



EMPLOYMENT TRIBUNALS

Claimants:

- (1) NASUWT Trade Union
- (2) Mr S Goodison
- (3) Ms J Rushworth
- (4) Ms B Moorhouse

Respondents:

- (1) Heathland School Limited in Administration)
- (2) Grant Thornton UK LLP

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Judgment of the Tribunal is that:

1. The first respondent failed to comply with section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 as it did not consult with the trade union claimant (the first claimant above) about proposals to dismiss, or measures taken in connection with the dismissal of, twenty or more employees, where the trade union claimant was recognised by the first respondent in respect of professional employees.
2. Under Section 189(1)(c), (2), (3) and (4) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Tribunal makes a protective award in respect of each employee for which the trade union claimant was recognised, of 90 days pay beginning on 1 March 2022.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award.
4. The claims brought for redundancy payments are dismissed on withdrawal by the individual claimants.
5. The claims against the second respondent are dismissed.

REASONS

1. The claimants claimed a protective award in respect of breach of the collective consultation requirements by the first respondent. No response was presented to the claim by the respondents. The second respondent is the administrator for the first respondent.
2. The trade union claimant (NASUWT) was the recognised trade union for collective consultation purposes for the professional employees of the first respondent and, accordingly, under section 189(1)(c) of the Trade Union & Labour Relations (Consolidation) Act 1992 the trade union claimant was the correct claimant able to bring a complaint about a failure to inform and consult.
3. Based upon the information provided, the Tribunal makes the following findings:
 - a. The first respondent appointed administrators and all relevant employees were dismissed by reason of redundancy on or around 1 March 2022.
 - b. The trade union claimant was the trade union recognised for collective bargaining, consultation or negotiation for professional employees within the workforce, including for redundancy consultation purposes;
 - c. There was no consultation with the trade union claimant;
 - d. Forty four employees at the establishment were dismissed on, or around, the same date.
4. There was no proper consultation with the trade union claimant.
5. In these circumstances, the first respondent was in breach of the duty under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of those for whom the trade union claimant was recognised for the maximum protected period of 90 days commencing on 1 March 2022.
6. The first respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the respondent must comply with the provisions of Regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:
 - a. the name, address and national insurance number of every employee to whom the award relates; and
 - b. the date of termination of the employment of each such employee.

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7. The first respondent will not be required to make any payment under the protective awards made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the first respondent.
8. In their email of the 28 February 2023, the claimants' representative confirmed that the individual claimants were not claiming a redundancy payment and the ticked box was an error.
9. No claim against the second respondent has been identified or pursued.
10. In this Judgment, the trade union claimant means the NASUWT. The individual claimants means the other claimants other than the NASUWT.

NOTE

11. No response to the claim has been received, and the claim therefore succeeds.
12. A protective award is a two-stage process. The Tribunal at this stage makes no financial award, but gives a judgment that those for whom the trade union claimant was recognised are entitled to a protective award in the terms set out above. The individuals must then seek payment of their individual award from the first respondent, quantifying the same.
13. Failure to pay (should that occur), or any dispute as to the amount payable, then becomes a matter for a further separate claim under s.192 of the Trade Union and Labour Relations (Consolidation) Act 1992 for payment of the award.

Employment Judge Phil Allen

21 March 2023

JUDGMENT SENT TO THE PARTIES ON

29 March 2023

AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE

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- Respondents:**
- (1) **Heathland School Limited (In Administration)**
 - (2) **Grant Thornton UK LLP**

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

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

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.

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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 less of:

- (a)** the amount (less any tax or social security contributions which fall to be deducted 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
- (b)** (i) 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 protected period falling before the date described in (a) above; or
- (ii)** in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person's earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

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.