



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4106683/2018 & others**

5

**Held in Glasgow on 10 July 2019**

**Employment Judge E J Bell**

10 **Unite The Union & others**

**Claimant  
Not present and  
Not represented**

15 **E.M. MacKenzie & Co. Ltd - In Administration**

**Respondent  
Not present and  
Not represented**

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

20

This judgment of the Employment Tribunal applies to all the Claimants to this claim with the exception of the first Claimant under case number 4106683/2018 and is as follows;

- 25
1. The Respondent failed to meet the requirements for the election of employee representatives in terms of S.188A of the Trade Union and Labour Relations (Consolidation) Act 1992, and
  2. The claims of each of the Claimants that the Respondent failed to comply with the requirements of s.188 of the Trade Union and Labour Relations  
30 (Consolidation) Act 1992 are well founded, and
  3. The Tribunal makes twenty-two (22) protective awards being one in favour of each of the twenty-two claimants, in respect of such failures by the Respondent, and

**E.T. Z4 (WR)**



4. The description of employees to which the protective award made on the claim of a given Claimant relates is, in that case, that same Claimant (and no one else) and,
5. In respect of each and all of the protective awards the protected period is 90 days, and
6. In respect of each and all the protective awards the protected period begins on 9 March 2018.

### REASONS

1. The first claimant is Unite the Union ('Unite'). The remainder of the claimants are listed in the schedule to the claim form.
2. This case was listed for a hearing in Chambers without parties present and for determination to be made on the papers only.
3. Unite originally contended that it was the appropriate representative for the purposes of consultation. The claim form also contains alternative arguments including that the respondent was obliged to satisfy the requirements of section 188A of the 1992 TULR(C) Act (as referred to in the judgment section above) in the event that Unite was not an appropriate representative as averred.
4. By email date 15 February 2019, Unite's representative stated that Unite was unable to locate the Recognition Agreement and so each of the individual claimants sought a protective award under the 1992 Act.
5. The Respondent is in administration. The Administrator consents to these proceedings continuing. The ET3 confirms that the claims are not defended but seeks specification and quantification of all claims excluding the protective award claim.
6. In light of the likelihood of a dividend being paid to creditors, Unite sought all but the protective award claims to be sisted. The Administrator consented and accordingly those remaining claims have been sisted meantime.



7. The Administrator has confirmed there is no objection to the protective award being granted.

8. In terms of section 189(4) of the 1992 Act the protective award will be calculated by reference to a 'protected period' being of whatever length the tribunal decides is 'just and equitable', up to a maximum of 90 days. The  
5 contention that there was a failure to satisfy the requirements of S.188A and s.188 of the 1992 Act are not contested. Accordingly it is just and equitable to make a protective award ordering the Respondent to pay the remuneration for a protected period of 90 days from 9 March 2018 being the  
10 date of dismissal by reason of redundancy of each of the claimants (save for the first claimant).

15 **Employment Judge: E Bell**  
**Date of Judgment: 10 July 2019**  
**Entered in register: 16 July 2019**  
**and copied to parties**

20

