



EMPLOYMENT TRIBUNALS

Claimant: Mr N O'Reilly

Respondents: 1. Nationwide Accident Repair Services Ltd (in administration)
2. Secretary of State for Business Energy & Industrial Strategy

JUDGMENT

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

1. The Tribunal makes a protective award in favour of the Claimant 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 Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award.

REASONS

1. The claimant was employed by the respondent within its audit function in the north west region. He worked from various sites at different times, but the work that he did related to the region as a whole.
2. On 4 September 2020, the claimant was dismissed by reason of redundancy.
3. The respondents did not fully inform and consult with the claimant in accordance with the provisions of s.188 and s.188A Trade Union and Labour Relations (Consolidation) Act 1992 ("the Act").
4. The claimant has raised his complaints as an individual (there being no relevant employee representatives) pursuant to section 189 of the Act seeking a protective award.
5. By email dated 14 September 2021 the respondents' Administrators, with the agreement of some claimants pursuing similar claims, 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. Subsequently, judgments have been issued in respect of certain claims and groups of claims where I have been satisfied that the claimants were assigned to establishments where at least 20 employees faced redundancy.
9. The claimant has provided further information about this role which demonstrates that he was working in a regional role rather than one which was specific to one geographic base. The employment of individuals in such roles was administrated by the respondents' HR function as a single group, namely, "Head Office and Support Services". I am satisfied that this is the relevant establishment in respect of Mr O'Reilly. I am satisfied from information provided by other 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.
10. In the circumstances, I consider it appropriate to treat Mr O'Reilly's claim in the same manner as other claimants in this category, and to issue a Judgment for a 90-day protective award.
11. If any party considers that Mr O'Reilly is not entitled to a protective award, 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: 26 November 2021
SENT TO THE PARTIES ON
30 November 2021

.....
.....
FOR EMPLOYMENT TRIBUNALS

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Claimant: Mr N O'Reilly

Respondent: 1. Nationwide Accident Repair Services Limited (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 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.