



THE EMPLOYMENT TRIBUNALS

Claimant: Unite the Union & Others (see attached schedule)
Respondent: Focus (MDC) Limited (In Compulsory Liquidation)
Interested Party: Secretary of State for Business Energy & Industrial Strategy

JUDGMENT FOR PROTECTIVE AWARD

1. The complaints that the respondent failed to comply with the requirement of Section 188 or Section 188A of the Trade Union and Labour Relations (Consolidation) Act 1992 is well-founded.
2. The respondent is ordered to pay remuneration calculated in accordance with Section 190 of the Trade Union and Labour Relations (Consolidation) Act 1992 to all employees dismissed as redundant on or after 22nd July 2019 in respect of whom the claimant union was recognised by the respondent for collective bargaining for the protected period.
3. The protected period is from 22nd July 2019 to 19th October 2019.
4. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 apply. Regulation 6 imposes on the respondent a duty to provide information to the Secretary of State. Regulation 7 postpones this award in order to enable the Secretary of State to serve a recoupment notice under Regulation 8. The full effect of Regulation 6, 7 and 8 is set out in the Annex to this judgment.

REASONS

1. This matter came before me this morning for consideration of the claimants application for a protective award pursuant to Section 188 and Section 188A of the Trade Union and Labour Relations (Consolidation) Act 1992. The claimant union was represented by Miss L Docherty of Counsel. Also in attendance was Mr Ryan Armstrong, Regional Officer for Unite the Union, and Mr Steven Mattinson, a former employee of the respondent.

2. Mr Armstrong had provided a witness statement confirming the following material facts:-
 - (i) Unite the Union is an independent trade union which was recognised by the respondent for collective bargaining purposes in respect of construction staff in various roles including, but not limited to, scaffolders, painters, labourers and general operatives. A copy of the NAECI recognition agreement was produced to the hearing.
3. On Monday 22nd July 2019, the respondent company informed all its staff that its contracts of employment were being terminated with immediate effect on the basis that the company was insolvent and was to be placed into administration. Joint liquidators were in fact appointed on 24th July 2019.
4. The tribunal is satisfied that those employees in respect of whom Unite the Union was recognised for collective bargaining purposes were dismissed as redundant on 22nd July 2019.
5. I am satisfied on the evidence before me that the respondent company will be unable to discharge the Protective Awards contained in this judgment and that liability will therefore fall upon the Secretary of State for Business, Energy and Industrial Strategy.
6. To assist the Secretary of State, there is attached to this judgment a schedule containing names of those employees who were known to the claimant union as being employees dismissed as redundant on 22nd July 2019 and in respect of whom Unite the Union was recognised for collective bargaining purposes.

EMPLOYMENT JUDGE JOHNSON

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON
20 January 2022**

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