EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4103347/2020

Employment Judge R Gall

Ms K Ritchie	**Claimant**
Prime Seafoods Limited (in Liquidation)	**Respondent**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal in terms of Rule 21 of the Employment Tribunals (Rules of Constitution & Procedure) Regulations 2013 is that: –

1. It is found and declared that the respondents failed to comply with the requirements of Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992; and

2. The Tribunal makes a Protective Award in terms of Section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of the claimant. The claimant was made redundant on 18 February 2020. The respondents are ordered to pay remuneration to the claimant for the protected period of 90 days, that being the period from 18 February 2020 until 18 May 2020.

REASONS

1. There has been no Form ET3 submitted by the respondents or on their behalf. They are a company now in creditors' voluntary liquidation.

2. Details of the claim and the background to it have been supplied by the claimant's representative.

3. The claimant worked for the respondents as a sales administrator. She was employed from 1 August 2012 until 18 February 2020. There was no union recognised in the workplace. No employee representatives were elected at any point. There were more than 20 employees at the premises operated by the respondents. As there were more than 20 employees at the work base, it was not necessary to determine whether it was a separate establishment for the purposes of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act").

4. On 18 February 2020 the claimant and some 60 or 70 other employees were invited to meet with the respondents' management at the office that day. The employees, including the claimant, were informed at that meeting that they were redundant with immediate effect. Her job ended that day.

5. There was no prior discussion with the claimant as to redundancy. There was no consultation with the claimant regarding possible redundancy.

6. The 1992 Act contains obligations on employers where redundancies are contemplated. Those obligations, broadly put, 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 stated above, 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.

7. All employees were made redundant over the period from on 18 February 2020. There was redundancy of more than 20 but less than 100 employees. In that circumstance, the obligation is for consultation to take place at least 30 days prior to the first dismissal taking place. That did not occur.

8. Although the obligation to consult involves consultation at least 30 days prior to the first dismissal, if that 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. That is confirmed in the case of Newage Transmission Ltd v TGWU & others EAT 0131/05.

9. 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 1992 Act.

10. 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.

11. There was no consultation whatsoever. No special circumstances existed justifying departure from the provisions of the 1992 Act and the obligation of consultation imposed. The protective award is therefore made in respect of the 90 day period running from 18 February 2020 to 18 May 2020.

Employment Judge: **R Gall**
Date of Judgment: **4 August 2020**
Entered in register: **6 August 2020**
and copied to parties