



EMPLOYMENT TRIBUNALS

Claimants Mrs S Walker and others as listed in schedule 1 to this Judgment
Mr D Leech and others as listed in schedule 2 to this Judgment

Respondents: T A Anders & Company Limited (in Administration) (1)
The Secretary of State for Business Energy and Industrial Strategy (2)(but only
in the claims listed at schedule 2 to this Judgment)

HELD AT: Manchester (by CVP) **ON:** 7 June 2021

BEFORE: Employment Judge Phil Allen
(sitting alone)

REPRESENTATION:

Claimants: Mr J Tanner, solicitor (for Mr Leech, Mr Melody, Mr Whitehead
and Mr O' Boyle)
Mrs S Walker (for all of those listed in schedule 1 to this
Judgment)
The other claimants did not attend and were not represented

Respondents: Did not attend and were not represented.

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Tribunal having heard the evidence from some of the claimants in a hearing conducted remotely by CVP technology, the Judgment of the Tribunal is that:

1. The first respondent failed to consult with the claimants as persons 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 each of the claimants, and the first respondent is ordered to pay remuneration to each claimant for a protected period of 90 days beginning on 22 January 2020.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award.

4. Any other claims brought by any of the claimants are dismissed having not been actively pursued.

REASONS

1. All of the claimants claimed a protective award in respect of breach of the collective consultation requirements on redundancy. No response was presented to the claims by the first respondent, which is in administration. The second respondent did provide a response in the claims to which he was a party, but made clear that a representative would not attend the hearing.
2. The consent of the administrator had been provided for the stay to be lifted and the claims to proceed against the first respondent, but only in respect of claims for a protective award. Those who attended the hearing confirmed that the only claim to be determined was one for a protective award and therefore only such claims were considered.
3. The hearing was conducted by CVP remote video technology. It was attended by some of the claimants. They were represented by either Mr Tanner or Mrs Walker, save for four claimants who were unrepresented (and did not attend). Mr Leech and Mrs Walker gave evidence under oath (having provided a written statement prior to the hearing). Mr Melody, Mr Whitehead and Mr O' Boyle also each provided a witness statement which was accepted without challenge.
4. Mr Tanner made submissions. Mrs Walker also briefly did so.
5. The Tribunal makes the following findings:
 - a. The respondent carried on business in Trafford Park.
 - b. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce. There were GMB members on the site, but the GMB was not recognised for the purposes of section 188(1B)(a) of the 1992 Act;
 - c. Some of the employees were first notified that there was an issue on 21 January 2020. There was no collective consultation undertaken and the employees were not invited to elect representatives.
 - d. A letter was sent to all of the claimants telling them that the respondent had ceased trading and that they were redundant with immediate effect on 22 January 2020;
 - e. The respondent employed 21 employees at the establishment, all of whom were made redundant on the same date.
6. 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.
7. In these circumstances, the first 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 claimants for the maximum protected period of 90 days commencing on 22 January 2020.
8. The first 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

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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.

9. The first respondent 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 respondent.

NOTE

10. These claims all arise from the Administration of the first respondent, and the necessary consent to the claims proceeding has been given. No response to the claim has been received from the first respondent. As explained, the claims succeed.

11. A protective award is a two-stage process. The Tribunal at this stage makes no financial awards, but gives a judgment that each of the listed claimants are entitled to a protective award in the terms set out above. The claimant must then seek payment of their individual award from the first respondent (or the Secretary of State), quantifying the same.

12. 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
7 June 2021

JUDGMENT SENT TO THE PARTIES ON
24 June 2021
AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

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SCHEDULE 1 TO THE JUDGMENT

The claimants to which this Judgment applies (and their case numbers), as represented by Mrs Walker and originally considered under case number 2400784/2020, are:

1. Mrs S Walker - 2400784/2020 (she was also allocated number 2401012/2020)
2. Miss H Pepper - 2400791/2020
3. Mr C White – 2401013/2020
4. Mr D Leyland – 2401014/2020
5. Mr M Fisher – 2401015/2020 (he was also allocated number 2406384/2020 – see schedule 2, but is the same claimant)
6. Mr D Butler – 2401016-2020
7. Mr A Gorton – 2401017/2020
8. Mr D Sharples – 2401018/2020
9. Mr D Rockey – 2401019/2020
10. Mr S Butler – 2401020/2020 (that is, for the avoidance of any doubt, a different claimant from Mr D Butler above)
11. Mr J McGrath – 2401021/2020
12. Mr D Leigh – 2401022/2020
13. Mr B Chute – 2401023/2020

SCHEDULE 2 TO THE JUDGMENT

The claimants to which this Judgment applies (and their case numbers), as originally represented by Simpsons Solicitors and originally considered under case number 2406378/2020 (albeit that only claimants numbers 1, 2, 5 and 8 below were represented by Mr Tanner at the hearing), are:

1. Mr D Leech - 2406378/2020
2. Mr N Melody - 2406379/2020
3. Mr S Jackson - 2406380/2020
4. Mr M Wilson – 2406381/2020
5. Mr P Whitehead – 2406382/2020
6. Mr P Kelly – 2406383/2020
7. Mr M Fisher – 2406384/2020 (he was also allocated number 2401015/2020 – see schedule 1, but is the same claimant)
8. Mr K O’Boyle – 2406385/2020

Claimant: Mrs S Walker & Others

Respondent: T A Anders & Company 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

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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.