



EMPLOYMENT TRIBUNALS

Claimants: Julia Constable
Joanne Harris
Samuel White

Respondent: Restaurants Etc Limited (In liquidation)

Heard at: Reading

Before: Employment Judge Gumbiti-Zimuto

Appearances
For the Claimants: In person
For the Respondent: Not attending and not represented

JUDGMENT

1. It is declared that the claimants' complaints that the respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded.
2. The Tribunal makes a Protective Award in terms of section 189 of the Trade Union Labour Relations (Consolidation) Act 1992 in respect of the claimants. The respondents are ordered to pay remuneration to the claimants for the protected period of 90 days beginning on 3 April 2020.

REASONS

1. The claimants, Joanne Harris, Julia Constable and Sam White were employed by the respondent as part of what was known the senior operations team. Between them, and with others, they oversaw the business. Joanne Harris was Communications Manager and dealt with all Communications, Marketing, PR, some HR, Events, Operations. Julia Constable was Finance Manager overseeing all Finance, IT systems, HR and Operations. Sam White was Executive Chef overseeing all Kitchens/Menus/Chefs, Events and Operations.
2. The claimants were assigned to carry out their duties across all the venues that the respondent had namely, HIX Oyster & Chop House, HIX Oyster & Fish House, Tramshed, Hixter, HIX Townhouse and HIX Soho. The hub or

head office was based at Tramshed, it was from this location that they carried out a lot of their duties, and much of the administration was done. At The Tramshed there were 52 employees. Over the whole of the business there were according to the administrator's response about 138 employees at different establishments.

3. On the 3 April 2020, the respondent entered administration, on 24 March 2021 the respondent moved from administration into liquidation. There will be no funds to distribute to unsecured creditors.
4. It is admitted that the claimants were employed by the respondent and that they were dismissed by the respondent by reason of redundancy. In the case of Samuel White on 3 April 2020, in the case of Joanne Harris on 8 April 2020 and in the case of Julia Constable on 9 April 2020.
5. On Monday 16 March 2020 the Prime Minister made an announcement that due to the Coronavirus outbreak people should avoid going to restaurants, the result was the respondent's covers in its restaurants reduced to almost zero. The respondent took the decision to close its restaurants for the nights of 17, 18 and 19 March 2020.
6. On Tuesday 17 March 2020, Maureen Sandbach, the HR Director for WSH & Mark Hix Restaurant Limited (an associated company), informed the claimants that they should call a group meeting with each restaurant to let them know that there would be an update on Thursday 19 March 2020.
7. On Wednesday 18 March 2020, in a video conference call between Ms Sandbach, the claimants were informed that they would need to make inform every member of staff working in the London restaurants (a total of 120 people) that they would be made redundant. The employees were to be dismissed with effect from Monday 23 and Tuesday 24 March 2020. The claimants were informed that they would need to continue working on sorting out the redundancies and 'mothballing' the restaurants, but that following this, they would then be in the same situation and would be made redundant about a week or so later.
8. On the instructions of Ms Sandbach, the claimants sent letters to all 120 staff employed in the London restaurants and invited them to attend one to one meetings with them via FaceTime on 23 and 24 March 2020. The Chancellor of the Exchequer announced the Coronavirus Job Retention Scheme on 20 March 2020, however no employees were placed on furlough under the scheme. The employees in the London restaurants were subsequently dismissed and the claimants followed suit on 3rd, 8th and 9th of April.
9. It is admitted by the respondent that the duty to consult pursuant to section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (referred to below as "TULRCA") arose in this case because the respondent had the intention to dismiss as redundant 20 or more

employees at one establishment within a period of 90 days or less. The Tramshed, where the claimants were based, employed 52 people excluding the senior operations team (i.e. the claimants). In total the respondent dismissed 138 people.

10. The establishment, the local unit or entity to which the claimants were assigned to carry out their duties, in the case of the claimant was in my view Tramshed. In the case of the claimants there did therefore arise a duty to consult.
11. The claimants presented their complaint to the employment tribunal on 1 April 2020 in the case of Samuel White and 2 April 2020 in the case of Julia Constable and Joanne Harris.
12. The respondent admits that there was no appropriate representative within the meaning of section 188(1B)(a) or (b) TURCA and therefore each of the claimants had standing to bring this claim. However, the respondent contends that the claimants have presented their complaints prematurely and therefore there is no jurisdiction to consider the complaints. I do not agree with the respondent. There is jurisdiction to consider the claimant's complaints, the claims were not presented prematurely. The respondent accepts that the claimants have standing bring a claim to the employment, section 189 (1) TULRCA allows "any of the affected employees" or "any employees dismissed as redundant". Then at section 189 (5) (TULRCA provides that an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the date on which the last of the dismissals to which the complaint relates takes effect, or during the period of three months beginning with that date, or where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of three months, within such further period as it considers reasonable. The effect of this provisions is that a claim may be brought by an affected employee before they are dismissed.
13. I am satisfied that the tribunal finds has jurisdiction to consider the claims and that the section 188 duty does apply to all of the claimant. The respondent does not seek to put forward any representations to the effect that any protected period should be less than 90 days.
14. The claims for a protective award under section 188 TULRCA brought by all the claimants are well founded in that the respondent failed to comply with its statutory collective consultation obligation before proposed redundancy dismissals took effect. The Tribunal makes a protective award in respect of the claimants and the respondent is ordered to pay remuneration to the each claimant for a protected period of 90 days beginning on the 3 April 2020

Case Number: 3303635/2020
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Employment Judge Gumbiti-Zimuto

Date: 26 August 2022

Sent to the parties on:

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For the Tribunals Office

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