



EMPLOYMENT TRIBUNALS (SCOTLAND)

5

Case No: 4112091/2019

Judgment issued in Glasgow on 8 July 2020

10

Employment Judge M Kearns

Unite the Union

Claimant

15

Havelock International Limited (in Administration)

Respondent

20

25

30

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Under Rule 64 of Schedule 1 to the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 and by consent of the parties the Employment Tribunal issues the following Judgment:

35

The Judgment of the Employment Tribunal was that the claimant's claim is well founded. The Employment Tribunal makes a protective award under Section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 in favour of all the employees of the respondent who were made redundant on or within 90 days of 31 July 2019 and orders the respondent to pay remuneration to the claimants for

40

the protected period of 8 weeks from 31 July 2019.

REASONS

Applicable Law

- 5 1. Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA") provides (so far as relevant):-

Duty of employer to consult ... representatives

10 (1) *Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.*

15 (1A) *The consultation shall begin in good time and in any event -*

(a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and

(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.¹

20

2. Section 189 states so far as material:

Complaint ... and protective award

25 (1) *Where an employer has failed to comply with a requirement of s.188 or S.188A, a complaint may be presented to an employment tribunal on that ground -*

(a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;

30 *(b) in the case of any other failure relating to employee representatives, by any of the representatives to whom the failure related;*

(c) in the case of a failure relating to representatives of a trade union, by the trade union, and

35 *(d) in any other case, by any of the affected employees, or by any of the employees who have been dismissed as redundant.*

(1B) On a complaint under subsection (1)(a) it shall be for the employer to show that the requirements in S.188A have been satisfied.

5

(2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(3) A protective award is an award in respect of one or more descriptions of employees -

(a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and

10

(b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of s. 188,

ordering the employer to pay remuneration for the protected period.

(4) The protected period -

15

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and

(b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with any requirement of s. 188;

20

but shall not exceed 90 days ...'

3. The claimant is an independent trade union formally recognised by the respondent for the purposes of collective bargaining. The category of workers in respect of whom they are recognised extends to all hourly paid employees.

25

4. Where the failure by an employer to comply with section 188 is a failure relating to representatives of a trade union, title to sue is conferred on the union under section 189(1)(c) on behalf of all employees in respect of whom the union is recognised (whether they were union members or not). Employees in that category cannot bring individual claims, but can instead rely on the Judgment in favour of the union.

30

5. On 31 July 2019 Zelf Hussain and David Robert Baxendale, Insolvency Practitioners, of PWC LLP, 7 More London Riverside, London, SE1 2RT were appointed Joint Administrators to the respondent. The Joint Administrators have consented to these proceedings.

5

6. On 31 July 2019 the claimant was informed that the respondent had ceased trading due to financial difficulties and the employees were dismissed by reason of redundancy with immediate effect. More than 20 employees were dismissed by the respondent on 31 July 2019. Prior to 31 July 2019 no information or warning had been given to the claimant and there was no prior consultation. The respondent did not inform and consult with the appropriate representatives in accordance with the provisions of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992. The claimant has raised a complaint pursuant to section 189 of the Act seeking a protective award in respect of that failure. The claim is well founded. The parties are agreed that the protected period is 8 weeks from 31 July 2019. The parties have applied for a consent order for that period.

10

15

20

Employment Judge: M Kearns
Date of Judgment: 08 July 2020
Entered in register: 09 February 2021
and copied to parties

25

30