



EMPLOYMENT TRIBUNALS

Claimant: Mr P Adams

Respondent: Bespoke Hotels (Plymouth) Limited (In Creditors Voluntary Liquidation)

Heard at: Plymouth **On:** 10 February 2022

Before: Employment Judge Matthews

Representation:

Claimant: In Person

Respondent: Did not attend and was not represented

JUDGMENT

1. The Claimant was employed by the Respondent and was amongst some 56 employees who were dismissed as redundant on 2 February 2021 whose place of work was at The Duke of Cornwall Hotel, Millbay Road, Plymouth PL1 3LG. The Respondent went into creditors voluntary liquidation on 12 February 2021.
2. The claim made by the Claimant for a protective award is well founded. The Respondent failed to comply with a requirement of section 188 of the Trade Union & Labour Relations (Consolidation) Act 1992.
3. The Respondent is ordered to pay to the Claimant remuneration for a protected period of 90 days from 2 February 2021.
4. The Claimant's breach of contract claim succeeds. The Respondent is ordered to pay the Claimant pay in lieu of notice of £6,067.44. No deduction is made for tax.
5. The recoupment regulations do not apply.

REASONS

INTRODUCTION

1. Mr Peter Adams brings a claim for a protective award by reference to section 189 of the Trade Union & Labour Relations (Consolidation) Act 1992 (the "TULRCA"). Mr Adams also claims notice pay.
2. The Respondent (also referred to in this Judgment as the "Company") does not defend the claims.
3. Mr Adams gave evidence.
4. The Tribunal had before it, Mr Adams' claim form, the relevant Early Conciliation Certificate, a copy of a letter from Mr Adams and others to the Respondent dated 19 October 2021 and a copy of Mr Adams' pay slip for the month of October 2020.
5. The hearing was a remote hearing using the Video Hearing Service consented to by the parties. The Tribunal is satisfied that, in this case, the overriding objective of dealing with cases fairly and justly could be met in this way.

FACTS

6. The Company's business was that of operating The Duke of Cornwall hotel at Millbay in Plymouth. Mr Adams was the General Manager of the hotel.
7. On 1 February 2021 Mr Adams was told to assemble the 56 or so staff at the hotel on 2 February. On 2 February 2021 the staff were dismissed with immediate effect by reason of redundancy. The Company entered into creditors voluntary liquidation on 12 February 2021.
8. The Company did not recognise any trade union in respect of any of its employees. The employees had no elected or appointed representatives who had authority from the employees to receive information and to be consulted about the proposed dismissals and the Company did not make any arrangements for the election of any such representatives.

APPLICABLE LAW

9. Section 188 of the TULRCA, so far as it is applicable, provides:

"188 Duty of employer to consult representatives

(1) Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.”

“(1B) For the purposes of this section the appropriate representatives of any affected employees are-

(a) if the employees are of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or

(b) in any other case, whichever of the following employee representatives the employer chooses:-

(i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section, who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf;

(ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1).”

“(7) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection (1A), (2) or (4), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances.”

10. Section 189 of the TULRCA, so far as it is applicable, provides:

“189 Complaint and protective award

(1) Where an employer has failed to comply with a requirement of section 188 or section 188A, a complaint may be presented to an employment tribunal on that ground-

(a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;”

“(d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.”

“(2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(3) A protective award is an award in respect of one or more descriptions of employees-

(a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and

(b) in respect of whose dismissal or proposed dismissal the employee has failed to comply with a requirement of section 188,

ordering the employer to pay remuneration for the protected period.

(4) The protected period-

(a) begins with the date on which the first of the dismissals to which the complaint relates take effect, or the date of the award, whichever is the earlier, and

(b) is 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 in complying with any requirement of section 188;

but shall not exceed 90 days."

"(6) If on a complaint under this section a question arises-

(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188, or

(b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,

It is for the employer to show that there were and that he did."

CONCLUSIONS

11. Did the Respondent propose to dismiss as redundant 20 or more employees at an establishment within a period of 90 days or less for the purposes of section 188(1) TULRCA?
12. On the facts, the Company proposed to dismiss as redundant around 56 employees at The Duke of Cornwall hotel within a period of 90 days or less.
13. Did the Respondent comply with its obligations under section 188 of TULRCA?
14. The Tribunal does not have to consider the detailed consultation requirements of section 188 of the TULRCA. This is because there is no evidence that the Company took any steps whatsoever to consult on or provide any information in respect of its proposals as far as the employees affected were concerned. The Company did not comply in any respect with its obligations under section 188 TULRCA.
15. Does the special circumstances defence apply?

16. In the absence of any consultation, this is not engaged.
17. Is the Claimant entitled to: (a) a declaration that the Respondent failed to comply with its obligations under section 188 TULRCA pursuant to section 189(2) and (b) should a protective award be made, pursuant to section 189(2)-(4)?
18. In the Tribunal's judgment, the Claimant is entitled to such a declaration and a protective award should be made.
19. If so, is a 90 day protective award just and equitable in all the circumstances, having regard to the seriousness of the Respondent's default in complying with any requirement of section 188 TULRCA?
20. In the Tribunal's view it is just and equitable to make the full award of 90 days' pay. There are no mitigating circumstances.
21. The Claimant was entitled to 12 weeks' notice under his contract of employment. No notice was given and the Claimant is awarded 12 weeks' net pay in this respect. The calculation is $12 \times \text{£}505.62 = \text{£}6,067.44$.

Employment Judge Matthews
Date: 10 February 2022

Judgment & reasons sent to parties: 14 February 2022

FOR THE TRIBUNAL OFFICE