sites:

- (a) East Midlands Airport;
- (b) Newcastle Airport;
- (c) Gatwick Airport;
- (d) Stansted Airport;
- (e) Manchester Airport.
- (f) Birmingham Airport

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Case Number 2400491/2020

6. The claimants, Mr Atkin and others, were not members of a recognised trade union nor were they part of the bargaining unit at the Manchester Airport site. The claimants worked for Thomas Cook Aircraft Engineering Limited and Thomas Cook Airlines Limited.

Case Number 2400514/2020

7. The claimant, Miss Law, was not a member of a recognised trade union nor was she part of the bargaining unit at the Manchester Airport site. The claimant worked for Thomas Cook Airlines Limited.

Case Number 2400516/2020

8. The claimant, Mr Matthews, was not a member of a recognised trade union nor was he part of the bargaining unit at the Manchester Airport site. The claimant worked for Thomas Cook Airlines Limited.

9. The first to sixth respondents 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.

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

11. In the circumstances, the first to sixth respondents are 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.

12. The first to sixth respondents are 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 to sixth respondents 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:

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- (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.

13. The first to sixth respondents 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 to sixth respondents.

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Employment Judge Ainscough

Date: 9 March 2021

JUDGMENT AND REASONS SENT TO  
THE PARTIES ON  
10 March 2021

.....  
AND ENTERED IN THE REGISTER

.....  
FOR THE TRIBUNAL OFFICE