



EMPLOYMENT TRIBUNALS

Claimants Mrs D Downes

Respondent: Ena Shaw Limited (in administration)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Judgment of the Tribunal is that:

1. The respondent failed to consult with the claimant as a person who may be affected by proposals to dismiss, or measures taken in connection with the dismissal of twenty or more employees, in breach of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. Under Section 189(1)(d), (2), (3) and (4) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Tribunal makes a protective award in respect of the claimant, and the respondent is ordered to pay remuneration to the claimant for a protected period of 90 days beginning on 12 February 2020.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award.

REASONS

1. The claimant claimed a protective award in respect of breach of the collective consultation requirements. No response was presented to the claims by the respondent.
2. The Tribunal makes the following findings based upon the claim:
 - a. The respondent carried on business in St Helens. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce;
 - b. The claimant was advised that the respondent had been placed into administration on 12 February 2020, at the same time as the other employees of the respondent. She was dismissed with immediate effect. There was no consultation with the claimant;
 - c. The respondent employed approximately 167 employees at the establishment, all of whom were dismissed on, or around, the same date.

3. There was no proper warning or notice given to, or consultation with, the workforce. No employee representatives had been elected or appointed for any such consultation within Section 188A of the 1992 Act. The dismissals were put into effect without any consultation or advance notice.
4. In these circumstances, the respondent was 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 claimant for the maximum protected period of 90 days commencing on 12 February 2020.
5. The respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the 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.
6. The respondent will not be required to make any payment under the protective award 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.

NOTE

7. No response to the claim has been received, and the claim therefore succeeds.
8. A protective award is a two-stage process. The Tribunal at this stage makes no financial award, but gives a judgment that the claimant is entitled to a protective award in the terms set out above. The claimant must then seek payment of their individual award from the respondent (or the Secretary of State), quantifying the same.
9. Failure to pay (should that occur), or any dispute as to the amount payable, then becomes a matter for a further separate claim under s.192 of the Trade Union and Labour Relations (Consolidation) Act 1992 for payment of the award.

Employment Judge Phil Allen

12 March 2021

JUDGMENT SENT TO THE PARTIES ON

19 March 2021
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

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Claimant: Mrs D Downes

Respondent: Ena Shaw Limited (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.