



EMPLOYMENT TRIBUNALS

Claimants:

1. Miss Anastasia Gklantzouni
2. Mr Callum O'Neill
3. Mrs Carla Warrington
4. Mr Michael Holland
5. Mrs Umelaila Hussain

Respondents:

1. STA Travel Limited (In Creditor's Voluntary Liquidation)
2. Secretary of State for Business, Energy and Industrial Strategy

Heard at: Manchester **On:** 1 July 2022
(in Chambers).

Before: Employment Judge McDonald

REPRESENTATION:

1st to 5th Claimants: Not required to attend

1st Respondent: Not required to attend

2nd Respondent: Not required to attend

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

In the absence of a response from the first respondent to the claimants' claims, and on the information before the Judge, the Judgment of the Tribunal is that:

1. The first respondent failed to consult with the claimants named in the attached Schedule, being people who may be affected by proposals to dismiss or measures taken in connection with the dismissal of twenty or more employees, in breach of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992.
2. Under Section 189(1)(d), (2), (3) and (4) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Tribunal makes a protective award in respect of each of the claimants in the attached Schedule and the first

respondent is ordered to pay remuneration to each of those claimants for a protected period of 90 days beginning on 2 September 2020.

3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards.

REASONS

1. The claimants in these proceedings claimed a protective award in respect of breach of the collective consultation requirements. The first respondent did not present a response to any of the claims. The Secretary of State has been joined to the proceedings because of its role as the statutory guarantor.

2. The claimants had brought their claims outside the usual time limit applicable to a claim for a protective award. By a judgment dated 27 July 2022 I decided their claims should be allowed to proceed because it had not been reasonably practicable for them to bring their claims in time.

3. The claimants were based at St George's House, 56 Peter Street, Manchester, M2 3NQ ("St. George's House").

4. The Tribunal makes the following findings based upon the claim:

- a. The first respondent had no trade union recognised for collective bargaining, consultation or negotiation with the workforce. There were no elected representatives;
- b. The first respondent's business ceased trading on 2 September 2020. The first of the redundancies took effect on that date. There was no consultation with the claimants;
- c. The first respondent entered into creditors voluntary liquidation on 6 October 2020;
- d. The respondent employed over 20 employees at St. George's House. The total number employed at that establishment was in the region of 100. All of those employees were dismissed on 2 September 2020.

5. The requirement to consult under s.188 of the 1992 applies where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. I find that requirement applied to the employees at St George's House.

6. There was no proper warning or notice given to, or consultation with, the workforce. No employee representatives had been elected or appointed for any such consultation within Section 188A of the 1992 Act. The dismissals were put into effect without any consultation or information being provided in writing in advance.

7. In these circumstances, the first respondent was in breach of the duty under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in

favour of each of the claimants named in the Schedule for the maximum protected period of 90 days commencing on 2 September 2020.

8. The first respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the first respondent must comply with the provisions of Regulation 6 of the 1996 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.

9. The first 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.

NOTE

10. A protective award is a two-stage process. The Tribunal at this stage makes no financial award, but gives a judgment that the claimants are entitled to a protective award in the terms set out above. Those claimants must each then seek payment of their individual award from the respondent (or the Secretary of State), quantifying the same.

11. Failure to pay (should that occur), or any dispute as to the amount payable, then becomes a matter for a further separate claim under s.192 of the Trade Union and Labour Relations (Consolidation) Act 1992 for payment of the award.

Employment Judge McDonald
Date: 27 July 2022

JUDGMENT AND REASONS SENT TO THE PARTIES ON
27 July 2022

FOR THE TRIBUNAL OFFICE

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ANNEX
Schedule of Claimants

Case Number	Claimant Name
2401656/2021	Miss Anastasia Gklantzouni
2401568/2021	Mrs Carla Warrington
2401586/2021	Mr Callum O'Neill
2401658/2021	Mr Michael Holland
2401694/2021	Mrs Umelaila Hussain

Claimants: Miss A Gklantzouni & others
(see schedule)

Respondents: 1. STA Travel Limited (In Creditors Voluntary Liquidation)
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

**Case No. 2401656/2021 & others
(see attached schedule)**

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.