

CE



EMPLOYMENT TRIBUNALS

Claimants: Mr B Ruddy and Ms K Jarosz

Respondents: (1) Casual Dining Services Limited
(2) Secretary of State for Business, Energy & Industrial Strategy

Heard at: East London Hearing Centre

On: 8 December 2022

Before: Acting Regional Employment Judge Russell

Representation
Claimant: Nobody attending for the Claimant
Respondent: Nobody attending for the Respondent

RECONSIDERATION JUDGMENT

The Judgment sent to the parties on 29 December 2021 is revoked in its entirety.

REASONS

1 By a Judgment sent to the parties on 29 December 2021, the Tribunal made a protective award for the protected period of 90 days from 2 July 2020 because of the First Respondent's failure to elect an appropriate representative and making more than 20 employees redundant on 2 July 2020. The protective award was said to apply to all 23 employees made redundant at the establishment that day, including the Claimants.

2 By an email sent to the Tribunal on 31 December 2021, the Second Respondent sought reconsideration on two grounds: (1) the First Respondent had been dissolved on 8 October 2021 prior to the Judgment of the Employment Tribunal and as liability from the Secretary of State arises under s.184(2)(d) of the Employment Rights Act only as statutory guarantor of any liabilities against the employer, there could be no independent liability of the Second Respondent; and (2) if liability did arise, the protective award could only apply to the two Claimants and not all employees as there were no elected representatives.

3 On 6 January 2022, the First Claimant's solicitor objected to the application on grounds that the First Respondent had not presented an ET3, administrators had given consent for the Claimant to proceed such that the hearing on 18 October 2021 was

essentially only to gather information to make the relevant awards by way of rule 21 Judgment. Further the Second Respondent had not advanced the dissolution point before and it would not be in the interest of justice to allow it to raise a new point which could and should properly have been raised at the original hearing. Finally, that the reconsideration would cause severe prejudice to the Claimant as he would be deprived of a remedy.

4 By a letter dated 1 August 2022, the parties were informed that I considered that it may be in the interest of justice to reconsider the Judgment for the reasons given by the Second Respondent, which may include consideration as to whether and to what extent the primary submission that it cannot be liable as guarantor following dissolution is consistent with the EU Collective Redundancy Directive and/or the effect of part 12 of the Employment Rights Act. I listed this hearing and made Orders that the parties should provide a bundle by 10 November 2022 and a skeleton argument by 24 November 2022.

5 No such documents have been received. The Second Respondent's representatives emailed on 17 August 2022 to indicate that they did not propose to be represented in person at this hearing and asked that the Tribunal accept the ET3 in place of written submission. Nothing was heard from the Claimants or the First Claimant's solicitor. This was not helpful as the Second Respondent's ET3 had not addressed the dissolution point as, at the time, the First Respondent had not been dissolved.

6 I had regard to the contents of the file and am satisfied from a search at Companies House that the First Respondent was indeed dissolved with effect from 8 October 2021. It follows that at the date which I made the original Judgment it no longer existed. The Judgment was as a matter of law rendered a nullity as judgment cannot be entered against a company that has been dissolved. The Claimants have not reinstated the company to the register and, therefore, I am satisfied that the Judgment must be revoked.

7 I considered the fairness point and question of any prejudice to the Claimants. The claims were initially listed for a hearing on 22 July 2021 which was postponed following an application by the Claimants' representative. The delay was not caused by the Tribunal or the Respondents. Even if it were, the Judgment could not stand as the First Respondent no longer existed when it was made.

8 I am satisfied that the Second Respondent's liability under domestic legislation arises only as a guarantor to a valid Judgment made against the employer. With no valid judgment against the First Respondent there can be no liability for the Second Respondent. Neither party made any submissions on the EU Directive such that it is not a matter the Tribunal can take any further. For all of these reasons, the Judgment is revoked in its entirety.

Acting Regional Employment Judge Russell

1 March 2023