



EMPLOYMENT TRIBUNALS

Claimant: Miss A Rollins
Respondent: Utility Alliance Ltd in administration
Interested Party: Secretary of State for Business Energy and Industrial Strategy

HELD at Newcastle by CVP ON: Thursday 9 June 2022

BEFORE: Employment Judge Speker OBE DL sitting alone

REPRESENTATION:

Claimant: In person
Respondent: No appearance
Interested Party: No appearance

JUDGMENT

1. It was not reasonably practicable for the claimant to have presented her complaint under section 189(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 ("The Act") during the period of three months beginning with 12 February 2021, which was the date on which the last of the dismissals to which the complaint relates took effect.
2. The claim by this claimant was presented on 23 December 2021 and in the circumstances this was within such further period as was reasonable.
3. The complaint made under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 that the respondent failed to comply with section 188 and section 188A in relation to the duty to consult in handling redundancies is well founded.
4. The respondent is ordered to pay remuneration calculated in accordance with section 190 of the Act for the protected period.
5. The protected period is a period of 90 days from 12 February 2021 to 13 May 2021.

6. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 applies. Regulation 6 imposes on the respondent a duty to provide information to the Secretary of State. Regulation 7 postpones this award to enable the Secretary of State to serve a recoupment notice under Regulation 8. The full effect of Regulations 6, 7 and 8 is set out in the annexe to this Judgment.

REASONS

1. This is a claim made by Miss Amy Rollins for a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (The Act). The claimant was employed by the first respondent Utility Alliance Ltd as an objective administrator working from Quorum Business Park in Newcastle from 1 June 2019 until 11 January 2021 or thereabouts. There was also an office run by the first respondent in Hartlepool.
2. The claimant gave evidence to the Tribunal with regard to the circumstances leading up to and following the termination of her employment. Shortly before Christmas 2020 the claimant and all in her office were informed that they were to be placed on furlough. At the beginning of January 2021 they were then told that they were no longer employed and should apply for new employment. She received her last pay as a furlough payment on an unspecified date in January 2021. Because of the short length of her employment she was not entitled to a redundancy payment but did recover unpaid holiday pay from the government office in Edinburgh.
3. The claimant and others working with her filled in various forms which she said related to seeking payment for monies outstanding. Arrangements for Tribunal claims were organised through the Hartlepool office. The claimant believed that she had signed the necessary forms to enable her to be included in the making of tribunal claims.
4. In the event the claimant read on social media that a work colleague Mr Jonathan Pullarp and others had been successful in the Employment Tribunal in obtaining protective awards against the first respondent. She saw this on social media on 21 or 22 December 2021. She contacted Mr Pullarp to check that she was included in the awards which had been made but was told that she was not. She sought advice from ACAS and on the basis of that promptly made an application which was presented to the Tribunal on 23 December 2021 seeking a protective award and basing it upon the award which had been made to Mr Pullarp and others.
5. The claimant accepted that her claim was lodged more than three months after the last of the redundancies relevant for the purposes of the right to claim a protective award under section 189 but she explained that she could do anything further from January 2021 because she genuinely believed that she was included in the claims which had been brought to the Tribunal. It was only when she checked this following the award made on 22 December 2021 that she discovered that this was not the case. She therefore argued that it was

not reasonably practicable for her to have presented her claim in time and that she had then issued her application as soon as reasonably possible.

6. Details of the award made to other employees were not produced as part of the claimant's application. I have retrieved the Order which was made in the Newcastle Tribunal by Employment Judge Sweeney on 22 December 2021. This relates specifically to claims made by Mr P Sibanda case number 2500845/2021, Mr J Pullarp, Mr C Baker and Mr D King (and others) in case numbers 2500291/2021, 2500615/2021 and 2500615/2021. Attached to those Judgments is a schedule of over 150 claims made against Utility Alliance. Apart from the claims by Mr Pullarp and Mr Baker which are separately numbered, all of the others were issued sequentially and in alphabetical order indicating that there was an efficient scheme operated for the benefit of the employees of the first respondent and all of their claims were put in together as a multiple claim. On checking the schedule it is clear that the claimant's name is not included and she mentioned the names of some other colleagues in Newcastle and it was found that their names also were not on the schedule. The claimant's explanation as stated above was that the organisation of this exercise was done in the Hartlepool office where the vast majority of the employees were listed and that all of the Newcastle employees were not included in the schedule.
7. I have applied the test in section 189(5) which states that an Employment Tribunal shall not consider an application under section 189 unless it is presented to the Tribunal:
 - (a) Before the date on which the last of the dismissals to which the complaint relates takes effect, or
 - (b) During the period of three months beginning with that date or
 - (c) Where the Tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of three months, within such further period as it considers reasonable.
8. I have taken into account the circumstances described by the claimant to the effect that she was one of a very large number of people who were dismissed without notice and without any consultation and that the consultation which should have taken place should have been in accordance with section 188 of the Act.
9. I find that in the circumstances it was not reasonably practicable for the claimant to have presented the claim to the Tribunal because she had reasonable grounds for believing that her claim had actually already been issued. As it was not reasonably practicable for the claim to have been presented in time I find that it was presented within such time thereafter as was reasonable, in this case within two days, and this therefore validates the claim.
10. I find on the evidence that there was a failure by the respondent which entitles the claimant to a protective award of 90 days pay. The claimant states that her daily rate of pay was £91. The Order made is subject to the Recoupment Regulations.
11. The joint administrator of the first respondent namely Ian Townsend of FRP Advisory Trading Limited had granted the administrator's consent to a claim for the commencement of proceedings for protective award and that that consent

was on the basis that there would be no attempt to enforce any Judgment against the company or its assets and that no element of the claims would rank as an expense of the administration.

Employment Judge Speker OBE DL

Date 15 June 2022

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