



5

**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case Nos: 4112464/2021; 4112481/2021 and 4112485/2021**

**Held on 29 March 2022 by Telephone Call**

10

**Employment Judge Neilson**

**Mr S Derby**

**First Claimant  
In person**

15

**Mr W Johnston**

**Second Claimant  
In person**

20

**Mr L Burnside**

**Third Claimant  
In person**

25

**Weir & McQuiston (Scotland) Limited  
In Administration**

**Respondent  
No appearance**

30

35

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

40

The Judgement of the Employment Tribunal is that:-

(1) the respondent failed to comply with their duties to inform and consult with the claimants in terms of Section 188 and 188A of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the Act");

(2) The complaint is well founded in terms of Section 189(2) of the Act; and

5 (3) The respondent is ordered to pay remuneration to the claimants for a protected period beginning on 11 November 2021 for a period of 90 days, being a protective award, again in terms of Section 189(2) of the Act.

### REASONS

1. This was a final hearing held by telephone conference call. The claimants  
10 appeared in person. There was no appearance by the respondent. All of the claimants expressly confirmed that the correct respondent is Weir & McQuiston (Scotland) Limited - In Administration. The administrators are Blair Milne and James Fennessey of Azets, Titanium, 1 Kings Inch Place, Renfrew, PA4 8WF. The respondent had been incorrectly noted as Azets.  
15 The Employment Tribunal agreed to amend the claims to identify the correct respondent as Weir & McQuiston (Scotland) Limited - In Administration.
2. The respondent had entered appearance in all three claims and had confirmed that the claims were not defended. The Tribunal has treated this as consent for the claims to proceed.
- 20 3. The claimants all confirmed that their claims were for a protective award arising out of the failure of the respondent to consult in accordance with its obligations under the Act.
4. All three claims had been combined following the order of the Employment Tribunal dated 14 January 2022.
- 25 5. All three claimants gave evidence to the Tribunal. Other than an e mail communication from the respondent to its employees on 11 November 2021 there were no additional documents referred to.

### Findings in Fact

6. All three claimants were employed by the respondent.

7. The first claimant commenced employment with the respondent in 2002. He was employed as an electrician's mate. Prior to his dismissal he earned £554 a week before tax.
8. The second claimant commenced employment with the respondent in 1983. He was employed as a supervisor. Prior to his dismissal he earned £750 a week before tax.
9. The third claimant commenced employment with the respondent in June 2021. He was employed as an electrician. Prior to his dismissal he earned £650 a week before tax.
10. The respondent operated a business as a mechanical and electrical contractor. They also carried out plumbing and solar energy work. For about 95% of the time they operated as sub-contractors working on sites being run by a main contractor or client.
11. The respondent operated out of premises at 201 Netherton Street, Wishaw, NL2 0EF ("the Wishaw premises").
12. The respondent employed more than 100 employees as at 11 November 2021.
13. The respondent's employees were either based at the Wishaw Premises or worked at various sites around central Scotland. The vast majority of these sites were either client sites or were operated by a main contractor. Employees permanently based at the Wishaw Premises included contract managers, directors, payroll administrators and procurement administrators. About 35 to 40 employees were permanently based at the Wishaw Premises.
14. The first and second claimant were both working at a site owned and operated by Aggreko in Dumbarton immediately prior to 11 November 2021. The first claimant reported into the second claimant. The second claimant reported into the contract manager based in the Wishaw Premises. The third claimant was working at a site in Edinburgh for a main contractor.

15. A supervisor would be the most senior employee working at a site for the respondent. The contract managers for the sites were based at the Wishaw Premises.
- 5 16. The respondent did not recognise any trade union for the purposes of collective bargaining.
17. The respondent dismissed all of its employees with immediate effect by an e mail notification sent to all employees on 11 November 2021. There was no advance warning of the dismissal and no consultation with employees or employee representatives. There was no election of employee representatives.
- 10 18. On or about 11 November 2021 the respondent went into Administration. Blair Milne and James Fennessey of Azets, Titanium, 1 Kings Inch Place, Renfrew, PA4 8WF were appointed as Administrators.

### Submissions

- 15 19. The claimants were all seeking a protective award in light of the failure by the respondent to consult.

### The Law

20. The Act provides in Section 188 a requirement upon an employer who is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less an obligation to consult about the dismissals all the persons who are appropriate representatives of any of the employees.
- 20 21. Section 188A of the Act sets out the process for election of employee representatives.
- 25 22. Under Section 189 where an employer fails to comply with the obligation to collectively consult under Section 188 then a claim may be brought to an Employment Tribunal. That claim may be brought by a dismissed employee where there has been a failure to elect any employee representatives.

23. Section 189 of the Act further provides that if the Employment Tribunal finds the complaint well founded it shall make a declaration to that effect and may also make a protective award. A protective award is an award in respect of one or more descriptions of employees who have been dismissed as  
5 redundant ...and in respect of whose dismissal ..the employer has failed to comply with a requirement of Section 188 of the Act, ordering the employer to pay remuneration for the protected period.
24. The protected period begins with the date on which the first of the dismissals takes effect and is of such length as the tribunal determines to be just and  
10 equitable in all the circumstances having regard to the seriousness of the employer's default in complying with the requirements of section 188..but shall not exceed 90 days - (Section 189(4) of the Act).

#### Discussion & Decision

- 15 25. The Tribunal was satisfied on the evidence led that the respondent's workforce were assigned to the Wishaw Premises and that the Wishaw Premises was the establishment for the purposes of Section 188 of the Act. Whilst a number of the respondents employees (including the claimants) worked at sites across central Scotland the Tribunal was not satisfied that  
20 these separate sites were "establishments" in terms of section 188. In arriving at this view the Tribunal had regard to the decisions by the European Court in *Rockfon A/s 1996 IRLR 168* and in *Athinalki Chartoplla AE -v- Panaglotidus 2007 IRLR 284*. The Wishaw Premises was the site from which all the contracts were managed. It was the base for the employees to  
25 report into. The sites at which the claimants worked from time to time lacked the permanence and stability to be "establishments" in light of the fact that these were sites that were in almost all cases operated and controlled by clients or the main contractor. In contrast the Wishaw Premises had permanence and stability, a workforce and an organisational structure.
- 30 26. The Tribunal was satisfied that the obligation to consult was triggered by the decision taken on 11 November 2021 to make all employees redundant. That

decision triggered an obligation to consult for 45 days in light of the numbers involved.

27. The respondent did not make any attempt to consult. There was no recognised trade union and no employee representatives were elected.  
5 Whilst it would appear that the reason for the sudden need for redundancies may have been insolvency that by itself is not a reason justifying a failure to consult.
28. The Tribunal was satisfied that the claimants were entitled to a protective award. The protective award begins with the date of the first redundancies -  
10 11 November 2021 and shall be of such length as the tribunal determines is just and equitable in all the circumstances.
29. Having regard to the decision in the case of **Sus/ Radin Limited -v- GMB 2004 1RLR 400** the Tribunal determined to start from the position that the period should be 90 days. There being no mitigating evidence from the  
15 respondents the Tribunal accordingly concluded that 90 days was the correct period for the protective award.

20 Employment Judge: Stuart Neilson  
Date of Judgment: 04 April 2022  
Entered in register: 05 April 2022  
and copied to parties

25