



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

Ms Lynne Toms and 15 Others

AND

Respondents

Drinkmaster Limited

(In Voluntary Creditors' Liquidation) (1)

The Secretary of State for Business, Energy and Industrial Strategy (2)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY AT Plymouth **ON**
By Cloud Video Platform

30 July 2021

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimants: Written Representations
For the First Respondent: Written Representations
For the Second Respondent: Written Representations

JUDGMENT

The judgment of the Employment Judge sitting alone is that:

1. The complaint that the respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded.
2. The tribunal makes a protective award in respect of the Claimants who were dismissed as redundant on or after 2 September 2020 and orders the first respondent to pay the Claimants remuneration for the protected period of 90 days beginning on 2 September 2020.

REASONS

1. This is a claim for a protective award brought by following claimants, by reference to their Tribunal reference numbers, who are referred to collectively in this Judgment as the Claimants: Ms Lynne Toms 1406225/2020; Miss Roksana Bairamova 1406226/2020; Ms Marion Burchell 1406227/2020; Mr Paul Davison 1406228/2020; Mrs Tania Elliott 1406229/2020; Mrs Susan Frantom 1406230/2020; Miss Kathleen Gibbs 1406231/2020; Mr Bradley Hicks 1406232/2020; Mrs Deborah Hicks 1406233/2020; Mrs Joanne Hutchings 1406234/2020; Mrs Louise Jenkin 1406235/2020; Mr William Jenkin 1406236/2020; Mr Neil Lampshire 1406237/2020; Mrs Rebecca Libby 1406238/2020; Mrs Sandra Stevens 1406239/2020; and Mr Charles Thompson 1406240/2020;.
2. I have considered the evidence before me, both oral and documentary, and which includes signed witness statements from two of the Claimants, (namely Ms Lynne Toms and Ms Roksana Bairamova, which were not challenged by the respondents. I have considered the legal and factual submissions made by and on behalf of the respective parties. I find the following facts proven on the balance of probabilities.
3. The Claimants were all employed by the first respondent company Drinkmaster Ltd at its premises at Plymouth Road, Liskeard, Cornwall PL14 3PG. There were 22 employees employed at that establishment. There was no recognised trade union, and no elected employee representatives. The Claimants, and other employees at that establishment numbering more than 20 in total, were summarily dismissed by reason of redundancy on 2 September 2020. The first respondent did not carry out any consultation with the Claimants about their impending dismissals. The first respondent did not elect any employee representatives with whom to consult on behalf of the Claimants or any other employees. The first respondent subsequently entered voluntary creditors liquidation on 22 September 2020.
4. The first respondent therefore failed to undertake any or any adequate consultation with the Claimants prior to their dismissals.
5. Having found the above facts I now apply the law.
6. The relevant law is in the Trade Union and Labour Relations (Consultation) Act 1992 (“TULRCA”).
7. Section 188(1) of TULRCA provides as follows: “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”. S188(1A) provides that “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.

8. S 188(1B) provides that: “For the purposes of this section the appropriate representatives of any affected employees are – (a) if the employees of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or (b) in any other case, whichever of the following employee representatives the employer chooses:- (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf; (ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1).”
9. S 188(2): provides that; “The consultation shall include consultation about ways of – (a) avoiding the dismissals, (b) reducing the numbers of employees to be dismissed, and (c) mitigating the consequences of the dismissals, and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.”
10. Section 188(4) provides: “For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives – (a) the reasons for his proposals, (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant, (c) the total number of employees of any such description employed by the employer at the establishment in question, (d) the proposed method of selecting the employees who may be dismissed, (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which any dismissals are to take effect, (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with the obligation imposed by or by virtue of any enactment) to employees who may be dismissed, (g) the number of agency workers working temporarily for and under the supervision and direction of the employer, (h) the parts of the employer's undertaking in which those agency workers are working, and (i) the type of work are those agency workers are carrying out.”
11. Section 188(5) provides: “That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or in the case of representatives of a trade union sent by post to the union at the address of its head or main office.”
12. I have been referred to and I have considered the following case: GMB v Susie Radin Ltd [2004] EWCA Civ 180.
13. In this case there was a complete failure by the first respondent to consult with the claimants in accordance with the requirements of the above statutory provisions of TULR(C)A, and a failure to elect employee representatives.
14. Accordingly I make the protective awards as set out above.

Employment Judge N J Roper
Date: 30 July 2021

Judgment sent to Parties: 10 August 2021

FOR THE TRIBUNAL OFFICE

**ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)**

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Regulation 5(2)(b), SI 2010 No 2429 Reg.5.

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 lesser of:

- (i) the amount (less any tax or social security contributions which fall to be deducted therefrom 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
- (ii) 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 protective period falling before the date described in (i) above.

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.