



EMPLOYMENT TRIBUNALS

Claimant: Mr J Moseley and others
Respondent: SUK Retail Limited (In Administration)
Heard at: Reading (By CVP) **On: 30 May 2022**
Before: Employment Judge Gumbiti-Zimuto

Appearances

For the Claimants: In person
For the Respondent: Not attending and not represented

JUDGMENT

The decision of the Tribunal is that:

1. It is declared that the claimants have standing to bring a complaint that the respondent has failed to comply with the requirement of section 188 of the Trade Union Labour Relations (Consolidation) Act 1992. It is the further conclusion of the Tribunal that the complaint is well founded.
2. The Tribunal makes a protective award in respect of the protected period as defined in section 189 (3) of the Trade Union Labour Relations (Consolidation) Act 1992. The respondent is ordered to pay remuneration to the claimants for a period of 90 days.
3. The protective award relates to the employees of the respondent employed at Head Office and the Distribution Centre dismissed as redundant between the 26 March 2019 and the 28 June 2019

REASONS

1. The following claimant's attend by CVP, John Moseley, Sarah Richardson, Ben Winter, Ann Moore, Graham Hunt, Andy Ridler, Simon Lawrence, Timm Brennan, Paul Prestion, Preejaya Purshahansa, Glyn Squires, and Agatha Allum. The respondent, in Administration since 18 March 2019, did to attend and was not represented.
2. This judgment is concerned only with the claim for a protective award.

3. The claimants as listed in paragraphs 22 of the amended response were employed by the respondent at “Head Office”. The claimants as listed at paragraph 23 were employed by the respondent at the “Distribution Centre”. At both these establishments the respondent employed more than 20 employees (at “Head Office” 105 employees and at the “Distribution Centre” 79 employees).
4. None of the respondent’s retail outlets employed more than 20 or more employees.
5. The respondent states in paragraph 26 of the Amended Response that on the 19 March 2019 it invited the affected employees at Head Office and at the Distribution Centre to elect representatives for the purpose of collective redundancy consultation and TUPE. The respondent further states that the persons listed in paragraphs 27 and 28 of the grounds of resistance were elected as employee representatives for Head Office and the Distribution Centre respectively.
6. The election of employee representatives is contested by the claimant. The Tribunal has concluded that the respondent has failed to show that the election of any employee representatives complied with section 188A(1) Trade Union and Labour Relations (Consolidation) Act 1992.
7. In arriving at this conclusion we took into account the following matters. The respondent did not rely on any witness evidence. The grounds of resistance stated at paragraphs 27 and 28 of the amended response that there were “*duly elected representatives*” at “Head Office” and at the “Distribution Centre”. The respondent’s grounds of resistance do not give any explanation of the process involved in the election of the representatives so as to determine that the election complied with section 188A(1). Some of the claimants, who did give evidence in witness statements, stated that they were unaware of any election of representatives taking place and those who were aware of elected representatives were unaware of the process which had been followed leading to the appointment of the representative. Mrs A Allum stated in her live evidence said that “*Donna Scott was elected as representative. I remember she worked in marketing. I was not involved. I do not recall what happened, maybe she put her name forward, I cannot remember the process.*”
8. The respondent accepts that the Head Office and Distribution Centre were establishments at which the respondent employed 20 or more employees and therefore the section 188 duty applied.
9. We have not received any evidence from the claimants to counter the respondent’s assertion that it did not employ 20 or more employees at “*any other establishments*”. There is no evidence from any employee who was not employed at the Head Office or the Distribution Centre. There is no evidence from which we would be able to conclude that the section 188 duty applied to dismissals taking place at “*any other establishment*”.

10. Those employees who are affected by the dismissals taking place on the 26 March 2019 at the Head Office and at the Distribution Centre are entitled to a protective award. There was no consultation about the respondent's proposal to make redundancies prior to the 26 March 2019. There was no consultation on the 26 March 2019, there were meetings at which employees were summarily dismissed with immediate effect.
11. We heard evidence that there were further dismissals which took place on 2, 12, and 18 April 2019, and also on 28 June 2019. The respondent says that the final dismissal took place on the 2 July 2019. The respondent, in the grounds of resistance, says that there were consultation meetings on 26 March, 2 April, 5 April, 18 April, and 2 May 2019. There is no evidence from anyone who attended any of these supposed consultation meetings.
12. The evidence from the claimants on this issue was given by Mrs A Moore she stated that there was no consultation prior to her dismissal on 18 April 2019. Mrs Moore received a letter dismissing her on the 18 April 2019. On that date she and other colleagues were dismissed without notice or warning, her evidence was that although "*Deloitte* (the administrators) *were in the building from 26 March*" they did not consult with the employees about redundancies. Mrs A Allum, who was dismissed on 12 April 2019, stated "*a lot of people were let go on 26 March 2019. We knew something was going on, we were told there might be a buyer who would take over. I do not recall anything being said about redundancy, what I recall is a meeting at which we were told that a buyer for the company might be found, and we would keep our positions if that was the case.*" The Tribunal also received written statements from, Mr J Mosely, Mrs P Purshahansa, Mr S Lawrence, Mr B Winter, Mr S Richardson, and Mr G Hunt all of whom stated that there was no consultation prior to their dismissals.
13. The conclusion of the Tribunal is that there was no consultation with the employees representatives prior to the dismissal of the employees at any time between the 26 March 2019 and the final dismissal.
14. The claimants are therefore entitled to a protective award of 90 days because the respondent failed entirely to consult with employees and has provided no explanation for the failure, further the respondent failed to appoint employee representatives in accordance with section 188A (1). We have not been able to find any mitigation for the failure to consult even in respect of employees dismissed after 26 March 2019 when the Administrators were "*in the building*".
15. On the evidence before us it is not possible to conclude that the dismissals, other than those at the Head Office and Distribution Centre were subject to the duty to consult under section 188. The evidence before us is that these dismissals took place in establishments where there were less than 20 employees.

16. The decision of the Tribunal is that it is declared that the claimants have standing to bring a complaint that the respondent has failed to comply with the requirement of section 188 of the Trade Union Labour Relations (Consolidation) Act 1992. It is the further conclusion of the Tribunal that the complaint is well founded.
17. The Tribunal makes a protective award in respect of the protected period as defined in section 189 (3) of the Trade Union Labour relations (Consolidation) Act 1992. The respondent is ordered to pay remuneration to the claimants for a period of 90 days.
18. The protective award relates to the employees of the respondent employed at Head Office and the Distribution Centre dismissed as redundant between the 26 March 2019 and the 28 June 2019.

Employment Judge Gumbiti-Zimuto

Date: 30 May 2022

Sent to the parties on: ...09/06/2022.....

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For the Tribunals Office

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Multiple Schedule

Multiple: 4457 - Suk Retail Limited

Case Number	Case Name
1600804/2019	Miss Alyson Peach -v- Suk Retail Ltd (in administration)
3313713/2019	Mr Simon Lawrence -v- SUK Retail Limited (in administration)
3313412/2019	Mr Benjamin Winter -v- SUK Retail Limited (in administration)
3313576/2019	Mr Richard Prowse -v- SUK Retail Limited (in administration)
3313846/2019	Mr John John Moseley -v- SUK Retail Limited (in administration)
3313847/2019	Mr Paul Preston -v- SUK Retail Limited (in administration)
3313848/2019	Mrs Joanne Adcock -v- SUK Retail Limited (in administration)
3313850/2019	Mr Chris Lodge -v- SUK Retail Limited (in administration)
3313851/2019	Mr Duncan Gee -v- SUK Retail Limited (in administration)
3313852/2019	Mrs Sarah Richardson -v- SUK Retail Limited (in administration)
3313853/2019	Mr Andy Ridler -v- SUK Retail Limited (in administration)
3313854/2019	Mr Simon Cowden -v- SUK Retail Limited (in administration)
3313856/2019	Miss Jackie Farrent -v- SUK Retail Limited (in administration)
3313857/2019	Mrs Natalie Fennell -v- SUK Retail Limited (in administration)
3313858/2019	Mrs Susan Nicholson -v- SUK Retail Limited (in administration)
3313859/2019	Mr Darren Nicholson -v- SUK Retail Limited (in administration)
3313860/2019	Mr Glyn Squires -v- SUK Retail Limited (in administration)
3313861/2019	Mr Graham Hunt -v- SUK Retail Limited (in administration)
3313862/2019	Mr Dylan Mace -v- SUK Retail Limited (in administration)
3313863/2019	Miss Emily McCormaick -v- SUK Retail Limited (in administration)
3313864/2019	Mr Stephen McKay -v- SUK Retail Limited (in administration)
3313865/2019	Miss Sarah Pendlebury -v- SUK Retail Limited (in administration)
3313957/2019	Ms Emma Eccles -v- SUK Retail Ltd (in administration)
3314058/2019	Mr Chris Lodge -v- Suk Retail Limited
3314081/2019	Mr Justin O'Grady -v- Suk Retail Limited (In Administration)
3314205/2019	Mr Philip Stears -v- SUK Retail Ltd (in administration)
3314506/2019	Mrs Ann Moore -v- SUK Retail Ltd (in Administration)
3314588/2019	Ms Rita Kotecha -v- SUK Retail Limited (In Administration)
3314804/2019	Miss Jade Robinson -v- SUK Retail Ltd (in administration)
3314811/2019	Mrs Justyna Bociek -v- SUK Retail Limited (in administration)
3318775/2019	Mr Tim Brennan -v- SUK Retail Limited (In Administration)
3318922/2019	Miss Terri Powis -v- SUK Retail Ltd (In Administration)
3319409/2019	Mrs Preejaya Purushahansa -v- SUK Retail Limited (in administration)
3319486/2019	Mrs Agata Allum -v- SUK Retail Limited (in administration)
3319513/2019	Miss Judy Littlejohns -v- SUK Retail Limited (in administration)
3319912/2019	Mr Simon Anderson -v- SUK Retail Ltd (in administration)
3319918/2019	Mr Kenneth Grantson -v- SUK Retail Ltd (in administration)
3320544/2019	Mr Simon Crowley -v- SUK Retail Limited (in administration)
3320545/2019	Mrs Pauline Crowley -v- SUK Retail Limited (in administration)
3320762/2019	Mrs Zoe Hodgkin -v- SUK Retail Ltd (in administration)
3320766/2019	Mr Stephen MacCabe -v- SUK Retail Limited (in administration)
3313402/2019	Mr Simon Lawrence -v- SUK Retail Limited (in administration)

