



EMPLOYMENT TRIBUNALS

Claimants: Mr J Bradbury & others (see schedule)

Respondents: P & L Joinery Sub-Contractors Limited (in creditors voluntary liquidation) (1)
Secretary of State for Business, Energy & Industrial Strategy (2)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The first respondent not having presented a response to the claims, and on the information before the Employment Judge, 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 named in the first schedule, and the first respondent is ordered to pay remuneration to each of those claimants for a protected period of 90 days beginning on 5 February 2021.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.

REASONS

1. All of the claimants claimed a protective award in respect of breach of the collective consultation requirements. No response was presented to the claims by the first respondent, which is in creditors voluntary liquidation. The joint liquidators had no objections to the Tribunal proceedings continuing, but did not intend to be present or represented at the hearings. The second respondent entered a response.
2. On a full consideration of the file in the proceedings and, in particular in the light of information which had been provided by the two firms of solicitors instructed by the claimants, it was possible to issue this Judgment under Rule 21 without a hearing.
3. On the information provided, the Tribunal makes the following findings:
 - a. The first respondent carried on business in Stockport. All of the claimants were employed at one establishment;

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- b. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce;
 - c. The first respondent dismissed the majority of the claimants with immediate effect on 5 February 2021, with a few of the claimants being dismissed on 12 February 2021. Approximately 35 employees were made redundant at the same establishment at, or around, the same time; and
 - d. The first respondent took no steps to arrange for the election of employee representatives with whom to consult about the redundancies. There was no consultation with any employee representatives.
4. All the protective award claims were entered within the time required.
5. 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.
6. 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 listed in the first schedule for the maximum protected period of 90 days commencing on 5 February 2021.
7. 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 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.
8. 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

9. 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 claimants listed in the first schedule is entitled to a protective award in the terms set out above. The claimants detailed must then seek payment of their individual awards from the first respondent (or the second respondent), quantifying the same.
10. 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 October 2021

JUDGMENT SENT TO THE PARTIES ON
19 October 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, including duplicate numbers where they apply):

1. Mr Jack Bradbury – 2405962/2021 & - 2405737/2021
2. Mr Stephen Hughes – 2405705/2021 & 2405706/2021
3. Mr Christopher Frain - 2405707/2021
4. Mr Ben Freeman - 2405708/2021
5. Mr Daniel Holloway - 2405709/2021
6. Mr Sean Allen - 2405710/2021
7. Mr Callum Lockwood - 2405711/2021
8. Ms Laura Hughes - 2405712/2021
9. Mr James Allen - 2405713/2021
10. Mr Ellis Porter - 2405714/2021
11. Mr Michael Allen - 2405715/2021
12. Mr Andrew Dennell - 2405716/2021
13. Mr Lee Shaughnesy - 2405717/2021
14. Mr John McCullough - 2405718/2021
15. Mr Jeffrey Dean - 2405719/2021
16. Mr Nigel Nixon - 2405720/2021
17. Mr Shaun O'Dwyer - 2405721/2021
18. Mr Jack O'Dwyer - 2405722/2021
19. Mr Jack Aspinall - 2405723/2021
20. Mr Michael Denny - 2405724/2021
21. Mr Dylan O'Reilly - 2405725/2021
22. Mr Brett Formosa - 2405726/2021
23. Mr Lucas Nixon - 2405727/2021
24. Mr John Mayall - 2405728/2021
25. Ms Nicola Unwin - 2405729/2021
26. Mr Peter Doyle - 2405730/2021
27. Mr Scott Stirling - 2405731/2021
28. Mr Scott Brown - 2405732/2021
29. Mr Adam Robinson - 2405733/2021
30. Mr Paul Handley - 2405734/2021
31. Mr Paul Murphy - 2405735/2021
32. Mr Oliver Molloy - 2405736/2021
33. Mr Stuart Wilkinson - 2405738/2021
34. Mr David Hazelwood - 2405739/2021
35. Mr Edward McCusker – 2407329/2021

Claimants: Mr J Bradbury & Others

Respondent: P & L Joinery Sub Contractors Ltd (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 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

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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.