



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4113735/2021 & others as per multiple ref 4100138

Ms M Forteath & others as per attached schedule

**Claimants
Represented by:
Mr P Kissen -
Solicitor**

Forth Care Limited (in Liquidation)

**Respondents
Not present and
Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Rules 70 – 72 of the Employment Tribunal Rules of Procedure 2013

The Judgment of the Employment Tribunal is that upon reconsideration in terms of rule 72, ground (b) of the original decision dated 13 July 2022 is revoked and the following decision substituted:

- (b) The Employment Tribunal declares well founded the claimants' complaint that the respondent has failed to comply with its obligations under Sections 188A and 188 of the Trade Union & Labour Relations (Consolidation) Act 1992. The Employment Tribunal makes a protective award under Section 189 of that Act in favour of the respondent's employees who were all made redundant on 1 September 2021 and orders the respondent to pay appropriate remuneration to the claimants for the protected period namely for 90 days starting on 1 September 2021.

REASONS

1. At a hearing on 12 July 2022, the Tribunal determined that it was satisfied that on the available material a determination could be made that the respondent was liable for the various claims lodged. A Judgment was issued on 13 July 2022 in the following terms:

“The judgment of the Employment Tribunal is that the claimant’s complaints of (a) unfair dismissal; (b) protective award under section 189 of Trade Union and Labour Relations (Consolidation Act) 1992; (c) redundancy pay; (d) holiday pay; (e) arrears of pay; and (f) notice pay succeed.

The remedy to which the claimant is entitled will be determined at a hearing if required.”

2. By email dated 5 August 2022 the claimants made an application under rules 70 – 71 of the Employment Tribunal Rules of Procedure 2013 for reconsideration of the Judgment in relation to ground (b). The claimants’ solicitor submitted that although the remedy for claims for unfair dismissal, redundancy pay, holiday pay, arrears of pay and notice pay could all be determined by the Redundancy Payments Service, the remedy for the protective award could not be so determined. He stated that the claimant would be unable to use the original decision to obtain remuneration from the Redundancy Payments Service. He submitted that it was an undefended position that the respondent had dismissed the claimants without consulting in any way the appropriate representatives of the affected employees. There are therefore no mitigating circumstances and the full 90 day protective award should be made. He argued that it was in the interests of justice to reconsider the judgment to make a protective award, state the protective period and determine its length.
3. The application for reconsideration was made outside the 14 days specified in rule 71. The claimants’ solicitor argues that it would nevertheless be in line with the over-riding objective to avoid unnecessary delays and complexity in the proceedings for the Tribunal to reconsider the Judgment in the way proposed rather than determine the protective award at a future hearing on remedy as indicated in

the original decision. I am persuaded that this course of action would be in line with the over-riding objective of dealing with cases justly; avoiding delay, saving expense and dealing with cases in a way that is proportionate to the complexity of the issue. It is also in line with the over-riding objective to extend time under rule 5 to enable this to happen.

4. In the circumstances I have revoked paragraph (b) of the original decision and substituted the protective award as set out above.

Employment Judge:	M Kearns
Date of Judgment:	16 August 2022
Entered in register:	19 August 2022
and copied to parties	

Multiple Schedule

Multiple: 4100138 - Forth Care Ltd

Case Number	Case Name
4113735/2021	Mary Forteath -v- Forth Care Ltd (In Liquidation)
4113736/2021	Ms agrineth gugu nkosi -v- Forth Care Ltd
4113737/2021	Ms mary forteath -v- Forth Care Ltd
4113738/2021	Ms grace rae -v- Forth Care Ltd
4113739/2021	Ms anne mcilroy -v- Forth Care Ltd
4113740/2021	Mr darren martin -v- Forth Care Ltd
4113741/2021	Mr andrew donald -v- Forth Care Ltd
4113742/2021	Mr balwinder singh -v- Forth Care Ltd