



EMPLOYMENT TRIBUNALS

Claimants: Unite the Union

Respondents: Spicers Limited (in administration)

Heard at: Liverpool (by video call)

On: 26 January 2022

Before: Employment Judge Benson

Representation

Claimants: Mr D Jones - counsel

Respondent: No attendance

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Tribunal declares that the complaint that the respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded, and makes a protective award in respect of the Warehouse Operatives and Warehouse Supervisors based at the respondent's premises at Pilsworth Road, Heywood Distribution Park, Heywood OL10 2TA.
2. The Tribunal orders the respondent to pay to those employees remuneration for the protected period of 70 days beginning with 14 May 2020.

REASONS

1. The evidence before the Tribunal produced on behalf of the claimant consisted of a statement from Mr Ian Ball, a warehouse operative who attended to give evidence, together with a bundle of documents. Mr Ball was employed by the respondent for some 27 years until his dismissal by reason of redundancy on 14 May 2020. Mr Jones made submissions on behalf of the claimant. No response was filed by the respondent, but consent was given that this claim may proceed.
2. From that evidence, the Tribunal was satisfied of the following:
 - (a) The claimant was a recognised trade union for the Warehouse staff.

- (b) There were 96 staff employed at one establishment being the respondent's premises at Pilsworth Road, Heywood Distribution Park, Heywood OL10 2TA.
- (c) The first respondent went into administration on 14 May 2020 following efforts by the respondent to explore options that would allow it to continue to trade.
- (d) There was no consultation with the claimant on behalf of its members. There were 15 members of the Unite union out of a workforce of 96 at the Heywood site. Upon reaching the conclusion on 20 April 2020 that redundancies may be necessary, the respondent completed an HR1 and notified the workforce and claimant they had done so. This notification confirmed that they would proceed to ask for representatives to be appointed for the purpose of collective consultation in respect of those who were not represented by the Union. They progressed with that process but because of the number of employees nominated, they required an election process. They kept employees informed. A ballot was arranged for 10 May 2020 with a second ballot required. Before representatives were elected, the company went into administration and all employees were made redundant between 14 May and 30 June 2020.
- (e) The purpose of a protective award is a sanction and not compensation. Where there has been no consultation, as in this case, it is appropriate for me to start with the maximum period of 90 days and reduce it if there are mitigating circumstances which may justify a reduction. I have a wide discretion to award what I consider just and equitable including considering the seriousness of the respondent's default.
- (f) This is not a case where the respondent has not engaged with the workforce at all. From its realisation on 20 April that redundancies maybe necessary, it kept employees informed and commenced the process for the appointment of employee representatives. That process however took longer than it should have but until such time as representatives were in place, consultation with them could not commence. The respondent could have commenced consultation with the claimant at an earlier stage, but the claimant only represented a small proportion of the workforce who needed to be consulted with and the reason for this delay is a mitigating factor which I have taken into account. As such I consider that there should be a small reduction of the protected period.

3. In the circumstances the Tribunal was satisfied that a protective award should be made in respect of the Warehouse Operatives and Supervisors at the respondent's Heywood site and that 70 days was the appropriate period.

NOTE

The following statement is given under regulation 5(2)(b) of the Employment Protection (Recoup of Benefits) Regulations 1996 (“the Regulations”) and advises the respondent of its duties under regulation and of the effect of regulations 7 and 8 of the Regulations.

- (1) The respondent is required to give the Benefits Agency in writing:
 - (a) The name, address and national insurance number of every employee to whom the above protective award relates; and
 - (b) The date of termination (or proposed termination) of the employment of each such employee.
- (2) The respondent is required to comply with paragraph (1) above within the period of ten days commencing on the date when the judgment was announced at the hearing or, if it was not so announced, the date on which the Judgment was sent to the parties.
- (3) No remuneration due to an employee under the protective award shall be paid to him until the Benefits Agency has:
 - (a) served on the respondent a notice (“a recoupment notice”) to pay the whole or part of the award to the Benefits Agency; or
 - (b) informed the respondent in writing that no recoupment notice is to be served.
- (4) The sum due to the Benefits Agency under a recoupment notice shall be the lesser of:
 - (i) the amount (less any tax or social security contributions which fall to be deducted by the respondent) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Benefits Agency receives from the respondent the information mentioned at paragraph (1) above; and
 - (ii) the amount paid by way of, or as on account of, Jobseeker’s Allowance or Income Support to the employee for any period which coincides with any part of the protected period falling before the date mentioned at (i) above.
- (5) The sum due under the recoupment notice shall be paid forthwith to the Benefits Agency. The balance of the protective award shall then (subject to deduction of any tax or social security contributions) be paid to the employee.
- (6) The Benefits Agency shall serve a recoupment notice within the period of 21 days after the date mentioned at paragraph (4)(ii) above or as soon as practicable thereafter.
- (7) Payment by the respondent to the employee of the balance of the protected award (subject to deduction of any tax or social security contributions) is a complete discharge of the respondent in respect of any sum so paid.

(8) The sum claimed in a recoupment notice is due as a debt by the respondent to the Benefits Agency, whatever may have been paid to the employee and whether or not there is any dispute between the employee and the Benefits Agency as to the amount specified in the recoupment notice.

Employment Judge Benson

Date: 26 January 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
Date: 15 February 2022

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Claimant: Unite the Union

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**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.