



# EMPLOYMENT TRIBUNALS

## Claimants

1. Community Union
2. Mrs Margaret Beattie and others

v

## Respondents

1. Sargent Shoes Online Limited  
(in liquidation)
2. Secretary of State for Business,  
Energy and Industrial Strategy

**Heard at:** Bury St Edmunds

**On:** 29 November 2022

**Before:** Employment Judge Freshwater

## Appearances

**For the Claimants:** Mr G Williams (Legal Officer)

**For the First Respondent:** Ms K Harper (Liquidator)

**For the Second Respondent:** None

## RESERVED JUDGMENT

1. The claims brought by Community Union and Mr Paul Sargent that the first respondent breached s.188 of TULRCA 1992 by failing to consult in respect of redundancies proposed at its establishment are well founded.
2. The Tribunal makes a protective award in accordance with s.189 TULRCA 1992.
3. The protected period to which the award relates is 90 days.
4. The claims brought by all other claimants are dismissed.

## RESERVED REASONS

### Introduction

1. This claim is brought by Community Union, Mrs Margaret Beattie and 37 other claimants who were made redundant by the first respondent.

2. The individual claimants and their case numbers are listed in the schedule compiled when it was decided that the cases should be heard together.

### **Hearing and procedure**

3. The hearing was by way of CVP. The claimants were represented by Mr Williams, with the exception of Mr Paul Sargent.
4. I was referred to an electronic bundle of 226 pages, the witness statement of Mrs Margaret Beattie and a skeleton argument prepared on behalf of the claimants.
5. I heard evidence from Mrs Margaret Beattie.
6. I heard submissions on behalf of all the claimants from Mr Williams. Mr Paul Sargent had the opportunity to make separate submissions, but did not wish to do so. He relied upon the submissions of Mr Williams. I heard submissions from Ms Harper.

### **Claim and issues**

7. The claim is for a protective award. At a preliminary hearing, the first respondent accepted the following points:
  - (i) that Community Union was a recognised union for the purposes of collective bargaining;
  - (ii) that they dismissed as redundant 20 or more persons at an establishment where Community Union were recognised within a 90-day period;
  - (iii) that they did not comply with their duty to consult Community Union as required by Section 188 Trade Union and Labour Relations (Consolidation) Act 1992 [“the TULRCA 1992”] for a minimum of 30 days;
  - (iv) that there were no special circumstances on which they rely as rendering it not reasonably practicable for the employer to comply with that requirement;
  - (v) that no steps towards compliance as were reasonably practicable in the circumstances were taken;
  - (vi) that in relation to the Claimants in case numbers 3303169/2021 they accepted that Community Union was the recognised union for all Claimants except Mr P Sargent;
  - (vii) that the duty and obligation of consultation were not fulfilled in relation to Mr P Sargent; and
  - (viii) that each of the Claimants (in case number 3303206/2021 on behalf of all the Claimants except Mr P Sargent and in case number 3303169/2021 for Mr P Sargent) are entitled to a protective award.
8. I was asked to make a finding that Community Union has standing to bring a claim on behalf of each claimant, with the exception of Mr Paul Sargent who

has standing to bring a claim himself. I was asked to dismiss all of the other individual claims.

9. The issues for me to decide today are
- (i) should a protective award be made; and
  - (ii) for what period.
  - (iii) who has standing to bring a claim.

### **The law**

10. Section 188(1) of the TULCA 1992 states that 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.

11. Section 189(1) of the TULCA 1992 states that:

Where an employer has failed to comply with a requirement of section 188 or section 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;
- (b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related,
- (c) in the case of failure relating to representatives of a trade union, by the trade union, and
- (d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.

12. Section 189(2) of the TULRCA 1992 states that if the tribunal finds a complaint well-founded it shall make a declaration to that effect and may also make a protective award.

13. Section 189(4) of the TULRCA 1992 states that:

The protected period—

- (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 section 188;

but shall not exceed 90 days.

14. In the case of *Susie Radin Ltd v GMB and others* [2004] EWCA Civ 180 the Court of Appeal identified the following matters that tribunals ought to take into account when considering whether or not to make a protective award (see paragraph 45 of that judgment):

*“(1) The purpose of the award is to provide a sanction for breach by the employer of the obligations in s.188: it is not to compensate the employees for loss which they have suffered in consequence of the breach.*

*(2) The tribunal have a wide discretion to do what is just and equitable in all the circumstances, but the focus should be on the seriousness of the employer's default.*

*(3) The default may vary in seriousness from the technical to a complete failure to provide any of the required information and to consult.*

*(4) The deliberateness of the failure may be relevant, as may the availability to the employer of legal advice about his obligations under s.188.*

*(5) How the tribunal assesses the length of the protected period is a matter for the tribunal, but a proper approach in a case where there has been no consultation is to start with the maximum period and reduce it only if there are mitigating circumstances justifying a reduction to an extent which the tribunal consider appropriate.”*

### **Findings**

15. The facts in the case were not in dispute.
16. The claimants were made redundant on 15 January 2021. Liquidators came into the factory that day. The liquidators told those employees who were at work that the first respondent had gone into insolvency.
17. Prior to 15 January 2021, it was apparent to Mrs Beattie that there was a down-turn in work. She said that she had a feeling “that things were going wrong” but hoped that it would pick up. There had been less work for at least 12 months before 15 January 2021.
18. There was no consultation or discussion with the employees who were made redundant, or union or any elected representative about the possibility of redundancies.

### **Conclusions**

19. The period of the protective award begins on 15 January 2021.
20. It is just and equitable in all the circumstances for the period of the protective award to be for 90 days. This is because there was no consultation and no mitigating circumstances justifying a reduction. It must have been clear that there was a risk of redundancy. Mrs Beattie was aware that work had

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dropped and that there were fewer orders for work for at least 12 months before the redundancies occurred.

21. Mr Paul Sargent is entitled to a protective award and has brought a claim in his own right that is well-founded.
22. Community Union has standing to bring a claim for all claimants except Mr Paul Sargent. That claim is also well-founded.
23. In light of my findings, the claims brought by all other claimants (except Community Union and Mr Paul Sargent) are dismissed. This is on the basis that Community Union has brought a claim for its members.

Employment Judge Rebecca Freshwater

Date: 17 February 2023

Sent to the parties on: 27 February 2023

For the Tribunal Office