



EMPLOYMENT TRIBUNALS

Claimants: Mr L Jones and others (see Schedule)

Respondents: Nationwide Accident Repair Services Limited (in administration)
and others (see Schedule)

JUDGMENT

This was a determination on papers with no attendance by any party.

1. The Tribunal makes a protective award in favour of the claimants listed in the Schedule attached to this judgment and orders the respondent to pay remuneration for a protected period of 90 days beginning on 4 September 2020.
2. There is no order requiring any party to pay or reimburse another party's costs or fees. Each party shall bear their own costs and fees.
3. The name of the respondent in each case is shown in the Schedule. Where this is different to the name which the claim has been submitted against, the name is amended accordingly.
4. Some of the claimants have other claims. Those other claims are not affected by this Judgment.
5. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award.

REASONS

1. The claimants listed in the attached schedule were each employed by the respondent within its "Head Office and Support Services" function.
2. On 4 September 2020, the claimants were dismissed by reason of redundancy.

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And others (see Schedule)

3. The respondents did not fully inform and consult with the claimants in accordance with the provisions of s.188 and s.188A Trade Union and Labour Relations (Consolidation) Act 1992 (“the Act”).
4. The claimants have raised complaints as individuals (there being no relevant employee representatives) pursuant to section 189 of the Act seeking protective awards.
5. By email dated 14 September 2021 the respondents’ Administrators, with the agreement of some of the claimants, applied for a consent order with the effect of giving all claimants who had been employed by the respondent (and other companies within the group) and who had brought protective award claims and who had consented to the terms proposed a protective award of 90 days.
6. In my judgment it was not appropriate to accede to the terms of the proposed consent order as it appeared that some of the claimants worked in smaller establishments in respect of which it appeared there was unlikely to have been a proposal to make 20 or more employees redundant (see **USDAW and anor v Ethel Austin Ltd and ors [2015] ICR 675.**)
7. The proposed consent order also contained terms as to how the claims will rank in the Administration of the respondent companies which is not a matter which it is appropriate for the Tribunal to purport to rule on.
8. The group of claimants to which this Judgment related performed national management roles, national management support roles, regional management roles, regional management support roles, or ‘roaming’ technical roles. They were either based at the respondent’s Head Office or they worked across a number of the respondent’s sites, which meant that they had no single geographic base. Their employment was administrated by the respondents’ HR function as a single group, namely, “Head Office and Support Services”. I am satisfied from information provided by the claimants to the Tribunal that this group of employees formed one establishment for the purposes of the Protective Award claims. I am also satisfied that there were more than 20 people were proposed to be made redundant within this establishment.
9. In the circumstances, I consider it appropriate to issue a Judgment for a 90-day protective award to the claimants who worked within this function and who had indicated their consent to the order proposed by the Administrators.
10. Given that the terms of the Judgment provide for a protective award for the maximum period, and that the Administrators and the Secretary of State have both indicated that they will not be actively resisting the claim, I also consider it appropriate to issue a Judgment in favour of those claimants who are only pursuing claims for a protective award, but who have not expressly indicated their agreement to the proposed consent order. Both groups of claimants who were part of “Head Office and Support Services” are therefore included in the attached Schedule.

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And others (see Schedule)**

11. In some cases the claimants have brought a claim against a company which is not a legal entity. Most often, they have missed the word 'Limited' from the company name, but in some cases the name itself seemed to be confused. As part of this Judgment I have amended the respondent's name in cases where this seems to have happened. This should ensure that the claimants are able to recover money from the redundancy payments service more smoothly. If, in any particular case, the wrong respondent is named in the Schedule, the claimant may write to the Tribunal asking for this to be corrected.
12. If any party considers that a claimant included in the Schedule has been wrongly included, then they are reminded that they may apply for a reconsideration of the Judgment. Further information is contained in the leaflet provided alongside the Judgment.

Employment Judge Dunlop

Date: 16 November 2021

SENT TO THE PARTIES ON
17 November 2021

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FOR EMPLOYMENT TRIBUNALS

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Schedule of Claimants, Respondents and Claims

Claim Numbers	Claimants	Respondents
1310020/2020	Mr L Jones	Nationwide Accident Repairs Services Limited (in administration) Secretary of State for Business, Energy & Industrial Strategy
2307716/2020	Mr A Morais	Nationwide Crash Repair Centres Limited (in administration)
3312183/2020	Mr T Johnston	Nationwide Accident Repairs Services Limited (in administration) Secretary of State for Business, Energy & Industrial Strategy
3312365/2020	Mr M Isaac	Nationwide Accident Repair Services Ltd (in administration) Secretary of State for Business, Energy & Industrial Strategy
3312536/2020	Mr K Couzens	Nationwide Crash Repair Centres Ltd (in administration)
3312596/2020	Mrs V Baldwin	Nationwide Accident Repair Services Ltd (in administration) Secretary of State for Business, Energy & Industrial Strategy

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(see attached schedule)**

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**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

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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.