EMPLOYMENT TRIBUNALS

Claimant: L Fetherston and Others

Respondent: Listen Limited (In liquidation)

Heard at: Bury St Edmunds (by CVP) **On:** 12 December 2022
20 March 2023 [panel only]

Before: Employment Judge Maxwell
Mr Davie
Mr Schooler

Appearances
For the claimants: Ms Hasan & Ms Abram
For the respondent: Mr Northall, Counsel

JUDGMENT

The Claimants have standing to bring their claims. The Tribunal makes a protective award in favour of the Claimants listed in the schedule below.

The Respondent is ordered to pay to the Claimants remuneration for the protected period of 70 days beginning on 22 August 2019.

REASONS

1. This case relates to a claim under section 189 of the **Trade Union & Labour Relations (Consolidation) Act 1992** ("TULCRA") for an alleged failure to collectively consult pursuant to section 188. The claims were dismissed following a strike out warning by a judgment dated 22 April 2021. Of the original Claimants, 14 applied for the judgment to be reconsidered under rule 71 of the Employment Tribunals Rules of Procedure 2013. Their application was successful. The case was listed for a full merits hearing to be held remotely via CVP.

2. The Claimants were not legally represented and had not clearly articulated the specific failures alleged under this complex legislative regime. The following issues appeared to arise from their factual complaints:

2.1 When did the Respondent propose to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less?

2.2 Whether the Respondent made arrangements for the election of employee representatives.

2.3 Whether the Respondent delivered information in writing to the appropriate representatives.

2.4 Whether the Respondent consulted with 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.

2.5 Whether the Respondent allowed appropriate representatives access to the affected employees and such accommodation and other facilities as may be appropriate.

2.6 Whether consultation began in good time before the first of the dismissals took effect and in any event at least 45 days.

2.7 If consultation did not take place in good time, whether there were special circumstances which rendered it not reasonably practicable for the Respondent to comply.

2.8 Whether the Respondent consulted about ways of: avoiding the dismissals; reducing the numbers of employees to be dismissed; mitigating the consequences of the dismissals.

2.9 If there were special circumstances, whether the Respondent took such steps towards compliance with that requirement as are reasonably practicable.

Facts

3. The Respondent business was concerned with charity fundraising, in particular by way of telephone campaigns. In 2016, with the implementation of the General Data Protection regulations ("GDPR") on the horizon, it became apparent the Respondent's business was likely to be significantly impacted. Previously, the Respondent had engaged in telephoning potential donors using contact information provided by their clients. In the future, not only would the Respondent be responsible for ensuring that necessary consents have been obtained from the recipients of its calls (which had not been the case previously) this could only be done by way of an express opt-in (whereas previously the Respondent's customers have been able to rely upon the absence of an opt-out). All of this meant the Respondent would be far more restricted in its ability to make telephone calls to potential donors in order to raise funds.

4. Following the implementation GDPR in 2018, the impact on the Respondent's business was even greater than had been feared. From May 2018, losses averaged £125,000 per month.

5. Three senior managers accepted voluntary redundancy in 2018.

6. Despite exploring many different ways in which its business and services might be made more attractive or efficient, the Respondent was unable to stop the decline.

7. In November 2018, the Respondent proposed a Company Voluntary Arrangement ("CVA") which would offer a return of 60p in the pound. This was agreed in January 2019. Joint supervisors of the CVA were appointed. Monthly contributions of not less than £7,500 were required during the term of the CVA.

8. By July 2019, the point had been reached when the Respondent could not maintain its contributions under the CVA and discharge its trading liabilities. All realistic sources of alternative income and new revenue streams had been exhausted. In the words of Ben Smith, the Respondent's Managing Director, the company was "out of ideas" for ways in which to improve its financial position.

9. On 8 July 2019, the Respondent instructed valuers to explore the possibility of a sale of the business. Some initial interest was received from potential buyers but no offers made.

10. By 6 August 2019, the Respondent concluded that no offers would be received and the business had to cease.

11. On or about 13 August 2019, Mr Smith made an announcement to the Respondent's employees, saying that because of financial difficulties it may be necessary to make some 20 to 30 redundancies. The employees were invited to nominate representatives for consultation, one coming from each team, there being several concerned with fundraising and one for the back office. Nominations were received for each of the teams and all of those named were appointed.

12. Meetings between the Respondent's managers and the representatives took place on 16, 19, 20 and 21 August 2019. Whereas the workforce had been told that 20 or 30 redundancy dismissals may be required, at these meetings the representatives were told the true position, namely that the business would close and everyone would be dismissed for redundancy. Having been told the truth, the representatives were then told they must not tell any of the affected employees about this. Various justifications were advanced so as to put pressure upon the representatives, including that any disclosure might undermine the business and any hope for maintaining it. Some of these meetings were lengthy. Amongst other things, the representatives were invited to suggest ways in which redundancies might be avoided and their proposals were discussed.

13. The entire workforce (circa 100 employees) was dismissed as redundant on 22 August 2019.

Law

14. Insofar as material, TULCRA sections 188, 188A and 189 provide:

188 Duty of employer to consult representatives.

(1) 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.

(1A) The consultation shall begin in good time and in any event—

> **(a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 45 days, and**
>
> **(b) otherwise, at least 30 days, before the first of the dismissals takes effect.**

(1B) For the purposes of this section the appropriate representatives of any affected employees are–

> **(a) if the employees are of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or**
>
> **(b) in any other case, whichever of the following employee representatives the employer chooses:–**
>
> > **(i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section, who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf;**
> >
> > **(ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1).**

(2) The consultation shall include consultation about ways of—

> **(a) avoiding the dismissals,**
>
> **(b) reducing the numbers of employees to be dismissed, and**
>
> **(c) mitigating the consequences of the dismissals,**

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.

(3) In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals consultation has already begun.

(4) For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives—

> **(a) the reasons for his proposals,**

(b) the numbers and description of employees whom it is proposed to dismiss as redundant,

(c) the total number of employees of any such description employed by the employer at the establishment in question,

(d) the proposed method of selecting the employees who may be dismissed,

(e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect,

(f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed,

(g) the number of agency workers working temporarily for and under the supervision and direction of the employer,

(h) the parts of the employer's undertaking in which those agency workers are working, and

(i) the type of work those agency workers are carrying out.

(5) That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or (in the case of representatives of a trade union) sent by post to the union at the address of its head or main office.

(5A) The employer shall allow the appropriate representatives access to the affected employees and shall afford to those representatives such accommodation and other facilities as may be appropriate.

(7) If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection [(1A), (2) or (4)], the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances. Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly, a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.

(7A) Where—

(a) the employer has invited any of the affected employees to elect employee representatives, and

(b) the invitation was issued long enough before the time when the consultation is required by subsection (1A)(a) or (b) to begin to allow them to elect representatives by that time,

the employer shall be treated as complying with the requirements of this section in relation to those employees if he complies with those requirements as soon as is reasonably practicable after the election of the representatives.

(7B) If, after the employer has invited affected employees to elect representatives, the affected employees fail to do so within a reasonable time, he shall give to each affected employee the information set out in subsection (4).

[…]

188A

(1)The requirements for the election of employee representatives under section 188(1B)(b)(ii) are that–

(a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;

(b) the employer shall determine the number of representatives to be elected so that there are sufficient representatives to represent the interests of all the affected employees having regard to the number and classes of those employees;

(c) the employer shall determine whether the affected employees should be represented either by representatives of all the affected employees or by representatives of particular classes of those employees;

(d) before the election the employer shall determine the term of office as employee representatives so that it is of sufficient length to enable information to be given and consultations under section 188 to be completed;

(e) the candidates for election as employee representatives are affected employees on the date of the election;

(f) no affected employee is unreasonably excluded from standing for election;

(g) all affected employees on the date of the election are entitled to vote for employee representatives;

(h) the employees entitled to vote may vote for as many candidates as there are representatives to be elected to represent them or, if there are to be representatives for particular classes of employees, may vote for as many candidates as there are representatives to be elected to represent their particular class of employee;

(i) the election is conducted so as to secure that–

(i) so far as is reasonably practicable, those voting do so in secret, and

(ii) the votes given at the election are accurately counted.

(2) Where, after an election of employee representatives satisfying the requirements of subsection (1) has been held, one of those elected ceases to act as an employee representative and any of those employees are no longer represented, they shall elect another representative by an election satisfying the requirements of subsection (1)(a), (e), (f) and (i)

189 Complaint and protective award.

(1) 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.

(1A) If on a complaint under subsection (1) a question arises as to whether or not any employee representative was an appropriate representative for the purposes of section 188, it shall be for the employer to show that the employee representative had the authority to represent the affected employees.

[…]

(2) If the tribunal finds the complaint well-founded it shall make a declaration to that effect and may also make a protective award.

(3) A protective award is an award in respect of one or more descriptions of employees—

(a) who have been dismissed as redundant, or whom it is proposed to dismiss as redundant, and

(b) in respect of whose dismissal or proposed dismissal the employer has failed to comply with a requirement of section 188, ordering the employer to pay remuneration for the protected period.

(4) 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.**
>
> **(5) An employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—**
>
> > **(a) before the date on which the last of the dismissals to which the complaint relates takes effect, or**
> >
> > **(b) during the period of three months beginning with that date, or**
> >
> > **(c) where the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented during the period of three months, within such further period as it considers reasonable.**
>
> **[…]**
>
> **(6) If on a complaint under this section a question arises—**
>
> > **(a) whether there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188, or**
> >
> > **(b) whether he took all such steps towards compliance with that requirement as were reasonably practicable in those circumstances,**
>
> **it is for the employer to show that there were and that he did.**

15. Guidance on the meaning of "proposing" was provided by the EAT in **MSF v Refuge Assurance Plc [2002] ICR 1365**, per Lindsay P:

> **44. That being so, but this not being a case where, on that account, the domestic provision can be disapplied by us, we are left with the task of seeing whether the employment tribunal erred in law, that question to be approached on the basis that, on a straightforward construction of the language of section 188, a "proposal" to dismiss within it emerges, if at all, at a stage later than the "contemplation" of redundancies. Of the meanings of "to propose" given by the Shorter Oxford English Dictionary perhaps the most fitting in context is "to lay before another or others as something which one offers to do or wishes to be done".**
>
> **45 The employment tribunal held that under section 188 there was no duty to consult before the employer had formulated its own proposals; there was a distinction to be drawn between the employer at a management level formulating a plan that may have the likely consequence of redundancies and his making a proposal to dismiss. There was no obligation to consult before the management knew what it may want to do. The employment tribunal said: "We find that proposing to dismiss means more than a mere contemplation of, or consideration of, dismissal during the formulation and adoption of a business plan but is something**

less than a final decision." A little later the tribunal continued: "At what point in time a proposal is made, and when the duty to consult arises, depends upon the facts in each case." Later they added:

> **"There is no duty to consult with the trade union until, at the very earliest, the board of directors has given its approval to the proposal. Until that point in time the management has been formulating business plans to put to the board. This is so even where the board of directors has given its approval for the merger discussions to go ahead."**

There may be cases where, by delegation from the board, the decision whether the employing company proposes to dismiss has been moved from the board to some other body such as the human resources department but, absent some such delegation and bearing in mind that it is the "employer" who has to be proposing to dismiss in order to trigger section 188, we are unable to describe any of the tribunal's conclusions we have cited above as in error of law where only the construction of section 188 is in play.

16. When the employer is under a duty to make arrangements for the election of representatives, it does not follow that a ballot is required; see **Phillips v Xtera Communications Ltd [2012] ICR 171**, per Mr Recorder Luba QC:

> **26. For the employers, Ms Misra accepted that, on the facts, there had here been no ballot, vote or counting. But she submitted that those features were not necessary or essential where, as here, the number of persons putting themselves forward for election precisely matched the number of representatives. Put shortly, her case was that (1) there is no absolute requirement for a ballot where there is no contest and (2) the requirement for there to be a secret ballot is qualified in section 188A(1) and as such is only required where it is reasonably practicable to hold one. It cannot be reasonably practicable to hold a secret ballot where there is no contest. She drew attention, by way of analogy, to the provisions for election of trade union officers contained in Part IV of the 1992Act and most particularly to section 53 which provides that in such cases there is no requirement to hold a ballot in an uncontested election.**

17. As to special circumstances in an insolvency context, we look to **Clarks of Hove Ltd v Bakers' Union [1978] 1 WLR 1207 CA**, per Geoffrey Lane LJ:

> **What, then is meant by " special circumstances "? Here we come to the crux of the case. In this aspect, also, the decisions under the Road Traffic Acts appear to me to be unhelpful. The decisions are too well known to need reference. The basis of them all is probably Whittall v. Kirby [1947] K.B. 194, per Lord Goddard C.J., at p. 201:**
>
> > **" A ' special reason ' is one . . . special to the facts of the particular case . . . special to the facts which constitute the offence. ... A circumstance peculiar to the offender as distinguished from the offence is not a ' special reason ' . .**
>
> **In so far as that means that the special circumstance must be relevant to the issue then that would apply equally here, but in these circumstances, the Employment Protection Act 1975, it seems to me that the way in which the phrase was interpreted by the industrial tribunal is correct. What they**

> **said, in effect, was this, that insolvency is, on its own, neither here nor there. It may be a special circumstance, it may not be a special circumstance. It will depend entirely on the cause of the insolvency whether the circumstances can be described as special or not. If, for example, sudden disaster strikes a company, making it necessary to close the concern, then plainly that would be a matter which was capable of being a special circumstance; and that is so whether the disaster is physical or financial. If the insolvency, however, were merely due to a gradual run-down of the company, as it was in this case, then those are facts on which the industrial tribunal can come to the conclusion that the circumstances were not special. In other words, to be special the event must be something out of the ordinary, something uncommon; and that is the meaning of the words " special " in the context of this Act.**
>
> **Accordingly it seems to me that the industrial tribunal approached the matter in precisely the correct way. They distilled the problem which they had to decide down to its essence, and they asked themselves this question: do these circumstances, which undoubtedly caused the summary dismissal and the failure to consult the union as required by section 99, amount to special circumstances; and they went on, again correctly, as it seems to me, to point out that insolvency simpliciter is neutral, it is not on its own a special circumstance. Whether it is or is not will depend upon the causes of the insolvency. They define " special " as being something out of the ordinary run of events, such as, for example, a general trading boycott— that is the passage which I have already read. Here, again, I think they were right.**

18. When determining the award, the correct approach involves an assessment of the seriousness of the Respondent's default; see **Susie Radin Ltd v GMB [2004] 2 All ER 279**, per Peter Gibson LJ:

> **45. I suggest that ETs, in deciding in the exercise of their discretion whether to make a protective award and for what period, should have the following matters in mind. (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 ET 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 ET assess the length of the protected period is a matter for the ET, 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 ET consider appropriate.**

Conclusion

Failure

> When did the Respondent propose to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less?

19. By 6 August 20219, the Respondent, in particular the Managing Director Mr Smith, had come to the conclusion that none of the potential purchasers were going to make an offer and decided, therefore, it would be necessary to close the business and dismiss the entire workforce as redundant.

20. We were most unconvinced by Mr Smith's evidence that the material decision was not made until 12 August 2019. In particular, we find that the delay in making an announcement to employees had nothing whatsoever to do with a mystery party, whose name he cannot now recall, having expressed interest in a purchase at the eleventh hour. There was no such potential buyer. We reject Mr Smith's evidence in this as inherently implausible. Had there truly been a potential saviour at the last gasp, he would remember who that was.

Whether the Respondent made arrangements for the election of employee representatives

21. The Respondent invited the nomination of a representative for each of the fundraising teams and the back office team. Whilst the evidence before us was not entirely comprehensive, we are satisfied there was no failure in this regard. Mr Smith told us that nominations were invited and where necessary an election was held, without being able to say whether or if so where that was done. On the other hand, none of the Claimants made any complaint about this aspect of the process and it was agreed that a representative was nominated and appointed for each team. On balance, it is likely that each nominated representative was accepted and there was no need for a ballot.

Whether the Respondent delivered information in writing to the appropriate representatives

22. None of the Claimants pleaded or gave statements saying they had seen, been told about or received a copy of any such a letter. Mr Evelyn, one of the nominated representatives, was clear that he did not get a letter. Whilst he began by saying he could not remember, when pressed he was certain he would have recalled and referred to this if it had been received. We accepted Mr Evelyn's evidence. He would have kept and not mislaid an important letter of this sort. Whilst Mr Smith said that such a letter had been sent, he could not find and provide a copy of it, which struck us as odd and another reason to doubt the reliability of his account. We noted that a great deal of contemporaneous documentation had been retained by the Claimants and / or the Respondent and made available to us in the course of this hearing. The absence of this very important letter was all the more striking set against this backdrop. We reject Mr Smith's evidence. No such written information was delivered to the appropriate representatives.

Whether the Respondent consulted with 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.

23. Whilst consultation took place, this was an exercise in form rather than substance.

24. The efficacy of the consultation was undermined by the lateness of it. The consultation did not take place when the proposal to dismiss was at a formative stage, rather the Respondent delayed dealing with this situation until the last possible moment when, realistically, nothing could be done. The Respondent went through the motions, meeting with the representatives several times, engaging in lengthy discussions, including about proposals made by the representatives, when it was far too late to avoid the inevitable, namely an immediate cessation of the business. This last minute flurry of activity was an exercise in appearing to comply with the Respondent's statutory obligations when the time to do that in a meaningful way had passed.

25. Furthermore, any potential efficacy in the consultation was further undermined by the prohibition imposed on the representatives, with respect to what they could tell other employees. The Respondent's workforce had been misled by the announcement that there may need to be some 20 or 30 redundancy dismissals, when in truth it was inevitable (or as near as makes no difference) the business would close and all would lose their jobs. On being told truth about the closure of the business, the representatives were then immediately put under great pressure not to share that with the workforce at large. In effect, the representatives were made complicit in a deceit.

Whether the Respondent allowed appropriate representatives access to the affected employees and such accommodation and other facilities as may be appropriate;

26. Whilst there was no lack of physical opportunity for the representatives to access the employees, the efficacy of that access was undermined by the Respondent's prohibition on the representatives passing onto employees the truth about the business and their prospect of dismissal.

Whether consultation began in good time before the first of the dismissals took effect and in any event at least 45 days

27. The Respondent admits it did not consult in good time.

If consultation did not take place in good time, whether there were special circumstances which rendered it not reasonably practicable for the Respondent to comply.

28. The Respondent pleaded the following matters amounted to special circumstances:

> **42.1. The effect of the introduction of the GDPR on its revenues and the revenues of the sector in which it operated.**
>
> **42.2. The sudden withdrawal of interest of the prospective purchaser referred to at paragraph 19 of these Grounds of Resistance.**
>
> **42.3. The Respondent's lack of funds to enable it to continue the employment of its workforce for the purpose of consultation. Although the Respondent entered administration, this was solely because of the difficulty of managing the Respondent's confidential data in the event of the Respondent's liquidation. The purpose of the administration was not**

to explore the potential sale of the business, since this option had already been exhausted, without success.

29. We do not accept the matters referred to in Respondent's pleaded case (or any other factors evidenced before us) amounted to special circumstances.

30. Whilst the introduction of GDPR represented a novel circumstance, it was not special in the required sense. This was merely an example of a legislative change, which makes the trading environment more difficult for a particular business or industrial sector. In the unlikely event that such a change were brought about in a swift an unexpected way, then it might be a special circumstance. Here, the likely consequences were long foreshadowed. The Respondent business entered a period of decline, which lasted for several years before the lack of viability was finally recognised and acted upon. The Respondent's managers had plenty of time in which to make an appropriate decision on the future of the business and consult with employee representatives. That they left this all until the last moment is just poor management, which is not a special circumstance.

31. There was no last minute prospective purchaser. This would not, in any event, have amounted to a special circumstance. The Respondent had tried and failed to find a way to return this business to profit. There was no reason (none was put forward) to suppose that anyone else could make it profitable. Seeking purchasers when a business has reached the point it cannot continue to trade is unlikely to amount to a special circumstance and did not do so here.

32. The lack of funds when the Respondent began consultation is entirely a function of the Respondent's management ignoring the parlous financial situation over a period of years and failing to engage with the need to make redundancies until the last possible moment. This is another consequence of the poor management to which we have already referred.

33. This was very far from the case of a seemingly viable business offering stable employment being brought to an end at short notice and by events which could not be foreseen, such that there was no opportunity to decide on redundancies and commence consultation in a timely fashion.

    Whether the Respondent consulted about ways of: avoiding the dismissals; reducing the numbers of employees to be dismissed; mitigating the consequences of the dismissals.

34. We repeat what we have already set out above. Whilst there were a number of lengthy meetings at which the representatives had an opportunity to put forward their ideas for avoiding redundancies and these were discussed, this was done when it was far too late to avoid the dismissals taking place. Here, the Respondent's management paid no regard to its statutory obligations of collective consultation until it was too late to discharge them and then engaged in a window-dressing exercise.

35. If there were special circumstances, whether the Respondent took such steps towards compliance with that requirement as are reasonably practicable

36. There were no special circumstances.

Award

37. Accordingly, we found many failures with respect to the Respondent's obligations under section 188. We are satisfied as it is appropriate to make a protective award in the amount of 70 days.

38. This is not a case of a complete failure. At the last moment, the Respondent made some steps toward compliance with its obligations to engage in collective consultation. As such, it would not be appropriate to award the maximum 90 days.

39. Nonetheless, this is a case of a very substantial failure. The consultation did not commence until a point in time when the outcome was inevitable (or as near so is made no difference) and was not, therefore, meaningful. Furthermore, whilst a number of lengthy meetings were held, this was in effect window-dressing. We were especially concerned by the Respondent putting pressure upon the appointed representatives to conceal from the employees their true position and, thereby, being made party to the Respondent's deceit.

Schedule

40. The claims to which this judgment relates are:

    40.1 3325550/2019 Laura Cogoni

    40.2 3325553/2019 Samar Durant

    40.3 3325554/2019 Graeme Evelyn

    40.4 3325557/2019 Rudy Gilpin

    40.5 3325561/2019 Manolya Hasan

    40.6 3325565/2019 Adam James

    40.7 3325577/2019 Donna Kuye

    40.8 3325580/2019 Greg Langola

    40.9 3325602/2019 Jakob Bailey-Hummel

    40.10 3325626/2019 Winston Service

    40.11 3325628/2019 Jasbir Singh

    40.12 3325645/2019 Adam Windsor

    40.13 3325648/2019 James Smith

EJ Maxwell

Date: 20 March 2023

Sent to the parties on:

……24/03/2023…….

For the Tribunal Office:

…….....……..