



EMPLOYMENT TRIBUNALS

Claimants: Mr N Berry & Others (see attached schedule)

Respondents: 1. UBH International Limited (in Administration)
2. The Secretary of State for Business, Energy & Strategy

Heard at: Liverpool **On:** 15 January 2021

Before: Employment Judge Benson
Members: Mr M Stemp
Mrs P J Byrne

Representation

Claimants: No attendance
Respondent: No attendance

JUDGMENT

The unanimous judgment of the Tribunal is that:

The Tribunal declares that the complaint that the first respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded, and makes a protective award in respect of those claimants whose names are listed in the Schedule to this Judgment and orders that the first respondent pay those claimants remuneration for the period of 90 dates beginning on 17 December 2019.

REASONS

1. The evidence before the Tribunal produced on behalf of the claimants consisted of statements from each of the claimants, written submissions on their behalf and supporting documents. The Tribunal further considered the Grounds of Resistance filed by each of the respondents.
2. From that evidence, the Tribunal was satisfied of the following:
 - (a) There were no recognised Trades Unions or employee representatives.
 - (b) The claimants were employed at one establishment in Burscough

Lancashire.

- (c) The first respondent went into administration on 17 December 2019.
- (d) There were 96 employees employed at the first respondent's premises.
- (e) The only consultation which took place before the claimants were dismissed was on 17 December 2019 when the majority of the workforce was assembled and told that they were being dismissed for redundancy. They were supplied with a claim form for their redundancy and holiday pay. They were also given a confirmation letter of the redundancy and then told to go home.
- (f) Upon the administrator's appointment they determined that to have consulted with the claimants for the minimum period would have required the first respondent to continue trading whilst insolvent.
- (g) There were no special circumstances which would reduce the protective period.

3. In the circumstances the Tribunal was satisfied that a protective award should be made in respect of each of the claimants and that 90 days was the appropriate period.

NOTE

The following statement is given under regulation 5(2)(b) of the Employment Protection (Recoup of Benefits) Regulations 1996 ("the Regulations") and advises the respondent of its duties under regulation and of the effect of regulations 7 and 8 of the Regulations.

- (1) The respondent is required to give the Benefits Agency in writing:
 - (a) The name, address and national insurance number of every employee to whom the above protective award relates; and
 - (b) The date of termination (or proposed termination) of the employment of each such employee.
- (2) The respondent is required to comply with paragraph (1) above within the period of ten days commencing on the date when the judgment was announced at the hearing or, if it was not so announced, the date on which the Judgment was sent to the parties.
- (3) No remuneration due to an employee under the protective award shall be paid to him until the Benefits Agency has:
 - (a) served on the respondent a notice ("a recoupment notice") to pay the whole or part of the award to the Benefits Agency; or
 - (b) informed the respondent in writing that no recoupment notice is to be served.

(4) The sum due to the Benefits Agency under a recoupment notice shall be the lesser of:

- (i) the amount (less any tax or social security contributions which fall to be deducted by the respondent) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Benefits Agency receives from the respondent the information mentioned at paragraph (1) above; and
- (ii) the amount paid by way of, or as on account of, Jobseeker's Allowance or Income Support to the employee for any period which coincides with any part of the protected period falling before the date mentioned at (i) above.

(5) The sum due under the recoupment notice shall be paid forthwith to the Benefits Agency. The balance of the protective award shall then (subject to deduction of any tax or social security contributions) be paid to the employee.

(6) The Benefits Agency shall serve a recoupment notice within the period of 21 days after the date mentioned at paragraph (4)(ii) above or as soon as practicable thereafter.

(7) Payment by the respondent to the employee of the balance of the protected award (subject to deduction of any tax or social security contributions) is a complete discharge of the respondent in respect of any sum so paid.

(8) The sum claimed in a recoupment notice is due as a debt by the respondent to the Benefits Agency, whatever may have been paid to the employee and whether or not there is any dispute between the employee and the Benefits Agency as to the amount specified in the recoupment notice.

Employment Judge Benson

Date 17 February 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON

15 March 2021

FOR THE TRIBUNAL OFFICE

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Claimants: Mr N Berry & others

**Respondent: 1. UBH International Ltd (In Administration)
2. 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

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(see attached schedule)**

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.

Schedule

- 2401874/2020 Mr Nicholas Berry v UBH International Ltd (in Administration) & Others
- 2401875/2020 Mr Lee Barrett v UBH International Ltd (in Administration) & Others
- 2401876/2020 Mr Martyn Byrne v UBH International Ltd (in Administration) & Others
- 2401877/2020 Mr Nicholas Cahill v UBH International Ltd (in Administration) & Others
- 2401878/2020 Mr Paul Cahill v UBH International Ltd (in Administration) & Others
- 2401879/2020 Mr Andrew Calder v UBH International Ltd (in Administration) & Others
- 2401880/2020 Mr Ron Calder v UBH International Ltd (in Administration) & Others
- 2401881/2020 Mr Jonathan Campbell v UBH International Ltd (in Administration) & Others
- 2401822/2020 Mr Alf Christensen v UBH International Ltd (in Administration) & Others
- 2401883/2020 Mr Colin Cliffe v UBH International Ltd (in Administration) & Others
- 2401884/2020 Mr Ian Cottam v UBH International Ltd (in Administration) & Others
- 2401885/2020 Mr Shaun Coulthard v UBH International Ltd (in Administration) & Others
- 2401886/2020 Mr Denis Cowell v UBH International Ltd (in Administration) & Others
- 2401887/2020 Mr Derek Doyle v UBH International Ltd (in Administration) & Others
- 2401888/2021 Mr Graham Fairclough v UBH International Ltd (in Administration) & Others**
- 2401889/2020 Mr John Fairclough v UBH International Ltd (in Administration) & Others
- 2401890/2020 Mr Ken Fox v UBH International Ltd (in Administration) & Others
- 2401891/2020 Mr David Gobin v UBH International Ltd (in Administration) & Others
- 2401892/2020 Mr James Gregory v UBH International Ltd (in Administration) & Others
- 2401893/2020 Mr Stephen Groves v UBH International Ltd (in Administration) & Others
- 2401894/2020 Mr Graham Harrison v UBH International Ltd (in Administration) & Others
- 2401895/2020 Mr Alex Hearn v UBH International Ltd (in Administration) & Others
- 2401896/2020 Mr John Heath v UBH International Ltd (in Administration) & Others
- 2401897/2020 Mr Robert Hesketh v UBH International Ltd (in Administration) & Others
- 2401898/2020 Mr John Isherwood v UBH International Ltd (in Administration) & Others
- 2401899/2020 Mr Daniel Lea v UBH International Ltd (in Administration) & Others
- 2401900/2020 Mr Stephen Lea v UBH International Ltd (in Administration) & Others
- 2401901/2020 Mr Peter Lees v UBH International Ltd (in Administration) & Others
- 2401902/2020 Mr James Mawdsley v UBH International Ltd (in Administration) & Others
- 2401903/2020 Mr Francis McCourt v UBH International Ltd (in Administration) & Others
- 2401904/2020 Mr David McDonald v UBH International Ltd (in Administration) & Others
- 2401905/2020 Mr John McGiverin v UBH International Ltd (in Administration) & Others
- 2401906/2020 Mr William Monaghan v UBH International Ltd (in Administration) & Others
- 2401907/2020 Mr Gordon Moss v UBH International Ltd (in Administration) & Others
- 2401908/2020 Mr Karl Mousley v UBH International Ltd (in Administration) & Others
- 2401909/2020 Mr Stephen O'Hare v UBH International Ltd (in Administration) & Others
- 2401910/2020 Mr Jack Owen v UBH International Ltd (in Administration) & Others
- 2401911/2020 Mr Michael Pace v UBH International Ltd (in Administration) & Others
- 2401912/2020 Mr Michael Paguarulo v UBH International Ltd (in Administration) & Others
- 2401913/2020 Mr Anthony Pritchard v UBH International Ltd (in Administration) & Others
- 2401914/2020 Mr Carl Rhoden v UBH International Ltd (in Administration) & Others
- 2401915/2020 Mr Grzegorz Romanowski v UBH International Ltd (in Administration) & Others
- 2401916/2020 Mr Leszek Samson v UBH International Ltd (in Administration) & Others
- 2401917/2020 Mr Anthony Seddon v UBH International Ltd (in Administration) & Others
- 2401918/2020 Mr Stuart Sheen v UBH International Ltd (in Administration) & Others
- 2401919/2020 Mr Neil Smith v UBH International Ltd (in Administration) & Others
- 2401920/2020 Mr Jack Smith v UBH International Ltd (in Administration) & Others

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(see attached schedule)**

2401921/2020 Mr Marcin Szafraniec v UBH International Ltd (in Administration) & Others
2401922/2020 Mr John Taylor v UBH International Ltd (in Administration) & Others
2401923/2020 Mr Frank Williams v UBH International Ltd (in Administration) & Others
2401924/2020 Mr Michael Winrow v UBH International Ltd (in Administration) & Others
2401925/2020 Mr Marcin Zietek v UBH International Ltd (in Administration) & Others
2401926/2020 GMB Union v UBH International Ltd (in Administration) & Others