

EMPLOYMENT TRIBUNALS

Claimant: Mr S Highton & Others
First Respondent: C1 Realisations (2020) Ltd
Second Respondent: Secretary of State for Business, Energy & Industrial Strategy

Heard at: Midlands (East) Region by Cloud Video Platform
On: 23 November 2022
Before: Employment Judge Legard (sitting alone)

Representation

Claimant: Mr Bronze (of Counsel)
First Respondent: Not represented
Second Respondent: Not represented

This was a remote hearing. The parties did not object to the case being heard remotely. The form of remote hearing was V – video.

JUDGMENT

The Judgment of the Tribunal is as follows:

1. The Second Respondent, having a statutory obligation so to do under s.182 ERA, has failed to pay remuneration to each of the four named Claimants in respect of a protective award made pursuant to a Judgment dated 2nd February 2022. The complaints brought pursuant to s.188 ERA are therefore well founded and succeed.
2. The Second Respondent must pay to each of the four named Claimants remuneration in accordance with the above protective award subject to any applicable statutory cap.
3. The Employment Protection (Recoupment of Benefits) Regulations 1996 may apply to this award.

REASONS

1. The Claimant's claims

- 1.1 By a multiple claim form presented on 19th May 2022 the Claimants brought claims alleging a failure on the part of the Second Respondent to make payments of a protective award.

2. The Hearing

- 2.1 The Claimants were represented by Mr Bronze of Counsel and neither Respondent was represented. I was provided with a bundle of documents consisting of 144 pages. Ms Walczak gave evidence on behalf of the Claimants. I accepted her evidence in its entirety. I read short witness statements from each of the four claimants.

3. The issue

- 3.1 The issue was straightforward, namely whether there had there been a failure by the Second Respondent to make payments of a protective award.

4. Findings of fact

- 4.1 Having considered all the evidence, I find the following facts on the balance of probabilities. There were no disputes of fact or differences of interpretation requiring resolution.

- 4.2 Each of the four Claimants were employed by the First Respondent (previously known as Carluccio's, a well known restaurant chain) at its West Bridgford restaurant (together with at least 17 others). In March 2020, they were furloughed as the CV-19 pandemic took hold. On 30th March 2020 the First Respondent went into administration and, on 20th April 2020, the Claimants each received correspondence from the First Respondent informing them that the restaurant had closed and that they would be dismissed by reason of redundancy (having previously been informed by telephone that the restaurant would close). On Tuesday 21st April, they received formal notice of termination together with details as to how to make claims via the RPS. The letter purported to backdate their dismissals to 17th April 2020.
- 4.3 There were 21 employees at the West Bridgford restaurant and a statutory duty to consult arose pursuant to s.188/s.188A arose. None of the Claimants were consulted about any matter in connection with their respective dismissals and accordingly claims for a protective award were issued pursuant to s.189 TULR(C)A.
- 4.4 Those claims were not defended and, following a Tribunal hearing on 2nd February 2022, the protective award claims were upheld¹ and each of the Claimants awarded 80 days pay (for the period commencing 21st April 2020).
- 4.5 Because the First Respondent was insolvent, the Claimants' representatives wrote to the Second Respondent (essentially the RPS) requesting payment pursuant to ss.182 and 184(2)(d) ERA. The Second Respondent declined to make any payments on the basis that the Claimants' dismissal date was 17th April and not 21st April. The Claimants, via their representative, sought a reconsideration but the Second Respondent declined again.
- 4.6 On 27th September 2022 the Tribunal, at the request of the Claimants, issued a Certificate of Correction, confirming and clarifying that the dismissals took

effect on 21st April and that the protective period therefore ran from 21st April 2020 for a period of 80 days (until 10th July 2020).

4.7 Notwithstanding the above the Second Respondent has failed to make any substantive response and sought instead to have this hearing postponed in order for it to 'make further enquiries' with the Insolvency Practitioner. This request was refused by the Tribunal.

4.8 In light of the above, both the Tribunal and the Claimants' representatives are at a loss to understand why the Second Respondent continues to prevaricate on what appears to be a simple and straightforward matter.

5. Relevant law

5.1 In circumstances where an employee meets the various conditions set out in ss.188 et seq TULR(C)A, an entitlement to a protective award may arise as happened in this case.

5.2 In circumstances where the employer is insolvent and pursuant to ss.182 and 184(2)(d) ERA, the Secretary of State is obliged to pay to a qualifying employee remuneration under a protective award, subject to a statutory cap.

5.3 Where the Secretary of State fails to make such a payment, a complaint lies to the Tribunal pursuant to s.188 ERA.

6. Conclusions

6.1 Each of the four Claimants is entitled to a protective award pursuant to the Judgment dated 2nd February 2022. The above Judgment was corrected by way of a certificate of correction dated 26th September 2022 which confirmed that the 80 day protected period began on 21st April 2020 and ended on 10th

July 2020 (the Tribunal having found that the dismissals all took effect on 21st April 2020).

- 6.2 Despite not objecting to the above certificate of correction, the Second Respondent has continued to drag its feet in respect of this matter for reasons unknown. In those circumstances, the Claimants had little option other than to prosecute their claims (under s.188 ERA) before the Tribunal.
- 6.3 Each of the four Claimants has proved their entitlement to an 80 day protective award and a failure on the part of the Second respondent to fulfil its statutory duty, namely to pay them remuneration under that award. In those circumstances, the claims are well founded and succeed.
- 6.4 Following discussion with Mr Bronze, I declined to declare the precise amount due to each Claimant under the protective award notwithstanding the combined schedule of loss contained within the bundle. I am confident that the amounts due will be worked out and thereafter paid in short order by the Secretary of State and will, of course, be subject to the statutory 8-week cap.

Employment Judge Legard

Date: 23 November 2022

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