



EMPLOYMENT TRIBUNALS

Claimants: Mr B Ruddy
Ms K Jarosz

Respondents: (1) Casual Dining Services Limited
(2) The Secretary of State for Business Energy & Industrial Strategy

Heard at: East London Hearing Centre

On: 18 October 2021

Before: Employment Judge Russell (by Cloud Video Platform)

Representation

Claimants: 1st Claimant - Mr L McKay (Solicitor)
2nd Claimant – No attendance, no representation

Respondents: 1st Respondent – No attendance, no representation
2nd Respondent – No attendance, written submissions

JUDGMENT

1. There was no appropriate representative elected for the purpose of consultation pursuant to Section 188 or 189 of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. The Claimant has jurisdiction to bring his claim as an individual employee.
3. The First Respondent failed to carry out any consultation at all as required by s.188 TULR(C)A. A protective award is made in respect of all 23 employees made redundant at the establishment of Las Iguanas 2 July 2020. The protected period is 90 days from 2 July 2020.

REASONS

1. By claim form presented to the Employment Tribunal on 9 October 2020, the Claimants bring a claim for a protective award pursuant to the Trade Union Labour Relations (Consolidation) Act 1992. Solicitors acting for the Second Claimant have withdrawn and now represent only the First Claimant. As a result, I have no information about the particular job, service or pay of the Second Claimant.
2. The First Claimant was employed by the First Respondent as an Assistant Manager from 21 June 2017 until his dismissal by reason of redundancy on 2 July 2020.
3. The First Claimant worked at Las Iguanas Restaurant, Charter Way, Freeport Designer Village, Braintree CM77 8YH.
4. Employee information provided by the First Respondent lists very many Las Iguanas restaurants throughout the United Kingdom which went into administration and made the employees redundant. I am satisfied that Las Iguanas, Braintree is the relevant establishment for the purposes of deciding whether there was an obligation for collective consultation pursuant to the Trade Union Labour Relations Consolidation Act.
5. There were 23 employees at Las Iguanas, Braintree. I accept the First Claimant's evidence today that all 23 were made redundant on 2 July 2020, including the First and Second Claimants.
6. It appears that the First Respondent fell into financial difficulty potentially as a result of the Covid-19 Pandemic which had a significant and well-known adverse impact upon the hospitality sector.
7. The First Claimant was informed shortly before 24 June 2020 by his Area Manager that there would be elections for appropriate employee representatives in anticipation of significant redundancies. In fact, no such elections took place and instead, on 24 June 2020, the Area Manager told the First Claimant that he had been appointed to represent staff in planned future consultations. As there were no elections, I find that the Area Manager was not the elected representative for the purposes of Sections 188 and 189 TULR(C)A. as there was no elected representative or Trade Union representative the Claimant has locus to bring his claim as an affected employee.
8. On 29 June 2020, a "Question and Answer" document was sent to the First Claimant by email suggesting that restaurants would be identified for future closure based upon profitability and suggesting that there would be a consultation period of at least a month. That did not in fact take place. Instead, on 2 July 2020 the First Claimant was informed that he was being made redundant with immediate effect because the First Respondent's Las Iguanas restaurant at Braintree was being closed down. The First Respondent subsequently went into administration.
9. I am satisfied that there was no effective consultation at all prior to redundancy. The appropriate period therefore starts from 2 July 2020. The affected employees are all of those employed at Las Iguanas, Braintree.

10. In deciding the length of the protected period, I took into account the importance of consultation as set out in **Susie Radin Limited v GMB** [2004] EWCA Civ 180. This was a redundancy situation in which there was a total failure by the First Respondent to undertake any meaningful consultation. It must have anticipated the need for redundancies before 2 July 2020, not least as there was discussion about electing employee representatives shortly before 24 June 2020. Yet nothing was done. In the circumstances, I conclude that the protected period is 90-days having regard to the number of employees made redundant and the total failure to consult.

11. I accept the First Claimant's evidence and find that his average weekly net wage was £315.89, with an average daily net wage was £63.18. I have no information about the Second Claimant's pay or length of service. Copies of the names, dates of service and pay for each of the 23 affected employees will need to be provided to the Secretary of State; this information is not known by the Tribunal.

**Employment Judge Russell
Dated: 17 December 2021**