



EMPLOYMENT TRIBUNALS

Claimant: Mrs B O'Keefe and others (see attached schedule)

Respondent: Ena Shaw Limited (formerly in Administration now in Liquidation)

Heard at: Manchester (remotely, by CVP)

On: 19 July 2022

Before: Employment Judge Robinson
(sitting alone)

REPRESENTATION:

Claimants: Mr Martin Bond (CAB Worker)

Respondent: Not in attendance

JUDGMENT

The judgment of the Tribunal is that:

1. All the claims in relation to a protective award are well founded.
2. It is appropriate to make the protective award as the respondent failed to inform and consult with the claimants in accordance with the provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 and, given the seriousness of the respondent's default in observing its statutory obligations, to make that award for the maximum period of 90 days.
3. The names of the employees covered by the protective award are set out in the schedule attached hereto.
4. All the claimants were dismissed by reason of redundancy with immediate effect on 12 February 2020 and these proceedings were issued in time on 9 June 2020.
5. The duration of the award shall, as stated, be for 90 days in each case commencing on 12 February 2020 and the award is made under section 189 of the 1992 Act.

6. Consent of the Administrators has been previously obtained with regard to these proceedings.
7. The recruitment provisions apply to this award.

Employment Judge Robinson
Date: 25 July 2022

JUDGMENT SENT TO THE PARTIES ON
25 July 2022

FOR THE TRIBUNAL OFFICE

Note

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

Case number

Case name

2408440/2020	Bernadette O'Keefe
2408441/ 2020	Miriam Balmforth
2408442/ 2020	Tracy Houltram
2408443/ 2020	Amanda Newman
2408444/ 2020	Rita Jean Harrison
2408445/ 2020	Sonya Twist
2408447/ 2020	Zena Mather
2408449/ 2020	Lynn Leigh
2408450/ 2020	Jacqueline Rogers
2408451 /2020	Mary Gannon
2408452/ 2020	Christine Axon
2408454/ 2020	Daniel Hughes
24084552020	Kevin Johnston
2408456/2020	Amanda Fay
2408457/ 2020	Sandra Abbott
2408459/ 2020	Susan Smith
2408460/ 2020	Janice Lancaster
2408461/ 2020	Lesley Wilburn
2408462/ 2020	Lilian Lloyd

The following claimants were included in Employment Judge Leach's Judgment of 11 March 2021 (the Bettely list of claimants, commencing with case number 2405387/2020), but have not been paid that protective award by the Secretary of State for Business Energy and Industrial Strategy. Consequently, I have included these three claimants in this Judgment for a protective award.

2405413/ 2020	Bobby Vose
2405409/ 2020	Hazel Leyland
2405417/ 2020	Dawn Case

**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.

**Case No. 2408440/2020 and others
(see attached schedule)**

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.