



EMPLOYMENT TRIBUNALS

Claimants: Mr L Baker & Others (see schedule)

Respondents: 1. Thomas Cook Airlines Limited (in Compulsory Liquidation)
2. Thomas Cook Aircraft Engineering Limited (in Compulsory Liquidation)
3. The Secretary of State for Business, Energy and Industrial Strategy

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The first and second 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 and second respondents to comply with the requirements of section 188 of the 1992 Act are well-founded.
2. The Tribunal orders the first and second 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 and second respondents. The Official Receiver subsequently confirmed that the first and second respondents would not be contesting the protective award claims.
2. The first and second respondents are in compulsory liquidation and by order of the High Court dated 4 February 2021 permission was granted for the claims to proceed.

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.
4. On the information provided, the Tribunal makes the following findings.
5. The first and second respondents employed over 20 employees at Manchester Airport, Hanger One, Western Maintenance Area.
6. The claimants, Mr Baker 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.
7. The first and second 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.
8. 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.
9. In the circumstances, the first and second 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.
10. The first and second 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 and second 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.
11. The first and second 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 and second respondents.

Case Nos: 2401069/2020 & others (see schedule)

Employment Judge Ainscough

Date: 23 August 2021

JUDGMENT AND REASONS SENT TO
THE PARTIES ON
24 August 2021

.....
AND ENTERED IN THE REGISTER

.....
FOR THE TRIBUNAL OFFICE

Schedule

2401069	2020	Baker L Mr
2401071	2020	Slater J Miss
2401072	2020	Smith K Miss
2401074	2020	Brannigan R Mr
2401075	2020	Stenhouse C Mr
2401076	2020	Mills B Mr
2401077	2020	Drabble J Miss
2401078	2020	Southan G Miss
2401079	2020	Nuthall T Miss
2401080	2020	Casey C Miss
2401081	2020	Thomas D Mr
2401082	2020	Kevan S Mr
2401083	2020	Naylor J Miss
2401084	2020	Bishop P Mr
2401085	2020	MacKenzie S Miss
2401087	2020	Smith C Mrs
2401088	2020	Beggs C Miss
2401089	2020	Thompson J Mrs
2401090	2020	Hodgkinson M Mr
2401091	2020	Gebruers R Mr
2401092	2020	Curbishley J Mr
2401093	2020	Gallacher Z Miss
2401094	2020	Nulty G Mr
2401095	2020	Garnsworthy J Mr
2401096	2020	Garnsworthy Y Mrs

Case Nos: 2401069/2020 & others (see schedule)

2401097	2020	Tweddle D Mr
2401098	2020	Murphy S Mr
2401099	2020	Cowsill T Mr
2401100	2020	Thurston S Mrs
2401101	2020	Hossack S Mr
2401102	2020	Mills L Mrs
2401103	2020	Streets B Mr
2401104	2020	King M Mr
2401105	2020	Ford L Mr
2401106	2020	McBride A Miss
2401107	2020	Ely C Miss
2401108	2020	Oliva L Mrs
2401109	2020	Grafton N Mr
2401110	2020	Cawood N Miss
2401111	2020	Loredo S Miss
2401112	2020	Fearnehough D Mr
2401113	2020	Kenward M Mr
2401114	2020	Harvey E Mrs
2401115	2020	Bowker L Miss
2401117	2020	Dewar G Mr
2401118	2020	Mulholland C Mr
2401119	2020	Mulholland K Mrs

Claimants: Mr L Baker & others
(see attached schedule)

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3. Secretary of State for Business, Energy & 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 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 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.