



EMPLOYMENT TRIBUNALS

Claimants: Mrs M Wiggins & Others (see attached schedule)

Respondents: 1. EBS Systems Limited (in administration)
2. The Secretary of State for Business, Energy & Strategy

Heard at: Liverpool (by CVP) **On:** 28 January 2022

Before: Employment Judge Benson

Representation

Claimants: (i) Lucy Skeaping, Debbie Poole, Yvonne Travis, Joanne Lawley, Alice Lake-Bradley, Gail Slattery, Tanya Appleton, Karen Edmundson, Chanelle Gibbons – in person;

(ii) Gail Miller, Stephen Edwards, Michelle Collins Meg Wiggins notified the Tribunal that they were unable to attend in whole or in part;

(iii) Lorraine Connolly, Margaret Worthington, Lucy Hutchinson – no attendance

Respondents: No attendance

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Tribunal declares that the complaints that the first respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 are well founded, and makes a protective award in respect of those claimants whose names are listed in the Schedule to this Judgment and orders that the first respondent pay those claimants remuneration for the period of 90 dates beginning on 27 February 2020.

2. Consent of the administrator has not been given to pursue the claims of unfair dismissal, breach of contract, for redundancy payments or for unpaid wages. All remaining claims shall be dismissed unless the claimants object to such dismissal by 28 February 2022 and provide a copy of the Administrator's consent or permission of

the court to continue with these claims.

REASONS

1. Evidence and submissions were given by Mrs A Lake-Bradley on behalf of herself and the other claimants present. The Tribunal further considered the Grounds of Resistance filed on half of the Secretary of State for BES. Not response was filed by the administrator of the first respondent, but consent was given for the claim of a protective award only to proceed.
2. From that evidence, the Tribunal was satisfied of the following:
 - (a) There were no recognised Trades Unions or employee representatives.
 - (b) The claimants were employed at one establishment in Warrington Cheshire.
 - (c) The first respondent went into administration on 27 February 2020.
 - (d) There were more than 50 employees employed at the first respondent's premises in Warrington, though an exact figure could not be provided by the claimants.
 - (e) No consultation took place with the claimants. In January 2020 the employees were told that the respondent was seeking a new finance company to finance its operations. At the end of January, they were told that the bank was funding the wages for that month and although it was looking at restructuring the business, the business was in a good position. In February 2020, the respondent gave reassurance to the employees who asked, that there were no financial issues for them to be concerned about. This was incorrect. On 27 February 2020 the claimants and all other staff were either called to a meeting or for those off site, required to dial into a conference call and told that the respondent was in administration and they were redundant with immediate effect. This was the day before the employees were due to be paid their salary for that month.
 - (f) There were no special circumstances which would reduce the protective period.
 - (g) Although not relevant to the issues I must decide, the implication of the claimants being dismissed on 27 February 2020 rather than a few days later were that they did not qualify for furlough payments and as such in light of the Covid pandemic, many were without jobs and income for a lengthy period causing hardship and suffering for them and their families.

3. In the circumstances the Tribunal was satisfied that a protective award should be made in respect of each of the claimants and that 90 days was the appropriate period.

NOTE

The following statement is given under regulation 5(2)(b) of the Employment Protection (Recoup of Benefits) Regulations 1996 ("the Regulations") and advises the respondent of its duties under regulation and of the effect of regulations 7 and 8 of the Regulations.

- (1) The respondent is required to give the Benefits Agency in writing:
 - (a) The name, address and national insurance number of every employee to whom the above protective award relates; and
 - (b) The date of termination (or proposed termination) of the employment of each such employee.
- (2) The respondent is required to comply with paragraph (1) above within the period of ten days commencing on the date when the judgment was announced at the hearing or, if it was not so announced, the date on which the Judgment was sent to the parties.
- (3) No remuneration due to an employee under the protective award shall be paid to him until the Benefits Agency has:
 - (a) served on the respondent a notice ("a recoupment notice") to pay the whole or part of the award to the Benefits Agency; or
 - (b) informed the respondent in writing that no recoupment notice is to be served.
- (4) The sum due to the Benefits Agency under a recoupment notice shall be the lesser of:
 - (i) the amount (less any tax or social security contributions which fall to be deducted by the respondent) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Benefits Agency receives from the respondent the information mentioned at paragraph (1) above; and
 - (ii) the amount paid by way of, or as on account of, Jobseeker's Allowance or Income Support to the employee for any period which coincides with any part of the protected period falling before the date mentioned at (i) above.
- (5) The sum due under the recoupment notice shall be paid forthwith to the Benefits Agency. The balance of the protective award shall then (subject to deduction of any tax or social security contributions) be paid to the employee.
- (6) The Benefits Agency shall serve a recoupment notice within the period of 21 days after the date mentioned at paragraph (4)(ii) above or as soon as practicable

thereafter.

(7) Payment by the respondent to the employee of the balance of the protected award (subject to deduction of any tax or social security contributions) is a complete discharge of the respondent in respect of any sum so paid.

(8) The sum claimed in a recoupment notice is due as a debt by the respondent to the Benefits Agency, whatever may have been paid to the employee and whether or not there is any dispute between the employee and the Benefits Agency as to the amount specified in the recoupment notice.

Employment Judge Benson
Date 31 January 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
8 February 2022

FOR THE TRIBUNAL OFFICE

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.

SCHEDULE

Case Number	Claimant Name
-------------	---------------

**Case No: 2401665/2020 & others
(see attached schedule)**

2401665/2020	Mrs Megan Wiggins
2401672/2020	Mrs Tanya Appleton
2401722/2020	Miss Chanelle Gibbons
2401737/2020	Miss Lucy Hutchinson
2401794/2020	Miss Joanne Lawley
2401811/2020	Mrs Karen Edmondson
2401841/2020	Miss Deborah Poole
2401844/2020	Miss Lucy Skeaping
2401850/2020	Mr Stephen Edwards
2401856/2020	Mrs Michelle Collins
2402162/2020	Mrs Margaret Worthington
2402198/2020	Mrs Yvonne Travis
2402285/2020	Mrs Gail Slattery
2402303/2020	Mrs Gail McKenzie
2402325/2020	Mrs Alice Lake-Bradley
2402621/2020	Mrs Lorraine Connolly

**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.

**Case No: 2401665/2020 & others
(see attached schedule)**

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.