



EMPLOYMENT TRIBUNALS

Claimants: Mr CM Jones and others (see schedule)

Respondents:

1. Thomas Cook Airlines Ltd (in Compulsory Liquidation)
2. Travel and Financial Services Ltd (in Compulsory Liquidation)
3. Thomas Cook UK Travel Ltd (in Compulsory Liquidation)
4. Thomas Cook Group PLC (in Compulsory Liquidation)
5. Thomas Cook Aircraft Engineering Ltd (in Compulsory Liquidation)
6. The Secretary of State for Business, Energy and Industrial Strategy

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The first - fifth respondents not having presented a response to the claims and the Secretary of State making legal submissions prior to the rule 21 Judgment, and on the information before the Judge, the judgment of the Tribunal is that:

1. The claimants' complaints under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") of a failure by the first - fifth respondents to comply with the requirements of section 188 of the 1992 Act are well-founded.
2. The Tribunal orders the first - fifth respondents by way of a protective award under section 189(3) of the 1992 Act to pay to the claimants a payment equivalent to remuneration for the period of 90 days beginning on 23 September 2019.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award.

REASONS

1. The claimants claimed a protective award in respect of breaches of the collective consultation requirements under the 1992 Act. No response was presented to the claim by the first - fifth respondents. The Official Receiver subsequently confirmed that the first - fifth respondents would not be contesting the protective award claims.

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2. The first - fifth respondents are in compulsory liquidation and by order of the High Court dated 4 February 2021 permission was granted for these claims to proceed.
3. On full consideration of the file of proceedings it was possible to issue this Judgment under rule 21 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 in respect of the claim for protective awards without a hearing.
4. On the information provided, the Tribunal makes the following findings.
5. The first - fifth respondents employed over 20 employees at
 - a) the Westpoint Peterborough site.
 - b) the Hangar 1 Manchester Airport site.
 - c) the Cardinal House Manchester site
 - d) the Aldersgate London site
6. The claimants were not members of a recognised trade union nor part of a bargaining unit.
7. The first - fifth respondents went into compulsory liquidation on 23 September 2019. At 1:47am on 23 September 2019 the Official Receiver was appointed. The claimants were notified of termination of employment between 23 September 2019 – 28 February 2020.
8. There was no proper warning or notice given to or consultation with the recognised trade unions or the claimants. There was no consultation with the claimants between 23 September 2019 and 28 February 2020. In addition, no employee representatives had been elected or appointed for any such consultation within section 188A of the 1992 Act.
9. In the circumstances, the first - fifth respondents are in breach of the duty under section 188 of the 1992 Act and the Tribunal makes an award under section 189 in favour of the claimants for the maximum protected period of 90 days commencing on 23 September 2019.
10. The first - fifth respondents are advised of the provisions of regulation 6 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within ten days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the first - fifth respondents must comply with the provisions of regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:
 - (a) The name, address and national insurance number of the claimants to whom the award relates; and
 - (b) The date of termination of the employment of the claimants.

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11. The first - fifth respondents will not be required to make any payment under the protective awards made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the first – fifth respondents.

Employment Judge Ainscough

Date: 11 May 2022

JUDGMENT AND REASONS SENT TO
THE PARTIES ON
12 May 2022

.....
AND ENTERED IN THE REGISTER

.....
FOR THE TRIBUNAL OFFICE

Case Nos: 2417061/2019 and others (see schedule)

Schedule

Case Number	Claimant Name
2205925/2019	Mr Stuart Adamson
2205927/2019	Mr Anthony Bridges
2205930/2019	Mr Mark Threlfall
2205931/2019	Ms Barbara Wilson
2205932/2019	Ms Kiya Wright
2205933/2019	Mr Tobie Bowdler
2205934/2019	Mr Edward Marr
2205938/2019	Mr Bobby Ghadami
2205940/2019	Mr Chris Pearce
2205944/2019	Mr Roy Stratford
2205949/2019	Ms Kelly Jones
2205956/2019	Mr Andrew Ellingham
2205959/2019	Ms Michelle Saunders
2205974/2019	Ms Waheeda Khalid
2205975/2019	Ms Lucy Abbott
2205976/2019	Mr Amir Molaie
2205977/2019	Ms Sarah Knight
2205979/2019	Ms Jayne Outram
2205981/2019	Ms Samantha Sinclair
2205982/2019	Ms Abbie Ritchie
2205983/2019	Mr Gareth Jackson
2205984/2019	Ms Suzanne Tighe
2205985/2019	Ms Angela Milner
2205986/2019	Ms Joanne Fradley
2205988/2019	Ms Samantha Oldale
2205992/2019	Ms Maria Tyler-Rix
2205994/2019	Ms Colleen Wilson
2205995/2019	Mr Stuart MacGregor
2205997/2019	Mr Simon Muddimer
2416865/2019	Mr Itohan Olaye
2416867/2019	Ms Kelly Cooke
2416912/2019	Mr James Burrows
2416913/2019	Mr Steven Deverall
2416914/2019	Mr Ciaran Hadley
2416915/2019	Mr Andrew Harrison
2416917/2019	Ms Sari Marjamaki
2416918/2019	Mr Daryyl Mastropietro
2416919/2019	Mr Robert Millington

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2416920/2019	Ms Alexandra Miron
2416922/2019	Mr Simon Speddy
2416923/2019	Mr Russell Stubbs
2416925/2019	Ms Sharon Confue
2416927/2019	Mr Paul Naylor
2416928/2019	Mr Jason Whiteside
2416929/2019	Mr Jake Atkin
2416930/2019	Mr Martyn Buonocore
2416931/2019	Ms Yvonnee Ravenscroft
2416932/2019	Ms Karen Lesley Underwood
2416933/2019	Mr Daniel Shaun Collier
2416934/2019	Mr Matthew Dakin
2416935/2019	Ms Rosalyn Gough
2416936/2019	Mr Paul William Meaden
2416937/2019	Mr Evano Pescatore
2416938/2019	Ms Nicola Smith
2416939/2019	Mr Stuart Matthew Clarke
2416940/2019	Ms Joanne Royston
2416941/2019	Mr Jason John Stewart
2416942/2019	Ms Stefanie Crowther
2416943/2019	Ms Lindsay Thwaites
2416944/2019	Mr Daniel Graham Parkes
2416945/2019	Ms Joanne Baguley
2416947/2019	Ms Beverley Thompson
2416948/2019	Mr Ryan George
2416950/2019	Ms Mehreen Stavri
2416951/2019	Ms Georgia Felton
2416952/2019	Ms Lisa Cahill
2416953/2019	Ms Holly Ann Corcoran
2416954/2019	Ms Amy Irving
2416955/2019	Ms Katy Dalton
2416956/2019	Ms Patsy Louise Jenkinson
2416957/2019	Ms Stuart Shires
2416958/2019	Mr Brid O'Connell
2416959/2019	Ms Dorothy Lee-McCoy
2416960/2019	Ms Louise Jane Oxer
2416961/2019	Ms Jing Zhao
2416962/2019	Mr Gavin Brewer
2416963/2019	Ms Lynsey Baker
2416964/2019	Mr Christopher McAuley

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2416966/2019	Mr Chris Westwood
2416967/2019	Ms Claire Hoang
2416968/2019	Mr James Ashby
2416969/2019	Ms Leonie Esme Gemmer-Snell
2416970/2019	Mr Ross Sleath
2416971/2019	Ms Tracey Ann Ingham
2416972/2019	Mr Joseph Canavan
2416973/2019	Ms Hozefa Jamali
2416974/2019	Ms Lorraine Miller
2416975/2019	Mr Niall Breeze
2416976/2019	Ms Rachel Hindley
2416977/2019	Ms Caroline Stone
2416978/2019	Ms Amelia Clarke Webb
2416979/2019	Ms Julie Marie Holmes
2416980/2019	Ms Vanessa Whitfield
2416981/2019	Mr Ashoka Kaneson
2416982/2019	Ms Lesley Etheridge
2416984/2019	Mr Robert James Lister
2416985/2019	Mr Dean John Witham
2416988/2019	Ms Sarah Cashmore
2416989/2019	Ms Sharon Wroe
2416991/2019	Ms Hazel Mary Corcoran
2416992/2019	Mr Justin Alan Harley
2416993/2019	Mr Jonothan Reece
2416994/2019	Mr Christopher O'Neill
2416995/2019	Ms Sarah Hughes
2416996/2019	Ms Lauren Edwards
2416997/2019	Mr Jonathan McGauley
2416998/2019	Mr Adriaan Bos Diederik-Jan
2416999/2019	Ms Laura Lesley Cooke
2417000/2019	Ms Maggie Kennedy
2417001/2019	Mr Stephen Peter Kearney
2417002/2019	Ms Rachel Fairley
2417003/2019	Ms Victoria Bird
2417004/2019	Ms Ruth Ann Parkinson
2417005/2019	Ms Tania Blaze
2417006/2019	Ms Clare Warrington
2417007/2019	Mr Andrew Raymond Davey
2417008/2019	Mr Scott James Kimber
2417009/2019	Ms Joanna Burke-Landy

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2417010/2019	Ms Katherine Mahoney
2417011/2019	Ms Gillian Bates
2417012/2019	Ms Tracy Hindley
2417013/2019	Mr Mark Sperring
2417014/2019	Mr James Carolann
2417015/2019	Ms Emma Louise Langford
2417016/2019	Mr Martin David Lamb
2417017/2019	Mr Malcom Turner
2417018/2019	Ms Selina Venton
2417019/2019	Mr Paul Needham
2417020/2019	Ms Fiona Corbett
2417021/2019	Ms Jody Kingsley
2417022/2019	Mr Peter Wanless
2417023/2019	Mr Neil Pearson
2417024/2019	Mr Christopher Atherton
2417025/2019	Ms Tracy Davis
2417026/2019	Ms Nicola Jackson
2417027/2019	Mr David Thomas Harford
2417028/2019	Ms Jayna Mistry
2417029/2019	Mr Gareth Miller-Reedman
2417030/2019	Ms Kathleen Sarah Thetford
2417031/2019	Ms Dawn Hibbert
2417032/2019	Ms Elizabeth Helen Ffoulkes-Davies
2417033/2019	Mr Gary Wynne
2417034/2019	Ms Joanne Burrows
2417035/2019	Ms Leigh Jenny
2417036/2019	Mr Christopher Woodland
2417037/2019	Mr Thomas Richard Johnson
2417038/2019	Ms Camilla Nixon
2417039/2019	Mr Lloyd Lucy
2417040/2019	Mr Andrew James Stephens
2417041/2019	Mr Darran Brindley
2417042/2019	Ms Heather Stanway
2417043/2019	Mr Martin Peter Durrant
2417044/2019	Ms Helen Louise Doyle
2417045/2019	Ms Michaela Lesley Joughin
2417046/2019	Ms Hatice Moreno Masey
2417047/2019	Ms Nicola Cole
2417048/2019	Mr Mark Rivers
2417049/2019	Ms Michele Carroll

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2417051/2019	Mr David Stew
2417052/2019	Ms Gail Mort
2417053/2019	Ms Theresa Amanda Oldham
2417054/2019	Ms Jenny Cobb
2417055/2019	Ms Lynn Taylor
2417057/2019	Ms Tracy Barr
2417058/2019	Ms Stephanie Shires
2417059/2019	Ms Tina Longrigg
2417060/2019	Mr Steven Mark Thompson
2417061/2019	Mr Casey Mark Jones
2417062/2019	Ms Hayley Bromley
2417063/2019	Ms Joanne Hough
2417065/2019	Ms Emilea Connor
2417066/2019	Ms Gemma Hunter
2417067/2019	Mr Nicholas Fawcett
2417068/2019	Ms Kathryn Richardson Lambourne
2417069/2019	Ms Sophie Wellock
3328114/2019	Ms Emma Doody
3328117/2019	Mr Darren Bien
3328118/2019	Mr Ian Souter
3328143/2019	Ms Katie Elson
3328145/2019	Ms Nicola Howes
3328146/2019	Ms Caroline la Niece
3328148/2019	Mr Matthew Pepperell
3328159/2019	Mr Kevin Gaddes
3328164/2019	Ms Amanda Porter
3328169/2019	Ms Karla Moylan
3328170/2019	Ms Rochelle Lambert
3328173/2019	Mr Ben Mather
3328176/2019	Ms Beverley Jones
3328177/2019	Ms Stephanie Gowler
3328178/2019	Ms Amy White
3328179/2019	Mr Andrew Tye
3328186/2019	Mr David Blight
3328187/2019	Ms Lorraine Riseley
3328188/2019	Ms Caren Hay
3328193/2019	Mr Paul Stirling
2400927/2020	Ms Lynn Healing
2401151/2020	Mr Andrew McKew

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**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

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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 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.