



EMPLOYMENT TRIBUNALS

Claimants:

Mrs E Graham

v

Respondents:

Warehouse Fashions Limited (in
administration)(1)
Deloitte LLP (2)
Secretary of State for Business,
Energy and Industrial Strategy (3)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – rule 21

The first respondent having stated that it does not contest the claim for a protective award, and on the information before the judge, the judgment of the tribunal is that:

1. The claimant's complaint against the first respondent of a failure to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 Act ('the Act') is well-founded.
2. The tribunal orders the first respondent by way of a protective award under section 189(3) of the Act to pay to the claimant a payment equivalent to remuneration for the period of 90 days beginning on 15 April 2020.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award.
4. The claim against the second respondent Deloitte LLP is struck out.

REASONS

1. The claimant was employed by the first respondent, a national British fashion retailer which went into administration on 15 April 2020. The claimant presented her employment tribunal claim on 3 June 2020; it was received by the tribunal but not processed because of an administrative error. No steps were taken in the claim until 29 March 2022 because of the delay processing the claim.

2. In an email dated 7 April 2022, the administrators of the first respondent granted consent for the claimant's claim against the first respondent for a protective award to proceed. In the ET3 and grounds of resistance presented on 5 May 2022, the first respondent does not contest the claimant's claim for a protective award, and does not put forward any representations to the effect that the protected period should be less than 90 days.
3. On consideration of the file of proceedings, it is possible to issue judgment against the first respondent under rule 21 of the Employment Tribunals Rules of Procedure 2013 in respect of the claim for a protective award, without a hearing.
4. The tribunal makes the following findings on the information provided, in respect of the claimant's claim for a protective award for breaches of the collective consultation requirements under section 188 of the Act.
5. The first respondent proposed to make 91 redundancies at its Oliver's Yard site. The first respondent did not fully inform and consult with the claimant in accordance with the provisions of section 188 of the Act 1992. There was no proper warning or consultation with the claimant and no employee representatives were elected or appointed for consultation as required under section 188A of the Act. In the circumstances, the first respondent was in breach of the duty under section 188.
6. The first of the dismissals to which the claim relates took place on 15 April 2020. The claimant was dismissed by reason of redundancy on 15 April 2020.
7. The claimant's claim was presented in time after Acas early conciliation.
8. The tribunal makes an award under section 189 in favour of the claimant for the maximum protected period of 90 days beginning with 15 April 2020.
9. The first respondent is advised of the provisions of Regulation 6 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ('the Regulations').
10. Within 10 days of this decision being promulgated or as soon as is reasonably practicable, the first respondent must comply with the provisions of Regulation 6 of the 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 every employee to whom the award relates; and b) the date of termination of the employment of each such employee.
11. The first respondent 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 respondent.

12. More information is contained in the annex to this judgment.

Claims against second respondent

13. The claimant has brought her claim against Deloitte LLP, the administrators of the first respondent. The claimant was employed by the first respondent, not by Deloitte LLP. The actions taken by Deloitte LLP referred to by the claimant in her claim form were actions taken by Deloitte LLP in their capacity as administrators of the first respondent, not as employers of the claimant. For this reason the claim against Deloitte LLP is struck out.

Employment Judge Hawksworth

Date: 11 May 2022

Sent to the parties on: 12 May 2022

For the Tribunal Office

Public access to employment tribunal decisions:

All judgments and any written 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.