



# EMPLOYMENT TRIBUNALS

## Claimant

Aaron Hunt

## Respondent

v Loftlock Precision Engineering Ltd (in  
voluntary liquidation)

**Heard at:** Bury St Edmunds

**On:** 16 January 2023

**Before:** Employment Judge Freshwater

## Appearances

**For the Claimant:** in person

**For the Respondent:** none

## RESERVED JUDGMENT

1. A declaration is made that the claimant's complaint that the respondent failed to comply with duty on employers to consult representatives under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded.
2. The protective period is 90 days. The protected period started on 20 May 2021.

## RESERVED REASONS

### Introduction

1. The claimant is Mr Aaron Hunt. He was employed by the respondent from 8 October 2012 until 20 May 2021, when he was made redundant.
2. The respondent is Lockloft Precision Engineering Ltd which is in liquidation. The type of liquidation is creditors voluntary liquidation. Liquidators were appointed on 24 June 2021. This information is taken from the Companies House website, of which I take judicial notice. The respondent was a company that manufactured component parts for ejector seats.

**Claim and issues**

3. Mr Hunt made a complaint under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the TULRCA 1992) that the respondent had failed to comply with the duty of an employer to consult about potential redundancies contrary to section 188 of the TULRCA 1992. Mr Hunt seeks a declaration to that effect, as well as a protective award.

**Preliminary matters**

4. The respondent did not file a response form (an ET3) in these proceedings nor did any representative attend the hearing today. There has been no correspondence received by the tribunal on behalf of the respondent. However, Mr Hunt produced an email from Mr Ben Briscoe, who is a manager working for the appointed liquidators. That email is dated 3 December 2021 and copies in Mr Robert Keyes who is one the insolvency practitioners noted on the Companies House website.
5. Neither party had complied with the case management order dated 17 September 2022. That order set the date for the hearing today, and provided for the exchange of documents required to be disclosed in the proceedings as well as witness statements.
6. I established that although the claim form (ET1) had initially been served on the respondent at its business address, it been re-served on the liquidators. However, although subsequent correspondence was addressed to the liquidators it was sent to the original address on file (which is that of the respondent company). This included the notice of hearing today.
7. I considered whether it was in the interests of justice to proceed in the absence of the respondent, in the knowledge that notice of the hearing had been sent to the wrong address. As there had been no response to the ET1, but it was clear that the liquidators were in receipt of that document, I did not think it likely that even if the notice of hearing had been sent to the liquidators that they would have attended the hearing.
8. I also took into account that the claimant had not complied with the case management order, but decided that I could take oral evidence from him in the allotted hearing time to sufficiently deal with the issues in the case.
9. I decided that, in all the circumstances, it would not be in the interests of justice to adjourn the case.

**Hearing and procedure**

10. The hearing took place remotely by way of CVP.
11. I read the following documents before the hearing: the ET1, ACAS certificate, acknowledgment of claim dated 1 July 2021, notice of claim dated 1 July 2021, resending of claim letter dated 1 December 2021, notice of claim dated 1

December 2021, correspondence dated 30 July 2022, and notice of hearing dated 17 September 2022.

12. I read the email confirmation of receipt of the ET1 by Mr Briscoe during the hearing (as set out in paragraph 4 above.)

13. I heard oral evidence from Mr Hunt.

### **The law**

14. Section 188(1) of the TULRCA 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.

15. Section 189(1) of the TULRCA 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.

16. 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.

17. 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.

18. Section 190 of TULRCA 1998 deals with entitlement under protective award. That says:

“(1) Where an [employment tribunal] has made a protective award, every employee of a description to which the award relates is entitled, subject to the following provisions and to section 191, to be paid remuneration by his employer for the protected period.

(2) The rate of remuneration payable is a week’s pay for each week of the period; and remuneration in respect of a period less than one week shall be calculated by reducing proportionately the amount of a week’s pay.”

19. 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 of fact**

20. I found the evidence of Mr Hunt to be credible. He was very clear in his evidence, and specific about the details when asked. I have therefore made the following findings on the basis of his oral evidence.

21. Twenty people were made redundant.

22. Mr Hunt was made redundant on 20 May 2021. He received a letter confirming that he was redundant. He was able to collect his belongings, including tools which were owned by him, from work.

23. The respondent closed down and no more trade happened after 20 May 2021.

24. The respondent did not consult with employees before the redundancies occurred. Mr Hunt was not told that receivers had been appointed.

25. Mr Hunt received a redundancy award after he was made redundant.

26. No information has been provided by the respondent about the lack of consultation.

**Conclusions**

27. The respondent failed to consult with Mr Hunt, or any other employees about the potential redundancies.

28. There was a complete failure by the respondent to provide any information to employees. There was no consultation. There are no mitigating circumstances that justify a reduction from the maximum period of an award. It is just and equitable for the protected period to be 90 days.

29. The protected period shall run from the date of the first of the dismissals, which in this case is 20 May 2021.

30. The rate of remuneration is as described in section 190 of the TULRCA 1992.

---

Employment Judge Freshwater

Date: 6 March 2023.

Sent to the parties on: 9/3/2023

NG.

For the Tribunal Office