



EMPLOYMENT TRIBUNALS

Claimant: Mr John Skupski

Respondent: Redeem UK Limited

Heard at: London South

On: 25 June 2021

Before: Employment Judge Sekhon

Representation

Claimant: In person

Respondent: N/A

JUDGMENT

Employment Tribunals Rules of Procedure 2013, Rule 21

Claims

At the beginning of the hearing, Ms Skupski confirmed that he was content to proceed with the claims in the claim form, namely the failure to comply with the collective redundancy consultation obligation, pursuant to section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRA") for which she is seeking notice pay of 45 days.

The respondent not having presented a response to the claim, did not attend the hearing on 25 June 2021. Having heard the evidence of the claimant under oath and subsequently being provided further information comprising of a contract of employment signed by the claimant on 5 September 2019, email from Paul Egan, Executive Chairman of the respondent, dated 3 July 2020 confirming that the UK faction of the business will be entering into administration, and email dated 7 July 2020 from the respondent,

The Judgment of the Tribunal is that:

1. The claimant's complaint under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the 1992 Act) of a failure by the respondent to comply with the requirements of section 188 of the 1992 Act is well-founded.
2. The Tribunal orders the respondent by way of protective award under section 189(3) of the 1992 Act to pay to the claimant a payment equivalent to remuneration for the period of 45 days beginning on 7 July 2020.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.

REASONS

The Tribunal makes the following findings based upon the claim:

1. The respondent, a company that refurbishes, processes and resells mobile phones, carried out business in Bathgate, Macclesfield and Scotland in the United Kingdom. The claimant worked at the Macclesfield branch. He earned £85,000 gross per month. There was no trade union recognised for collective bargaining, consultation or negotiation with the workforce at the Macclesfield branch.
2. The claimant was placed on furlough on 4 April 2020. He was advised whilst on furlough by email dated 3 July 2020 from Paul Egan, executive chairman of the respondent, that the respondent firm was to be placed into administration and the UK offices were to close. He was invited to a telephone meeting on 7 July 2020, at the same time as the other employees at the Macclesfield branch of the respondent. He was dismissed with immediate effect. There was no consultation with the claimant. The claimant stated that he spoke to the chairman, Paul Egan, a week prior to receiving the email on 3 July 2020 and he was advised that there were no concerns about the business.
3. The claimant estimated 80 employees worked at the Macclesfield branch, a majority of which were made redundant at the same time. KPMG were appointed as administrators on 7 July 2020 and their website confirms that 118 staff were made redundant in the UK on, or around, the same date. Whilst there is no clear evidence of the exact number of employees that were made redundant from the Macclesfield branch, the Tribunal is satisfied on the evidence of the claimant that this was in excess of 20 employees. The Tribunal has not therefore needed to consider whether separate sites at Macclesfield, Bathgate and Scotland would be considered as one establishment for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992.
4. 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.
5. In these circumstances, the respondent was in breach of the duty under Section 188 of the 1992 Act and the Tribunal can make an award under Section 189 in favour of the claimant for up to a maximum protected period of 90 days. The claimant is seeking an award of 45 days.
6. The Tribunal at this stage makes no financial award but gives a judgment that the claimant is entitled to a protective award in the terms set out above. The claimant must then seek payment of their individual award from the respondent (or the Secretary of State), quantifying the same.
7. 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.
8. The 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.
9. The respondent will not be required to make any payment under the protective award 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.

Employment Judge Sekhon

Date: 30 June 2021

**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.