



EMPLOYMENT TRIBUNALS

Claimants: Ms B Buttler, Ms B Hothersall, Mr A Clark

Respondent: Edward Dewhurst Limited (in Creditors Voluntary Liquidation)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The respondent has not presented a response. Judgment is granted to the claimants in the terms set out below.
2. On the 1 September 2020, the Claimants were dismissed by reason of redundancy with immediate effect. The first Respondent failed to inform and consult with the Claimants in accordance with the provisions of s188 and s188A of the Trade Union and Labour Relations (Consolidation) Act 1992 (the 1992 Act).
3. The claimants have raised a complaint pursuant to s189 of the 1992 Act seeking a protective award in respect of that failure.
4. The Tribunal makes an award under s189 of the 1992 Act in favour of the claimants named in the attached schedule for the maximum protected period of 90 days commencing on 1 September 2020.
5. The recoupment provisions apply to this award.

Employment Judge **Leach**

**Case No 2418355/2020
2418356/2020
2417981/2020**

Date: 20 April 2021

JUDGMENT SENT TO THE PARTIES ON
27 April 2021
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

Claimants: Ms B Buttler, Ms B Hothersall, Mr A Clark

Respondent: Edward Dewhurst Limited (In Creditors Voluntary Liquidation)

**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.