



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr T Vella  
Ms K Kubicki  
Ms B Thaker

**Respondent:** STA Travel Management Limited (1)  
STA Travel Limited (2)  
Secretary of State for Business,  
Enterprise, and Industrial Strategy (3)

**HELD AT** London Central **On 4<sup>th</sup> March 2022**

**EMPLOYMENT JUDGE F Spencer**

**MEMBERS:** Ms B Makins  
Mr F Benson

## JUDGMENT ON RECONSIDERATION

UPON A RECONSIDERATION of the judgment dated 23<sup>rd</sup> November 2021 (and subsequently amended under certificates of correction dated 1<sup>st</sup> and 21<sup>st</sup> December, and 26<sup>th</sup> January 2022) under Rule 71 of the Employment Tribunals Rules of Procedure 2013 the Judgment is varied by:

- (i) deleting Ms K Kubicki, Mr T Vella and Ms B Thaker from Schedule C as being out of time.
- (ii) including Ms B Thaker in Schedule A (Claimants employed by STA Travel Management Limited) and Mr T Vella and Ms K Kubicki in Schedule B (Claimants employed by STA Travel Limited) and that the Tribunal therefore makes a protective award of 90 days pay to these three Claimants.

Accordingly, the Tribunal orders that (i) STA Travel Management Ltd pay Ms Thaker and that (ii) STA Travel Ltd pay Mr Vella and Ms Kubicki their remuneration for the protected period of 90 days beginning on 2 September 2020.

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

## REASONS

1. Following a hearing on 13<sup>th</sup> and 14 October 2021, Judgment was given in respect of 116 individual Claimants who were employed either by STA Travel Limited or STA Travel Management Ltd. The Tribunal made a protective award in respect of those Claimants who worked at establishments with 20 or more employees. The three Claimants named above all worked at Head Office which was an establishment with 20 or more employees. However, a number of Claimants who worked at establishments with 20 or more employees had presented their claims out of time, and their claims were dismissed.
2. The three Claimants named above had their claims dismissed as being out of time. They had not provided any explanation prior to the hearing as to why their claims had not been presented within the relevant three-month time limit. All of them have applied for a reconsideration of the judgment dismissing their claims as being out of time. All would otherwise have qualified for a protective award.
3. The 116 Claimants at the original hearing had all presented individual claim forms and were all unrepresented. A few of those Claimants agreed to coordinate the paperwork and evidence for all their former colleagues in order to make the hearing more manageable. Despite very good efforts on their behalf, occasionally things got missed.
4. Mr Vella applied for a reconsideration on 29<sup>th</sup> November 2021. He said that he had thought that a single pack of documents was being provided on behalf of all the Claimants and that he had not realised that he had to provide his own statement of case as to why it had not been presented within the relevant three-month time limit. He explained that at the time of the redundancy they were assisted by ERA Solutions who had provided an in-depth pack on what their rights were, and what they could claim and how. ERA Solutions did not however advise them of their right to a protective award and it was a time of great stress. As soon as he had found out about the possibility of a protective award, he had presented his claim.
5. Ms Kubicki applied for a reconsideration on the basis that she had believed her claim to have been submitted in time. The non-legal representative for the Claimants wrote to the Tribunal on 1 December 2021 within 2 days of the Judgment being sent to the parties stating that Ms Kubicki's claim had been dismissed as out of time, but it had been submitted on 30 September 2020, which was well within the time limit. In

fact, on further investigation it appeared that Ms Kubicki had submitted two claim forms; one on 30 September 2020 (in time) and one on 5 February 2021 (out of time) but the claim submitted on 30 September 2020 was not progressed; –it is not clear why. However, we accept that Ms Kubicki had believed that her claim was presented in time and had not understood that her claim was late. If she had understood that her claim was late, she would have provided any further information that was required. She also explained that ERA Solutions who had handled the redundancy process had not informed them about the Protective Award and that she had submitted her claim as soon she became aware of the possibility for claim.

6. Ms Thaker wrote to the Tribunal a number of times from 22<sup>nd</sup> December 2022, and although her correspondence was not always clear it has been treated as an application for reconsideration. Although her letter was outside the 14-day time limit normally provided for applications for reconsideration we have agreed to consider her application (pursuant to Rule 5 of the Employment Tribunal’s Rules of Procedure 2013). Ms Thaker worked at Head Office, which was an establishment with more than 20 employees. She was confused by the initial judgment sent on 29<sup>th</sup> November 2021 which indicated that the Claimant worked at an establishment with fewer than 20 employees. That judgment was corrected on 1 December 2022. In her various emails the Claimant says that she had been unable to open the case management order sent in September which required her to explain why her claim was submitted late, that it had been a difficult time for everyone, and she was very confused as to the process and had not understood what she was required to do. She had asked to be moved from schedule C to Section A and included in the list of successful Claimants employed by STA Travel Management Limited. (Ms Thaker in her application also refers to unused holiday but, for the avoidance of doubt, the hearing in October and the existing judgment only relates to her claim for a protective award.)
7. Under Rule 70 of the Employment Tribunal Rules of Procedure 2013 a Tribunal “may reconsider any judgment where it is necessary in the interest of justice to do so”, and upon reconsideration the decision may be confirmed varied or revoked.
8. Following an initial consideration Employment Judge Spencer was of the opinion that the application for consideration should proceed. The parties were asked to write to the Tribunal by 29 December 2021 setting out their views as to whether the application could be determined without a hearing. No response has come from the Respondent or the Secretary of State. Mr Vella requested a determination without a hearing. As the decision was taken by a full Tribunal, it was necessary for the reconsideration decision to be taken by the full Tribunal. Today has been the first opportunity the Tribunal has had to meet. We did so by video conference.
9. We consider that all three Claimants have provided explanations showing that it was not reasonably practicable for them to have presented their

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claims in time and why they had not provided an appropriate written explanation prior to the hearing in October 2021. A single hearing to deal with 116 Individual Claimants none of whom were legally represented, presents a particular challenge, and we accept that these Claimants may not have appreciated that they were required to provide explanations for the late submissions of their claim prior to the hearing. The explanations which they have given tally with the explanations given by those late Claimants who had provided evidence to the Hearing as to the reasons why their claims were presented late. We consider that it was not practicable for these Claimants to have presented their claims in time and that it would be in the interests of justice to vary the original Judgment under Rule 70 of the Employment Tribunals Rules of Procedure 2013.

10. Accordingly, we vary the Judgment by revoking that part of the Judgment which dismissed the claims of Mr Vella, Ms Kubicki and Mr Thaker as being out of time. We find that the First and Second Respondents failed to consult with the above Claimants as required by section 188 of the Trade Union & Labour Relations (Consolidation) Act 1992.
11. We order the relevant Respondent to pay those three Claimants their remuneration for the protected period of 90 days beginning on 2 September 2020 as set out above.

Employment Judge F Spencer  
Dated 14<sup>th</sup> March 2022

JUDGMENT SENT TO THE PARTIES ON

15/03/2022..

FOR THE TRIBUNAL OFFICE

**ANNEX**

**Claimants:**                   **Mr T Vella**  
                                      **Ms K Kubicki**  
                                      **Ms B Thaker**

**Respondents:**               **STA Travel Limited (1)**  
                                      **STA Travel Management Limited (2)**  
                                      **The Secretary of State for BEIS (3)**

**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 and second respondents are 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.

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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 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 respondents 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.