



EMPLOYMENT TRIBUNALS

Claimants: Mr I Clark & others
(see attached schedule)

Respondents: 1. Rhys Davies & Sons Limited (in Administration)
2. Secretary of State for Business, Energy and Industrial Strategy

Heard at: Manchester

On: 9 May 2022

Before: Employment Judge K M Ross

REPRESENTATION:

Claimant: Not in attendance

Respondent: Not in attendance

JUDGMENT ON RECONSIDERATION

Upon application made by letter dated 14 March 2022 to reconsider the Judgment dated 4 March 2022 (which was sent to the parties on 7 March 2022):

1. Employment Judge Ross allows the application for reconsideration and orders that the complaint of the claimants listed in the one attached schedule, under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992, of a failure by the first respondent to comply with the requirements of section 188 of the 1992 Act, is well-founded.
2. The Tribunal orders the first respondent, by way of a protective award under section 189(3) of the 1992 Act, to pay all claimants listed on the attached schedule a payment equivalent to remuneration for the period of 90 days beginning on 9 December 2020.
3. The Recoupment Regulations apply.

Employment Judge KM Ross
Date: 9 May 2022

JUDGMENT SENT TO THE PARTIES ON
10 May 2022

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

SCHEDULE

Case Number	Claimant Name
2402448/2021	Mr Ian Clark
2402449/2021	Mr Julian Binding
2402450/2021	Mr Peter Blackwell
2402451/2021	Mr Stephen Brooks
2402452/2021	Miss Nicola Bugg
2402453/2021	Mr Paul Chisnall
2402454/2021	Mr Scott Dickinson
2402455/2021	Mr Michael Eaves
2402456/2021	Mr Mark Edwards
2402457/2021	Mr Michael Fleetwood
2402458/2021	Mr Mark Giblin
2402459/2021	Mr Ian Hanlon
2402460/2021	Mr Andrew Hayes
2402461/2021	Mr Neil Holbrook
2402462/2021	Mr Kevin Hornby
2402463/2021	Mr Michael Hornby
2402464/2021	Mr Neil Houtt
2402465/2021	Mr Marc James
2402466/2021	Mr Gareth Jones
2402467/2021	Mr Lloyd Jones
2402468/2021	Mr Jeffrey Keene
2402469/2021	Mr Daniel Littler
2402470/2021	Mr Christopher Lloyd
2402471/2021	Mr Kevan Logan
2402472/2021	Mr Martin Malone
2402473/2021	Mr Stephen Maunder
2402474/2021	Mr Darryl Parker
2402475/2021	Mr Adam Parkinson
2402476/2021	Mr Brain Richards
2402477/2021	Mr Derek Robinson
2402478/2021	Ms Danielle Roe
2402479/2021	Mr Jack Ryder
2402480/2021	Miss Amy Scott
2402481/2021	Mr Vivian Sier
2402482/2021	Mr Paul Smith
2402483/2021	Mr Gordon Steel
2402484/2021	Mr Stewart Tennant
2402485/2021	Mr Michael Tracey
2402486/2021	Mr Kevin Turner
2402487/2021	Mr Leon Ward
2402488/2021	Mr Jason Williams
2402489/2021	Mr Sean Williams
2402490/2021	Mr Steven Williams

**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.

**Case No. 2402448/2021 & Others
(see attached schedule)**

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.