EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100507/2021 (A)

Held on 26 April 2022

Employment Judge R Gall

Ms L Steele — **Claimant**
In Person

STA Travel Ltd (In Creditors Voluntary Liquidation) — **Respondent**
No appearance and
No representation

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that: –

1. It is found and declared that the respondents failed to comply with the requirements of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992; and

2. The Tribunal makes a Protective Award in terms of Section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the claimant. The claimant was made redundant on 02 September 2020. The respondents are ordered to pay remuneration to the claimant for the protected period of 90 days, that being the period from 02 September 2020 until 01 December 2020.

REASONS

1. This case called for hearing on 26 April 2022. It was not practicable to hold a hearing in person due to the coronavirus pandemic. The hearing took place by video conference facility, CVP. The claimant participated in that CVP hearing and gave her evidence.

2. As the respondents are in voluntary liquidation, consent of the liquidator to bring proceedings is not required. The claim has been intimated to the liquidator and form ET3 has not been presented intimating any defence to the claim before the cases could be heard.

3. There was no "testing" of the evidence of the claimant's evidence as there was no challenge to her evidence, given that there was no appearance and no representation for the respondents in circumstances where no form ET3 had been lodged. I found her to be entirely credible and reliable. I was in no doubt as to her honesty.

4. There was no union recognised in the workplace. No employee representatives were elected.

5. The respondents were run from their head office in London with all decisions of a management nature being taken there. HR was a centralised function. Marketing decisions and promotions were instigated and run from the head office. Stores had to follow instructions in relation to marketing. The business operated on the basis of being one unit. Staff targets were set nationally. There was one file opened for each customer. A customer could visit, or contact, a store in any location to deal with a booking made through a different store. That was part of the service and image promoted by the respondents. There was a centralised computer system keeping customer records. The on-line booking system was common to all stores. Customers enquiring about their booking could use the website irrespective of which store had been involved in any booking. Customers made payment into one bank account. All employees could access information on that bank account to be able to confirm payments made. Payment links were often sent by one employee to a customer, although a different employee in a different branch might have been involved in taking the booking here was one telephone number which they could phone to enquire about any aspect of heir booking, irrespective of which store had been the one with which they had initially dealt. There were training events which were attended by personnel from all stores. Staff could be asked to move from one store to another.

6. I was satisfied that each store was not a separate establishment for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). There was no such position adopted in challenge to the claimant's evidence or by way of defence.

7. There were more than 20 employees made redundant by the respondents on 02 September 2020.

8. The claimant was working for the respondents as at 2 September 2020.

9. During August 2020 the respondents were rumoured to be in financial difficulty. This was however regarded as an issue for their parent company which was based outside the UK. The UK operation was said to be profitable and employees, including the claimant, derived some comfort from this. The claimant was, with other employees, informed on 02 September 2020 that she was being made redundant. There was no prior discussion whatsoever with the claimant as to redundancy. This came as a shock to her. She had not been spoken to by his employer by way of consultation.

10. The 1992 Act contains obligations on employers where redundancies are contemplated. Those obligations, broadly put, are to consult regarding whether job losses are to take place, if so how many job losses are to be involved and whether anything can be done to mitigate the impact of redundancies. This is in terms of Section 188 of the 1992 Act. The obligation is to consult a recognised trade union or alternatively for there to be appointment of employee representatives if consultation is to take place. As stated above, there was no recognised trade union in the workplace. No election or appointment of employee representatives took place. There was no individual consultation. The terms of Section 188 were therefore not adhered to.

11. All employees were made redundant over the period 02 September 2020. There was redundancy of more than 100 employees. In that circumstance, the obligation is for consultation to take place at least 90 days prior to the first dismissal taking place. That did not occur.

12. If that obligation to consult is not adhered to the protective award which is to be made in terms of Section 189 of the 1992 Act proceeds on the basis that the starting point is that an award in respect of 90 days is to be made.

13. Payment in respect of that 90 day period is appropriate. The case of *Susie Radin Ltd v GMB & others* 2004 IRLR 400 makes it plain that an Employment Tribunal should start on the basis of a 90 day award. That period can be reduced depending upon the extent of the default and also depending upon whether any special circumstances exist justifying departure from the 90 day period. That is in terms of Section 188 (7) of the 1992 Act.

14. The case of *Clarks of Hove Ltd v Bakers' Union* 1978 ICR 1076 confirms that a "standard" insolvency does not constitute special circumstances. There was in that case no disaster of a sudden nature or any emergency. It was not said here that there had been a sudden disaster or emergency.

15. There was no consultation whatsoever. On the basis of the evidence I heard, no special circumstances existed justifying departure from the provisions of the 1992 Act and the obligation of consultation imposed. The protective award is therefore made in respect of the 90 day period running from 02 September 2020 to 01 December 2020.

Employment Judge: **R Gall**
Date of Judgment: **26 April 2022**
Entered in register: **27 April 2022**
and copied to parties