



EMPLOYMENT TRIBUNALS

Claimants:

Mrs Z Phipps

v

Respondent:

Oasis and Warehouse
Limited (in administration)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – rule 21

The respondent having stated that it does not contest the claim for a protective award, and on the information before the judge, the judgment of the tribunal is that:

1. The claimant's complaint was presented in time under section 189(5)(c) of the Trade Union and Labour Relations (Consolidation) Act 1992 Act ('the Act').
2. The claimant's complaint against the respondent of a failure to comply with the requirements of section 188 of the Act is well-founded.
3. The tribunal orders the respondent by way of a protective award under section 189(3) of the Act to pay to the claimant a payment equivalent to remuneration for the period of 90 days beginning on 15 April 2020.
4. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award.

REASONS

1. The claimant was employed by the respondent, a national British fashion retailer which went into administration on 15 April 2020. The claimant brought an employment tribunal claim which was stayed pending consent from the administrators of the respondent.
2. In the ET3 and grounds of resistance presented on 27 September 2021, the administrators of the respondent granted consent for the claimant's claim against the respondent for a protective award to proceed. The respondent does not contest the claimant's claim for a protective award, and does not put

forward any representations to the effect that the protected period should be less than 90 days.

3. On consideration of the file of proceedings, it is possible to issue judgment against the respondent under rule 21 of the Employment Tribunals Rules of Procedure 2013 in respect of the claim for a protective award, without a hearing.
4. The tribunal makes the following findings on the information provided, in respect of the claimant's claim for a protective award for breaches of the collective consultation requirements under section 188 of the Act.
5. The claimant's claim was originally presented on 8 September 2020 and rejected on 9 October 2020 because it did not contain an Acas early certificate number. The claimant notified Acas for early conciliation on 10 October and the early conciliation certificate was issued on 12 October 2020. The claimant sent the early conciliation certificate to the tribunal on 12 October 2020. The tribunal wrote to the claimant on 19 March 2021 to ask the claimant to resubmit a claim form with the Acas number on it. She did so on 26 March 2021 and the claim was accepted as rectified on that date.
6. The claimant's rectified claim form was not presented within three months of the last of the dismissals to which the complaint relates. However, I am satisfied that it was not reasonably practicable for the complaint to be presented within that period. This is because the claimant thought she had already presented her claim on 8 September 2020 and rectified it on 12 October 2020, within the three month period from the date of her dismissal and within the primary time limit. The claimant had complied in substance with the requirements by this date, if not in form. When she was later told that she had to resubmit the whole claim form, she did so promptly, within a further period which I consider to be reasonable. There is no prejudice to the respondent from the delay as the claim was stayed until 27 September 2021. I allow the claimant's complaint to proceed under section 189(5)(c).
7. The respondent proposed to make 43 redundancies at its Paul Street site. The respondent did not fully inform and consult with the claimant in accordance with the provisions of section 188 of the Act 1992. There was no proper warning or consultation with the claimant and no employee representatives were elected or appointed for consultation as required under section 188A of the Act. In the circumstances, the respondent was in breach of the duty under section 188.
8. The first of the dismissals to which the claim relates took place on 15 April 2020. The claimant was dismissed by reason of redundancy. The dismissal took place on 31 July 2020.
9. The tribunal makes an award under section 189 in favour of the claimant for the maximum protected period of 90 days beginning with 15 April 2020.

10. The claimant has ticked a box in section 8.1 of the form in respect of notice pay. However, the claim form read as a whole includes only a claim for a protective award for failure to consult.
11. The Respondent is advised of the provisions of Regulation 6 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ('the Regulations').
12. Within 10 days of this decision being promulgated or as soon as is reasonably practicable, the respondent must comply with the provisions of Regulation 6 of the 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.
13. The respondent will not be required to make any payment under the protective awards 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 respondent.
14. More information is contained in the annex to this judgment.

Employment Judge Hawksworth

Date: 28 January 2022

Sent to the parties on: 1 February 2022

For the Tribunal Office

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