



EMPLOYMENT TRIBUNALS

Claimant

Respondents

Unite the Union

**v Monarch Aircraft Engineering Ltd
(in administration) (R1)
The Secretary of State for BEIS (R2)**

Heard at: Watford

On: 3 March 2022

Before: Employment Judge R Lewis (in chambers)

Appearances

For the Claimant: Written submissions

For the Respondents: No participation (R1)
Written submissions (R2)

JUDGMENT

1. The claim that R1 breached s.188(1) and s.188(1B)(a) of TULRCA 1992 by failing to consult in respect of redundancies proposed at each of its establishments relevant to this claim is upheld.
2. The Tribunal makes a protective award in accordance with s.189 TULRCA.
3. The award is made in respect of 115 Unite members whose names and addresses are set out in a schedule provided to the Tribunal.
4. The protected period to which the award relates is 90 days.
5. R2 is liable to make payments to such individuals in accordance with Part 12 Employment Rights Act 1996.

REASONS

1. This is determination of a claim presented on 3 May 2019.
2. The procedural history indicates a tangle of mistake, misunderstanding, and delay caused in some part by lockdowns. At a hearing on 7 December 2021 I reinstated the proceedings and made brief case management orders.

On 20 January 2022 the claimant's solicitors sent the Tribunal a bundle and submissions.

3. The bundle for this hearing included, in relation to R1, the administrator's consent to proceed, and R2's submissions as guarantor. It also contained the judgment of this Tribunal (Employment Judge Smail) of 24 February 2020 in Ward & Others v MAEL (Case 3200957/2019) (36-44). While I accept that Judge Smail's reasoning is not strictly binding on me (because this claimant was not a party), I see no reason to depart from the analysis of law set out at paragraphs 3-11.
4. For today's hearing, I accept the evidence of Mr C Spraggon-Quinn, who wrote that he had been senior Unite steward at R1 between 2002 and 2017, during which time Unite achieved full recognition.
5. The bundle contained a recognition agreement of 12 February 2014 between Unite and MAEL (51). I note that Mr Spraggon-Quinn was one of the signatories (57) and that the signatory on behalf of R1 was the then Group HR Director.
6. I note the significance of the following (53):

“The Management recognises Unite the Union within MAEL as part of the Joint National Consultation Committee for the purposes of negotiation... as well as for the provision of information relating to collective bargaining and consultation.”
7. I accept the evidence of Mr P Bouch, who wrote that he had been a National Officer of Unite responsible for dealing with R1 from 2010 onwards. His evidence was the following:

“The first indication I had that there was any kind of issue at Monarch was that a scheduled meeting with the MD and his team, on I believe 21 December 2019, when we were told that for the meeting to continue, we had to sign a non-disclosure agreement (“NDA”). We agreed and having signed the NDA, we were told that Monarch Engineering was going into liquidation, and that some staff would be made redundant and others would be TUPE transferred to various companies in the first week of January 2019.”
8. It is a matter of record that R1 went into administration on 4 January 2019. The judgment of Judge Smail quotes the evidence of the then Operations Manager on how staff were informed of this:
9. “On 4 January 2019 at 5am the managing director of R1, Mr Chris Dare, sent an email to all R1 employees informing us that administrators had that day been appointed and R1 put into administration and that we would shortly be receiving an email from the administrator. Later than morning at 6.05am, the administrator sent an email to all employees confirming their appointment and asking all employees to come to work as usual.”
10. I received no evidence or submission to the contrary effect.

11. In the circumstances, I respectfully adopt, slightly modified for the different circumstances, paragraphs 14 and 15 of Judge Smail's judgment, which I now set out as part of this judgment and therefore my own findings:

“There was no consultation at all with the workforce in respect of proposed redundancies. There was no opportunity at all given to the workforce to make proposals as to how the business and jobs might be saved in whole or in part... it seems that the possibility of redundancies was a feature of the working relationship since [2017]. There was ample opportunity to consult. Instead management kept it all to themselves.”

12. I add that in that context, the decision of management to reveal that administration was imminent, subject only to signature of an NDA, is compelling evidence in support of that finding.

13. I respectfully adopt paragraph 15 from Judge Smail's judgment:

“Applying then the guidance given by Peter Gibson LJ in the Susie Radin case, on the information I have I can identify no mitigating circumstance justifying a reduction from the maximum in these cases. There is no evidence upon which I can find it appropriate to reduce the maximum award, and so a protective award must be paid in respect of all claimants of 90 days pay. The protected period is 90 days from 4 January 2019. The claimants were not consulted about decisions before 4 January 2019 from when it was clear the business was lost.”

14. At paragraph 16 Judge Smail dealt with the position of the few staff who were retained essentially to carry out the run down of the business, and ruled that no distinction should be made in their cases. He did so for the reason which I respectfully adopt, namely:

“The fact that the administrators kept them on for limited purposes for a while does not detract from the fundamental position that in respect of their own jobs no consultation took place with him prior to the decision to go into administration on 4 January 2019.”

15. The claimant submitted that the claimants constituted a single establishment, alternatively each was employed at a different airport location each of which constituted an establishment. I had no submission or evidence to the contrary and I respectfully agree. I note that Judge Smail issued judgment which applied to redundancies at Birmingham and Luton airports, and I accept that conclusion for the purposes of this case.

Employment Judge R Lewis

Date: 23/3/2022

Sent to the parties on: 30/3/2022

N Gotecha – For the Tribunal Office