



EMPLOYMENT TRIBUNALS

Claimant: Mr Graham Gates

Respondents: (1) PSL 2020 Limited, in administration
(formerly Principle Spira Limited)
(2) Secretary of State for Business, Energy & Industrial Strategy

RULE 21 JUDGMENT

- (1) The claimant worked within a single establishment along with more than 19 others who the first respondent was proposing to dismiss as redundant within a period of 90 days or less. There was no consultation with his or their appropriate representatives prior to him and them being made redundant on 7 May 2020.
- (2) The first respondent failed to organise the election of employee representatives and to consult with them in accordance with sections 188 and 188A of Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA"). The claimant's complaint pursuant to TULRCA section 189 is well founded.
- (3) The protected period in relation to the claimant is 90 days beginning on 7 May 2020.
- (4) The first respondent must pay the claimant a protective award, consisting of remuneration for the protected period.
- (5) The proceedings against the second respondent are stayed. It is assumed that the second respondent will now pay the claimant the appropriate amount, calculated in accordance with Part XII of the Employment Rights Act 1996, in respect of the above protective awards and that no further decision of the Tribunal will be necessary. The claimant may apply to lift the stay if there are any difficulties in this respect.

REASONS

1. There is no obligation to give reasons for a rule 21 judgment as such. However, particularly given that this Judgment was issued after a telephone hearing on 29 November 2021 that was listed as a case management hearing, it may be helpful for me to explain why I have issued a judgment at all and why I have made a full 90 day protective award.

2. This claim, proceeding in the Employment Tribunals in Leicester, was presented as long ago as 29 July 2020, following early conciliation on 28 July 2020. Initially, it was stayed because the claimant had not obtained the administrators' consent to proceeding. The stay was lifted after the claimant, in March 2021, provided the Tribunal with a copy of an email from the administrators giving their consent dated 8 September 2020. The claim form was subsequently sent to the respondents and they were given until 11 June 2021 to respond. The second respondent responded on time. The first respondent did not respond at all.
3. Rule 21 therefore applies as against the first respondent. The relevant part of that rule is: "*An Employment Judge shall decide whether on the available material (which may include further information which the parties are required by a Judge to provide), a determination can properly be made of the claim, or part of it. To the extent that a determination can be made, the Judge shall issue a judgment accordingly. Otherwise, a hearing shall be fixed before a Judge alone.*"
4. It appears from the Tribunal file that no Employment Judge has yet decided whether to make "*a determination*". The rule requires an Employment Judge to decide this. I have therefore done so, after taking the opportunity presented by the preliminary hearing on 29 November 2021 to obtain some further information from the claimant by asking him some questions over the telephone.
5. The questions I asked the claimant were primarily to confirm that he satisfied the requirements of the relevant parts of TULRCA. He confirmed (and I note that most of the necessary information was in his claim form anyway) that: he was in a non-unionised workforce; there was no consultation with employee representatives at all; at the establishment in which he worked, approximately 75 people were made redundant in one go on 7 May 2020.
6. In light of that confirmation, the claimant was entitled to a protective award and the only question that potentially arose was as to the length of the protected period. The reason I have made a 90 day protective award is that Susie Radin Ltd v GMB [1994] ICR 893 suggests a proper approach where, as here, there has been no consultation is to start with the maximum period of 90 days and reduce it only if there are mitigating circumstances justifying a reduction.
7. No mitigating circumstances have been put forward by or on behalf of the first respondent and it has made clear it doesn't intend to participate in the proceedings. The second respondent's response is its usual generic one and it has made no allegations or submissions concerning the facts of this specific case relevant to this question of whether there were mitigating circumstances, or otherwise suggested that there is a good reason why a 90 day protective award should not be made against the first respondent.
8. Accordingly, 90 days is the appropriate protected period.

Case No: 2602872/2020

Employment Judge Camp

29 Novmber 2021