

Case Nos: 2416652/2019 & others (see schedule)
2204484/2019
2401169/2020
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2416778/2019
2400264/2020 & others (see schedule)
2400491/2020 & others (see schedule)
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EMPLOYMENT TRIBUNALS

- Claimants:**
1. The Transport Salaried Staff Association & Others (see schedule)
 2. Mr Sagrolikar
 3. Mr J Jakobsen
 3. Ms McGinn
 4. Mr M Hutton
 5. Unite the Union & Others (see schedule)
 6. Mr Atkin & Others (see schedule)
 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

CERTIFICATE OF CORRECTION

Employment Tribunals Rules of Procedure 2013

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Under the provisions of Rule 69, the Judgment and Reasons sent to the parties on 10 March 2021 is corrected as set out in block type at paragraphs 3, 4 and 5 of the Judgment and paragraphs 6 and 12 of the Reasons.

Employment Judge Ainscough

Date: 14 May 2021

SENT TO THE PARTIES ON
17 May 2021

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FOR THE TRIBUNAL OFFICE

Important note to parties:

Any dates for the filing of appeals or reviews are not changed by this certificate of correction and corrected judgment. These time limits still run from the date of the original judgment, or original judgment with reasons, when appealing.

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EMPLOYMENT TRIBUNALS

Claimants: 1. The Transport Salaried Staff Association & Others (see schedule)

2. Mr Sagrolikar
3. Mr J Jakobsen
3. Ms McGinn
4. Mr M Hutton
5. Unite the Union & Others (see schedules)
6. Mr Atkin & Others (see schedule)
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)
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7. The Secretary of State for Business, Energy and Industrial Strategy

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

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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:

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 Tribunal orders that the first to sixth respondents, by way of a protective award under section 189(3) of the 1992 Act, pay to all those employees who were of a description in respect of which The Transport Salaried Staff Association was recognised for the purposes of collective bargaining, a payment equivalent to remuneration for the period of 90 days beginning on 23 September 2019.**
4. **The Tribunal orders that the first to sixth respondents, by way of a protective award under section 189(3) of the 1992 Act, pay to all those employees who were of a description in respect of which Unite the Union was recognised for the purposes of collective bargaining, a payment equivalent to remuneration for the period of 90 days beginning on 23 September 2019.**
5. **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

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

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

6. The Transport Salaried Staff Association was a recognised trade union **for the purposes of collective bargaining** 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

7. The claimant, Mr Sagrolkar, 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 2416725/2019

8. 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

9. 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.

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Case number 2416778/2019

10. 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)

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

12. Unite the Union was a recognised trade union **for the purposes of collective bargaining** at the following sites:

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

Case Number 2400491/2020

13. 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

14. 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

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15. 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.
16. 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.
17. 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.
18. 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.
19. 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:
 - (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.
20. 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

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FOR THE TRIBUNAL OFFICE

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Case Numbers: 2416652/2019 & others

Claimants: Transport Salaried Staffs Association & others
(see attached schedule)

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

**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

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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 the refrom 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.

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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.

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Schedule

2416652	2019	Transport Salaried Staffs Association
2204484	2019	Sagrolikar R Mr
2416637	2019	Clegg C Mr
2416653	2019	Transport Salaried Staffs Association
2416654	2019	Transport Salaried Staffs Association
2416660	2019	Adcock E Mrs
2416661	2019	Allen J Mrs
2416663	2019	Ashley A Mrs
2416667	2019	Copeland H Ms
2416671	2019	Eyre A Mrs
2416675	2019	Glencross M Miss
2416677	2019	Harrison P Mr
2416678	2019	Holman A Mrs
2416680	2019	Ismail I Mr
2416683	2019	Jeyes S Mrs
2416686	2019	Lambert D Mr
2416688	2019	Milne R Mr
2416689	2019	Milsom S Mrs
2416692	2019	Rambridge G Mr
2416696	2019	Sparkes P Mr
2416697	2019	Staig K Mrs
2416698	2019	Wainwright B Ms
2416700	2019	Whitehead G Mr
2416702	2019	Williams A Mr
2416725	2019	McGinn V Ms
2416727	2019	Neal S Miss
2416778	2019	Hutton M Mr
2400264	2020	Unite The Union
2400153	2020	Downs S Mrs
2400265	2020	Abbott J Mrs
2400266	2020	Addison H Miss
2400267	2020	Akers H Miss
2400268	2020	Alexander C Mr
2400269	2020	Archer B Mr
2400270	2020	Askew L Mrs

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2400271	2020	Askin J Ms
2400272	2020	Avikainen P Ms
2400273	2020	Baazab A Mr
2400274	2020	Barnacle M Mr
2400275	2020	Bown O Miss
2400276	2020	Brooks J Mrs
2400277	2020	Brown M Ms
2400278	2020	Brown E Mrs
2400279	2020	Bruton C Ms
2400280	2020	Burton B Mrs
2400281	2020	Burton L Miss
2400282	2020	Byrne H Mrs
2400283	2020	Chambers C Miss
2400284	2020	Clarke L Miss
2400285	2020	Closs L Mrs
2400286	2020	Coggins L Miss
2400287	2020	Cole R Mrs
2400288	2020	Coleman C Ms
2400289	2020	Colley J Mrs
2400290	2020	Cooper K Ms
2400291	2020	Cowley S Miss
2400292	2020	Curry L Miss
2400293	2020	Cutler S Mr
2400294	2020	Dalloway P Mr
2400295	2020	Danks H Miss
2400296	2020	Dawson C Miss
2400297	2020	Dubidat C Mrs
2400298	2020	Dunn P Mr
2400299	2020	Edwards C Mrs
2400300	2020	Ellis K Miss
2400301	2020	Ellis H Miss
2400302	2020	Farden H Miss
2400303	2020	Farnsworth H Miss
2400304	2020	Farrell K Mrs
2400305	2020	Ferguson B Mr
2400306	2020	Finch C Miss
2400307	2020	Fisher S Miss

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2400308	2020	Fisher E Miss
2400309	2020	Fletcher G Mrs
2400310	2020	Forster S Miss
2400311	2020	Foster L Mr
2400312	2020	Gamble K Mr
2400313	2020	George S Miss
2400314	2020	Goodwin-Wilcox C Miss
2400315	2020	Grace C Mrs
2400316	2020	Hadley K Mr
2400317	2020	Hainsworth A Mrs
2400318	2020	Hems Z Mr
2400319	2020	Hewines H Mrs
2400320	2020	Higgs A Ms
2400321	2020	Hodgetts N Mr
2400322	2020	Horton E Miss
2400323	2020	Hughes R Miss
2400324	2020	Jackson J Mrs
2400325	2020	Jeffery K Mr
2400326	2020	Johal J Mrs
2400327	2020	Johnson K Miss
2400328	2020	Jones S Mrs
2400329	2020	Jones J Mrs
2400330	2020	Kelleher C Miss
2400331	2020	Knight M Mr
2400332	2020	Lallie R Mrs
2400333	2020	Lamb J Miss
2400334	2020	Lawley J Mr
2400335	2020	Lawrie C Mrs
2400336	2020	Lester D Miss
2400337	2020	Lewis K Miss
2400338	2020	Littlewood K Mrs
2400339	2020	Lloyd H Mrs
2400340	2020	Marsh S Mrs
2400341	2020	Matley K Mrs
2400342	2020	McCarthy C Mr
2400343	2020	McGrandles N Mr
2400344	2020	McKnight I Mr

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2400345	2020	Moreton C Miss
2400346	2020	Mulhall P Mr
2400347	2020	Murray T Miss
2400348	2020	Neary J Miss
2400349	2020	Nicholls L Miss
2400350	2020	Nogre D Miss
2400351	2020	Nurse C Miss
2400352	2020	Oldfield G Miss
2400353	2020	Oxford R Mr
2400354	2020	Pang S Mr
2400355	2020	Pass S Miss
2400356	2020	Payne Z Miss
2400357	2020	Pitt E Mrs
2400358	2020	Pool E Miss
2400359	2020	Preece T Mrs
2400360	2020	Price T Mr
2400361	2020	Pugh N Miss
2400362	2020	Pullkinen J Miss
2400363	2020	Read S Miss
2400364	2020	Reilly L Miss
2400365	2020	Rhodes C Mrs
2400366	2020	Rideg G Miss
2400367	2020	Roberts A Mr
2400368	2020	Rodger L Miss
2400369	2020	Rouse S Mrs
2400370	2020	Russell L Miss
2400371	2020	Russell W Mr
2400372	2020	Sansom N Mr
2400373	2020	Sharma Lally N Mrs
2400374	2020	Shilvock Z Mr
2400375	2020	Simpson C Mrs
2400376	2020	Smith A Miss
2400377	2020	Spencer C Mr
2400378	2020	Spray K Miss
2400379	2020	Sullivan A Mrs
2400380	2020	Sutton S Mrs
2400381	2020	Taylor L Miss

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2400382	2020	Terry A Miss
2400383	2020	Thomas A Miss
2400384	2020	Thomson M Miss
2400385	2020	Tindall B Mr
2400386	2020	Turner A Mr
2400387	2020	Turner J Mrs
2400388	2020	Twells N Ms
2400389	2020	Weaver C Mrs
2400390	2020	Whitehouse L Mr
2400391	2020	Wilkins H Miss
2400392	2020	Williams D Mrs
2400393	2020	Williamson T Miss
2400394	2020	Wilson P Miss
2400395	2020	Wood K Miss
2400396	2020	Woolley K Miss
2400397	2020	Yardley A Miss
2400398	2020	Unite The Union
2400399	2020	Alker D Mrs
2400400	2020	Apanasewicz K Mrs
2400401	2020	Bacon C Miss
2400402	2020	Barrass C Ms
2400403	2020	Bates S Ms
2400404	2020	Binns C Mrs
2400405	2020	Blagden G Mrs
2400406	2020	Bondon H Miss
2400407	2020	Bowler S Ms
2400408	2020	Boyle H Miss
2400409	2020	Carvalho de Araujo Filho I Mr
2400410	2020	Edgeley R Ms
2400411	2020	Evans D Miss
2400412	2020	Fanous M Mrs
2400413	2020	Fletcher N Mrs
2400414	2020	Genda J Mr
2400415	2020	Gilbert A Mrs
2400416	2020	Giles S Mrs
2400417	2020	Girling S Miss
2400418	2020	Greaves K Miss

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2400419	2020	Green N Miss
2400420	2020	Gunning M Mrs
2400421	2020	Hargreaves S Mrs
2400422	2020	Hawkes S Miss
2400423	2020	Hinks R Miss
2400424	2020	Hollis K Mrs
2400425	2020	Hollis-Jones K Miss
2400426	2020	Holt K Miss
2400427	2020	Howard T Mrs
2400428	2020	Hughes S Miss
2400429	2020	Hulbert L Miss
2400430	2020	Hunter A Miss
2400431	2020	Jackson L Miss
2400432	2020	Jaques S Miss
2400433	2020	Jennings L Mrs
2400434	2020	Katryniok P Mr
2400435	2020	Kaur G Mrs
2400436	2020	Kew D Miss
2400437	2020	Krike O Mrs
2400438	2020	Love S Miss
2400439	2020	Luetttge D Mrs
2400440	2020	Mason C Mrs
2400441	2020	Mason D Mrs
2400442	2020	McHugh N Ms
2400443	2020	Mepsted T Mrs
2400444	2020	Pallett B Ms
2400445	2020	Pancholi P Mr
2400446	2020	Pare E Mrs
2400447	2020	Parry E Mrs
2400448	2020	Partner L Mrs
2400449	2020	Patchett L Mr
2400450	2020	Pearson J Miss
2400451	2020	Raybould L Mrs
2400452	2020	Redfern K Miss
2400453	2020	Rodgers L Miss
2400454	2020	Scoffham T Mrs
2400455	2020	Skerritt A Mrs

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2400456	2020	Smith S Miss
2400457	2020	Steventon A Miss
2400458	2020	Thorpe L Miss
2400459	2020	Wakeling G Ms
2400460	2020	Wardle C Mrs
2400461	2020	Weldon S Miss
2400462	2020	White S Mr
2400463	2020	Whitehouse L Miss
2400486	2020	Unite The Union
2400491	2020	Atkin A Mr
2400492	2020	Byrne R Mr
2400493	2020	Horner M Mr
2400494	2020	Howson N Miss
2400495	2020	Judge A Mr
2400496	2020	Leaning J Mr
2400497	2020	Leckenby A Mr
2400498	2020	Mahmood Z Miss
2400499	2020	Ryan D Mr
2400500	2020	Simms P Mr
2400501	2020	Neal S Ms
2400502	2020	Walkden D Mrs
2400514	2020	Law S Miss
2400516	2020	Matthews K Mr
2400521	2020	Unite The Union
2400522	2020	Unite The Union
2401169	2020	Jakobsen J Mr