



EMPLOYMENT TRIBUNALS

Claimants: Mr P Edwards
Mr M Misner
Mr D Burley

Respondents: 1. Shearings Ltd (in administration)
2. Secretary of State for Business, Energy & Industrial Strategy

JUDGMENT BY CONSENT

UPON reading the joint application submitted by the Claimants and First Respondent on behalf of the parties and the Second Respondent having consented to that application.

AND UPON the parties having agreed to the terms of the Judgment set out below by consent:

The Judgment of the Employment Tribunal made under Rule 64 of Schedule 1 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 is that:

1. Permission for the claims to proceed against the First Respondent, and the lifting of the moratorium in relation to these claims, is granted by the administrators of the First Respondent.

2. Protective Award

2.1 The claimants marked in the schedule attached were employed by the first respondent.

2.2 Beginning on the 22nd May 2020, the claimants were dismissed by the first respondent by reason of redundancy.

2.3 In relation to the Claimants the First Respondent, failed to adequately comply with a requirement of section 188 of the Trade Union & Labour Relations

(Consolidation) Act 1992 and the claim for a protective award brought under section 189 of the Trade Union & Labour Relations (Consolidation) Act 1992 succeeds.

2.4 The First Respondent is Ordered to pay remuneration to the Claimants for a protected period of 60 days beginning on 22nd May 2020 (being the date on which the first of the dismissals to which the complaint relates took effect).

2.5 All further proceedings of the Claimants in this action be stayed and all claims against any named Respondent other than the First Respondent are dismissed on withdrawal.

2.6 The Recoupment Regulations apply to this award.

3. Preferential debts

3.1 Subject to the normal categories of preferential debts set out in Schedule 6 of the Insolvency Act 1986, any payments made by the First Respondent (rather than the Secretary of State) pursuant to this Judgment will be paid as an unsecured dividend.

4. Costs

4.1 There shall be no Order as to costs and each party shall bear their own costs in these proceedings

Employment Judge Johnson

Date: 9 February 2022

JUDGMENT SENT TO THE PARTIES ON
14 February 2022

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FOR THE TRIBUNAL OFFICE

Claimants: Mr P Edwards
Mr M Misner
Mr D Burley

Respondent: 1. Shearings Ltd (in administration)
2. Secretary of State for Business, Energy & Industrial Strategy

**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.

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.