



EMPLOYMENT TRIBUNALS

Claimants: Mr M Jones and others (see schedule)

Respondents: 1. Vital Infrastructure Asset Management (VIAM) Limited (in Administration)
2. Secretary of State for Business Energy and Industrial Strategy

Heard at: Manchester Employment Tribunal

On: 27 June 2022

Before: Employment Judge Cookson sitting alone with the consent of those parties who attended participated in the hearing by sending representations

Representation

Claimants: Ms Crayshay-Williams (counsel) for those claimants represented by Thompsons, Ms Bayliss (counsel) for those claimants represented by Imperium Law Solicitors and Mr S Davies for those claimants represented by MSB Solicitors.

Ms J Dearne did not attend but provided written representations

Mr Reece did not attend

Griffin Legal did not attend on behalf of those claimants it represents

Respondents: Did not attend (responses treated as written representations)

JUDGMENT ON PROTECTIVE AWARDS

Consent having been granted for the claims in the schedule to this judgment to proceed against the first respondent and the first respondent having accepted liability for some but not all of the claims for protective awards in this case, the judgment of the tribunal is that:

1. Mr M Jones, Mr R Sheenan and Mr B Jones were all employed by the first respondent and were dismissed by reason of redundancy on or after 1 June 2021 by the Joint Administrators.
2. The first respondent comprised of 3 distinct establishments at Forth Street Bootle (referred to as Derby Road”), 1a Prestwood Place Skelmersdale (“Skelmersdale”) and 18 Goodlass Road Speke (“Speke”). 20 or more employees were assigned to carry out their duties at each of these sites.
3. The first respondent having proposed to make 20 or more redundancies at the Derby Road, Speke and Skelmersdale establishments did not fully inform and consult with the claimants in accordance with the provisions of section 188 of the Act 1992. There was no proper warning or consultation with the claimants and no employee representatives were elected or appointed for consultation as required under section 188A of the Act. Accordingly, in the circumstances, the respondent was in breach of the duty under section 188 and the tribunal orders the first respondent by way of a protective award under section 189(3) of the Act to pay to each of the claimants a payment equivalent to remuneration for the period of 90 days beginning on 1 June 2020.
4. The Employment Protection (Recoupment of Jobseeker’s Allowance and Income Support) Regulations 1996 apply to this award.
5. Within 10 days of this decision being promulgated or as soon as is reasonably practicable, the 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.
6. The 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 respondent.
7. More information is contained in the annex to this judgment.

Employment Judge Cookson
Date 11 July 2022
JUDGMENT SENT TO THE PARTIES ON
13 July 2022

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FOR THE TRIBUNAL OFFICE

Notes

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

2408415/2021 Miss Jessica Deane
2408558/2021 Mr Mark Jones
2408559/2021 Mr Paul Reece
2408560/2021 Mr Niall Summerskill
2408969/2021 Mr Anthony Patrick
2408970/2021 Mr Lloyd Redgrift
2408971/2021 Mr Mark Shaw
2408972/2021 Mr Jack Court
2408973/2021 Ms Tracey Crawford
2408974/2021 Mr Terry Gouthwaite
2408975/2021 Mr Martin Rutter
2408977/2021 Mr Marc Conlan
2410964/2021 Mr William Hastings
2410965/2021 Mr John Robert Carter Davies
2410966/2021 Mr David Healey
2410971/2021 Mr Anthony Cannell
2410973/2021 Mr Daniel Highdale
2410974/2021 Mr Callum Highdale
2410978/2021 Mr Lee Owens
2410979/2021 Mr Paul Lawrie
2410980/2021 Mr Joe Bennett
2410981/2021 Mr Paul Sheridan
2410982/2021 Mr Barrie Mottram
2410983/2021 Mr Jordan Bums
2410985/2021 Mr Callum Riley
2410986/2021 Mr Thomas Carroll
2410988/2021 Mr Paul Whittam
2410989/2021 Mr Gary Birchall
2410991/2021 Mr Benjamin Rickards
2410992/2021 Mr Ben Prescott
2410993/2021 Mr James Healey
2410994/2021 Mr Alan McQueen
2410995/2021 Mr Jack Nelson
2410996/2021 Mr Carlos Pimentel
2410997/2021 Mr Graham Wood
2410998/2021 Ms Kirsty Swift
2410999/2021 Mr Peter Shaw
2411000/2021 Mr Connah McDonald
2411001/2021 Mr James Speed
2411002/2021 Mr Ronald Carroll
2411003/2021 Mr Gary Durney
2411004/2021 Mr Paul Butterworth
2411005/2021 Mr Andrew Lawler
2411106/2021 Mr Paul Nelson
2411107/2021 Mr Alan Essery
2411108/2021 Ms Rebecca O'Connor
2411109/2021 Mr Robert Sheehan
2411110/2021 Ms Laura McAllister
2411111/2021 Mr Derek Smith
2411112/2021 Mr Ben Jones
2411113/2021 Mr Stephen Gouthwaite
2411114/2021 Mr Alec McDowell
2411115/2021 Mr Gerard Manning
2411116/2021 Mr Kevin Lee

Claimants: Mr M Jones & others (see attached schedule)

Respondent: 1. Vital Infrastructure Asset Management (VIAM) Ltd (In Administration)
2. Secretary of State for Business, Energy & Industrial Strategy

**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.

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.