



EMPLOYMENT TRIBUNALS

SITTING AT: LONDON CENTRAL

ON:10th February 2022

BEFORE: EMPLOYMENT JUDGE F SPENCER

MEMBERS: MR A ADOLPHUS
MR M SIMON

CLAIMANTS Mr J Uddin and others whose names
appear in the attached schedule

FIRST RESPONDENT J. Crew Limited
SECOND RESPONDENT The Secretary of State for Business
Energy and Industrial Strategy

Representation:

For the Claimants: Mr Uddin and Ms Bedborough
For the Respondents: No attendance, submissions received from the
Secretary of State

This hearing was carried out on CVP (Cloud Video Platform). The parties did not object to it being conducted in this way and was designed to allow more Claimants to attend.

JUDGMENT

1. The Tribunal declares that the First Respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. The Tribunal makes a protective award of 90 days pay to the Claimants set out in the schedule to this judgment. The First Respondent is ordered

to pay the said Claimants their remuneration for the protected period of 90 days beginning on 9 September 2020.

3. The Recoupment of Jobseekers Allowance and Income Support Regulations 1996 may apply to these awards.

REASONS

1. In this case some 21 Claimants who were employed by J. Crew UK Ltd seek a protective award following the insolvency of their former employer, which is now in creditors voluntary liquidation.
2. Mr Uddin some 19 other Claimants presented a claim on 10 January 2021 following a period of early conciliation from 8th to 10 December 2020. Ms Bedborough presented a claim on 24 December 2020 following a period of early conciliation from 18th to 24th November 2020. The claims were for a protective award and other amounts, although the Claimants today confirmed that at today's hearing only a protective award was sought.
3. J Crew UK Limited presented a response to Ms Bedborough's claim but there has been no response from the First Respondent in respect of Mr Uddin's claim. The Secretary of State was notified as an interested party and has presented responses in which he neither supports nor resists the claims and asks for the Response to be treated as his written submissions for the hearing. These have been taken into account.
4. In order for the consultation obligations under section 188 of the Trade Union Labour Relations (Consolidation) Act 1992 to be engaged 20 or more dismissals must be proposed at one establishment within 90 days. An employee may bring a claim on his or her own behalf only if there is no recognised trade union or elected employee representatives.
5. In the case of *USDAW and anor v Ethel Austin Ltd and ors* 2015 ICR 675, (commonly known as the Woolworths case) the ECJ interpreted the term "establishment as designating, depending on the circumstances, the unit to which workers who were made redundant were assigned to carry out their duties. It was not essential in order for there to be an "establishment" that the unit in question was endowed with a management that could independently effect collective redundancies." In this context they found that an "establishment" in the context of an undertaking, could consist of a distinct entity, having a certain degree of permanence and stability, which was assigned to perform one or more given tasks and which had a workforce, technical means and a certain organisational structure allowing for the accomplishment of those tasks.

**Case No: 2200142/2021 and others
(see attached schedule)**

6. The Tribunal heard evidence from both Ms Bedborough and Mr Uddin. In addition, we accepted into evidence witness statements from Mr Blower, Ms Urban, and Ms Khanom. From the evidence we have heard we make the following findings.
7. On 10 September 2020 all UK staff of J. Crew UK Limited were informed by the UK liquidators, via a zoom meeting, that they were dismissed with effect from 9 September 2020. There was no recognised trade union and nor had any employee representatives been elected.
8. The First Respondent is a clothes retailer which is owned by its US parent company J. Crew Group Inc. In the UK the First Respondent employed some 68 staff based at 7 locations all of which were geographically very close. There were 6 stores. 30 staff were employed at Regent Street, 10 staff across 2 stores in Lamb's Conduit Street and Redchurch Street, 10 staff at Brompton Cross, 14 staff at Sloane Square, 7 staff at Marylebone High Street and 5 staff at head office, which was In Stevens Street.
9. Of the 21 Claimants who had brought claims for a protective award 12 (including Ms Bedborough and Mr Uddin) worked at the Regent Street store. It was clear that this was an establishment where the proposal to dismiss as redundant affected 20 or more employees. The issue for the Tribunal was whether the 9 other employees who had brought claims but were not based at Regent Street could be said to be working at separate establishments or whether it could be said that all of the UK employees in fact worked for one establishment, so that in calculating whether the proposal to dismiss as redundant 20 or more employees "at one establishment" should include employees working at the smaller stores. 6 of the Claimants were primarily based between the stores in Lamb's Conduit Street and Redchurch Street. One Claimant, Ms Khan, was based at Brompton Cross and Ms Urban and Mr N Khan were based at Sloane Square.
10. All the UK stores were located within central London, within 6 miles of each other. Each store had its own manager, though the stores in Lamb's Conduit Street and Redchurch Street shared a single manager. There was a very small Head Office team based in Stephen Street near Tottenham Court Road.
11. The contracts of employment of all staff provided for a place of work at a particular store but with a requirement to work at other stores as and when required. Although the staff rotas were devised on a store by store basis, sales staff would move between stores as and when required. Ms Bedborough estimated that the sales staff would work at another store once a week, while the store managers might work at another store once a month, but more frequently at busy periods such as Christmas. If a member of staff worked in another store there would be no recharge

**Case No: 2200142/2021 and others
(see attached schedule)**

between the stores, Hours worked were tracked on a single enterprise system called Dayforce wherever the employee worked. Mr Uddin was responsible for stock levels in all the stores and would visit all of the stores each day. Mr Blower, for example who worked as a visual merchandiser worked across all the UK locations.

12. Each store had their own sales targets and overheads for accounting purposes. However, all ordering of stock, its distribution to the stores, all accounting, all visual merchandising as well as sales launches and promotional events were directed from the United States and was uniform across the stores. We understood that the computer system was centralised and managed from the US. The sales figures for individual stores were provided to the US and then made available and visible to the other stores. The senior management team from the US would visit once a quarter.
13. We considered whether the various stores were separate establishments for the purposes of section 188 of the Act or whether all the stores were in effect a single establishment. We considered that while there were factors pointing either way, the smaller stores could not be said to be separate establishments. While the fact that each store had its own sales targets and overheads, and that staff were principally attached to a particular store might suggest that they were a number of small but separate establishments we considered that other factors outweighed this. In particular the degree of control exercised by the US parent over all the London stores alike, as set out in paragraph 12 above, the geographical proximity of all the stores and as a consequence the extent to which staff moved between stores and the various factors set out above clearly suggests that all the London offices were operated as a single establishment.

Employment Judge Spencer
10 February 2022

JUDGMENT SENT TO THE PARTIES ON
11 February 2022

FOR THE TRIBUNAL OFFICE

THE SCHEDULE

2207845/2020	Ms K Bedborough	Regent Street
2200142/2021	Mr Jahad Uddin	Regent Street
2200143/2021	Mrs Wiolette Urban	Sloane Square
2200144/2021	Ms Manuela Barbara Sousa	Regent Street
2200145/2021	Miss Leidy Gutierrez Satizabal	Lambs Conduit
2200146/2021	Mr Eugede Misuri	Regent Street
2200147/2021	Mr Usmaan Salam	Lambs Conduit
2200148/2021	Miss Nayima Khan	Brompton Cross
2200149/2021	Mr Michael Joseph Theodore-Persaud	Regent Street
2200150/2021	Mr William Blower	Regent Street
2200151/2021	Miss Rebecca Rich	Regent Street
2200152/2021	Mr Tahir Mangarah	Lambs Conduit
2200153/2021	Mr Shaquille Silvanus Samuel Bryan	Lambs Conduit
2200154/2021	Mr Niyaz Khan	Sloane Square
2200155/2021	Mr Yedehiagosa Ighodaro -	Regent Street
2200156/2021	Mr Kevin Ly	Regent Street
2200157/2021	Mr Claudio Esposito	Regent Street
2200158/2021	Ms Reshma Khanom	Lambs Conduit
2200159/2021	Mr Christian Johnson	Regent Street
2200160/2021	Mr Ahmed Osinaike	Lambs Conduit
2200161/2021	Ms El Bacha Nawal	Regent Street

**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 first 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

**Case No: 2200142/2021 and others
(see attached schedule)**

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 relevant 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.