



EMPLOYMENT TRIBUNALS (SCOTLAND)

5 **Case No: 41 18074/201 8, 41 18075/201 8, 41 18076/201 8, 41 18077/201 8,
41 18078/201 8, 41 18079/201 8, 41 18081 /2018, 41 6790/201 8 and 41 1671 1/2018**

Held in Glasgow on 25 November 2019

Employment Judge J Young

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Mr J Carver

**First Claimant
Represented by:
Mr M Albaston -
Trainee Solicitor**

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Mr A McAdam

**Second Claimant
- as above**

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Mr W Cameron

**Third Claimant
- as above**

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Mr J Armstrong

**Fourth Claimant
- as above**

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Mr C Tait

**Fifth Claimant
- as above**

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Mr A Mavir

**Sixth Claimant
- as above**

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E.T.Z4(WR)

	Mr C McGeorge	Seventh Claimant - as above
5	Mr G Waugh	Eighth Claimant - as above
10	Mr S Elliot	Ninth Claimant - as above
15	T Graham & Sons (Builders) Limited (in Liquidation)	Respondent No appearance and No representation

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

- 25 (1) the respondent has failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 and the employment tribunal makes a declaration to that effect in respect of each of the claimants;
- 30 (2) each of the claimants is entitled to a protective award and under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 the respondent is ordered to pay remuneration to each of the claimants for the protected period of 90 days beginning 31 May 2018.

REASONS

Introduction

- 35 1. In this case, each of the claimants presented a claim to the Employment Tribunal seeking a protective award.

2. On 1 June 2018, a provisional liquidator was appointed of the respondent and subsequently an interim liquidator was appointed.
3. On 23 May 2018, the Sheriff at Dumfries Sheriff Court granted leave for the claimants to proceed with their claims against the respondent.
- 5 4. At the hearing, no appearance was made for the respondent who had been given notice of the hearing on 20 August 2019. No adjournment was requested or reason for non-attendance given. The ET3 lodged for the respondent simply indicated that consent of the court was required to proceed with the claims. Under rule 47 of the Employment Tribunal Rules of Procedure
10 2013, it was considered appropriate to proceed with the hearing.
5. Evidence was given by Stephen Elliot and William Cameron two former employees of the respondent. An Inventory of Productions paginated 1-85 was also produced. From the evidence given and documents produced, I was able to make findings in fact.

15 **Findings in fact**

6. The respondent was a building company operating in Dumfriesshire. They were based at Henry Street, Langham and from there organised labour to work at various building sites.
7. The respondent employed over 35 employees. On 31 May 2018 all the
20 employees were advised that the company was to cease trading with immediate effect
8. Some employees were advised of this at the Henry Street base; others were asked to return to the Henry Street base in the course of the day to be given this information.
- 25 9. All employees were dismissed on 31 May 2018 by reason of redundancy. No consultation or attempt at consultation with the employees was made prior to intimation of termination of employment as at 31 May 2018.

10. By letter of 7 June 2018, the provisional liquidator of the respondent noted the employees dismissal with effect from 31 May 2018 and advised how claims be made for redundancy pay and wages in lieu of notice.

Conclusions

5 11. In terms of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A), where an employer proposes to dismiss as redundant 20 or more employees at an establishment within a period of 90 days or less, the employer shall consult about the dismissals.

10 12. The consultation period if between 20 and 100 employees are affected should be 30 days. The purpose of the consultation is about ways to avoid or reduce or mitigate the effect of the dismissals.

15 13. I accept that the employees in this case were all employed at an establishment namely the respondent's base at Henry Street, Langham. I accept that at least 35 employees were made redundant on 31 May 2018. No consultation was attempted in this case and so there was a breach of section 188 of TULR(C)A.

14. Where a tribunal finds there has been a breach of section 188, then it shall make a declaration to that effect and a protective award.

20 15. In the circumstances, each of the claimants is entitled to a protective award. That award under section 189 (4) of TULR(C)A begins with the date of dismissal and the protected period should be of such length as the tribunal determines "to be just and equitable in all the circumstances having regard to the seriousness of the employer's default... but shall not exceed 90 days."

25 16. In this case, there was no evidence of the respondent seeking to comply with the provisions of section 188. Insolvency has been held not to amount to any 'special reason' why consultation could not take place. A protective award is punitive and not compensatory and in the absence of any evidence as to a reason for non-compliance. I consider the protected period in this case should be 90 days from 31 May 2018.

17. Each of the claimants is entitled to remuneration for the protected period and an order is so made.

5 Employment Judge: J Young
Date of Judgment: 29 November 2019
Entered in register: 11 December 2019
and copied to parties

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