



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

AND

Respondent

Mr A Kerr and Mr G McManus

STA Travel Ltd (in Creditors Voluntary
Liquidation)

HELD AT Birmingham (via CVP)

ON 26 July 2022

EMPLOYMENT JUDGE Choudry

Representation:

For the claimants: In person

For the respondent: No attendance

JUDGMENT

The Judgment of the Tribunal is that :

1. The claimants' complaints against the respondent of a failure to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") is well-founded.
2. The Tribunal orders the respondent to pay, by way of a protective award under section 189(3) of the Act, the claimants a payment equivalent to remuneration for the period of 90 days beginning on 2 September 2020 and ending on 1 December 2020.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award in relation to Mr McManus.

REASONS

Background

1. The claimants brought claims for a protective award following the termination of their contracts of employment by the respondent on 2 September 2020 by reason of redundancy.
2. The respondent was a travel company based throughout the UK.
3. The hearing took place by video conference facility, CVP. The claimants participated in that CVP hearing and gave their evidence.
4. As the respondents are in voluntary liquidation, consent of the liquidator to bring proceedings is not required.
5. The claims have been sent to the liquidator and no Responses have been presented intimating any defence to the claim before the cases could be heard.
6. There was no “testing” of the evidence of the claimants’ evidence as there was no challenge to their evidence, given that there was no appearance and no representation for the respondent in circumstances where no Respondent had been lodged. I found their evidence to be entirely credible and reliable. I was in no doubt as to their honesty.

Evidence and documents

7. I heard evidence from both claimants and considered documents attached to those statements. I also had schedules of loss for each of the claimants and a further document headed particulars of evidence.

Issues

8. The issues which I needed to consider were whether (1) the respondent was under an obligation to consult under the 1992 Act; and (2) if so, whether the respondent had failed to comply with any obligations under s188 of the 1992 Act when making the claimants redundant.

Facts

9. I make the following findings of fact on the balance of probabilities having considered both oral and documentary evidence and the submissions by both claimants:

- 9.1 The respondents were run from their head office in London with all decisions of a management nature being taken there. HR was a centralised function. Marketing decisions and promotions were instigated and run from the head office. Stores had to follow instructions in relation to marketing. The business operated on the basis of being one unit.. There was one file opened for each customer. A customer could visit a store in any location to deal with a booking made through a different store. That was part of the service and image promoted by the respondent. There was a centralised computer system keeping customer records. The on-line booking system was common to all stores. Customers enquiring about their booking could use the website irrespective of which store had been involved in any booking.
- 9.2 There was one telephone number which customers could phone to enquire about any aspect of their booking, irrespective of which store had been the one with which they had initially dealt. There were training events which were attended by personnel from all stores. Staff could be asked to move from one store to another.
- 9.3 There were more than 20 employees made redundant by the respondent on 02 September 2020.
- 9.4 The claimants were working for the respondent as at 2 September 2020.
- 9.5 During August 2020 the respondent was rumoured to be in financial difficulty. This was however regarded as an issue for their parent company which was based outside the UK. The UK operation was said to be profitable and employees, including the claimant, derived some comfort from this.
- 9.6 The claimants were, with other employees, informed on 02 September 2020 that they were being made redundant. There was no prior discussion whatsoever with the claimant as to redundancy. This came as a shock to them. The claimants had not been spoken to by their employer by way of consultation.
- 9.7 The 1992 Act contains obligations on employers where redundancies are contemplated. Those obligations, broadly, are to consult regarding whether job losses are to take place, if so how many job losses are to be involved and whether anything can be done to mitigate the impact of redundancies. This is in terms of Section 188 of the 1992 Act. The obligation is to consult a recognised trade union or alternatively for there to be appointment of employee representatives if consultation is to take place. As there was no recognised trade union in the workplace. No election or appointment of employee

representatives took place. There was no individual consultation. The terms of section 188 were therefore not adhered to.

- 9.8 All employees were made redundant over the period 02 September 2020. There was redundancy of more than 100 employees. In that circumstance, the obligation is for consultation to take place at least 90 days prior to the first dismissal taking place. That did not occur.
- 9.9 The claimants' gross weekly pay at the time of dismissal were £890 in the case of Mr Kerr and £609.97 in the case of Mr McManus.

Applicable law

10. The Act contains obligations on employers where redundancies are contemplated. Those obligations, broadly, are to consult regarding whether job losses are to take place, if so how many job losses are to be involved and whether anything can be done to mitigate the impact of redundancies. This is in terms of Section 188 of the 1992 Act. The obligation is to consult a recognised trade union or alternatively for there to be appointment of employee representatives if consultation is to take place.
11. All employees were made redundant over the period 02 September 2020. There was redundancy of more than 100 employees. In that circumstance, the obligation is for consultation to take place at least 90 days prior to the first dismissal taking place. That did not occur.
12. If that obligation to consult is not adhered to the protective award which is to be made in terms of Section 189 of the 1992 Act proceeds on the basis that the starting point is that an award in respect of 90 days is to be made.
13. Payment in respect of that 90 day period is appropriate. The case of **Susie Radin Ltd v GMB & others 2004 IRLR 400** makes it plain that an Employment Tribunal should start on the basis of a 90 day award. That period can be reduced depending upon the extent of the default and also depending upon whether any special circumstances exist justifying departure from the 90 day period. That is in terms of Section 188 (7) of the Act.
14. The case of **Clarks of Hove Ltd v Bakers' Union 1978 ICR 1076** confirms that a "standard" insolvency does not constitute special circumstances. There was in that case no disaster of a sudden nature or any emergency. It was not said here that there had been a sudden disaster or emergency. There was no consultation whatsoever.

Conclusions

15. In reaching my conclusions I have considered all the evidence I have heard and considered the bundle in its entirety I also considered the oral submissions made by the claimants.
16. I was satisfied that each store was not a separate establishment for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act"). There was no such position adopted in challenge to the claimant's evidence or by way of defence.
17. As there was no recognised trade union in the workplace. No election or appointment of employee representatives took place. There was no individual consultation. The terms of Section 188 were therefore not adhered to
18. On the basis of the evidence I heard, no special circumstances existed justifying departure from the provisions of the Act and the obligation of consultation imposed. The protective award is therefore made in respect of the 90 day period running from 02 September 2020 to 01 December 2020.

Employment Judge Choudry
26 July 2022