Case Number: 3311451/2020, 3311463/2020, 3311464/2020, 3311470/2020, 3311783/2020 & 3301504/2021

EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss A Dyer and others	**v**	**1. STA Travel Limited (a company in Creditors Voluntary Liquidation)** **2. The Secretary of State for Business & Trade**

Heard at: Watford Employment Tribunal **On**: 15 December 2022
Before: Employment Judge George
Members: Mr C Bailey
Mr D Bean

Appearances
For the Claimants: Miss A Dyer, Miss C Mears, Miss V Mircheva, Ms J Risk, and Ms R Meads in person. Mr J Saunders did not attend, having been given notice of hearing.
For the Respondents: No attendance having been given notice of the hearing.

JUDGMENT

1. The Secretary of State for Business & Trade is substituted as the second respondent.

2. The Employment Tribunal does not have jurisdiction to consider Mr Saunders' claim because it was presented out of time. Case number 3301504/2021 is dismissed.

3. The following claims for a protected award succeed:

3311451/2020	Dyer
3311463/2020	Mears
3311464/2020	Mircheva
3311470/2020	Risk
3311783/2020	Meads

4. The respondent did propose to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less.

5. The claimants Dyer, Mears, Mircheva, Risk and Meads were assigned to that establishment.

6. The respondent did not comply with the requirement to consult with its employees as set out in s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (hereafter "TULR(C)A") and the claimants set out in paragraph 5 above are entitled to bring claims under s.189.

7. That complaint is well founded and the claimants are entitled to a protective award. The protected period is 90 days from 2 September 2020.

8. The Employment Protection (Recoupment of Benefits) Regulations 1996 may apply to these awards and the required information is as follows: -

   8.1. The date of the hearing is 15 December 2022;

   8.2. The Tribunal is located at Radius House, Clarendon Road, Watford;

   8.3. The employer is STA Travel Limited (in creditors voluntary liquidation). The registered office is Snow Hill, London EC1A 2AY. The appointed liquidators are Rollings Butt LLP of the same address.

REASONS

1. We are conscious that, in reaching the conclusion that we have reached, we make different findings and conclusions from those reached in some other claims involving STA Travel Ltd. We do wish to make clear that these claims that are before us, where they have succeeded, they have succeeded on the basis of the evidence that has been presented to us and the evidence that we have heard, and we have taken into account both documentary and oral evidence. Furthermore, Employment Tribunals are not bound by decisions of other Employment Tribunals that are of equivalent jurisdiction.

2. We have had the benefit in hearing this case of written statements from the five claimants who have succeeded made in response to an earlier case management order. They were all adopted in oral evidence and I asked questions in clarification of all of the statements.

   2.1 Ms Rachel Meads' statement was given by an email dated 28 December 2021;

   2.2 Ms Alana Dyer's statement was also given by an email dated 28 December 2021 and contained some documentation on which she relied.

   2.3 Ms Vikki Mircheva submitted a response email setting out the factual matters she relied on. It was dated 27 Decmeber 2021;

   2.4 Ms Jennifer Risk's emailed statement was also dated 15 December 2021.

   2.5 Ms Chloe Mears set out the information relied on in an email sent on 20 December 2021.

3. Mr Saunders had written an email on 30 December 2021 and was given leave to rely on it, although it was slightly out of time, setting out the basis on which he argued that he was also assigned to an establishment that had more than 20 employees attached to it. However, he did not set out the basis on which he argued that it had not been reasonably practicable for him to present his claim in time despite being directed to do so.

4. We also had the benefit of various documents that were sent to us electronically, and arranged in six exhibit folders, and we took those in to account. These included documentation provided by each of the six remaining claimants.

Does the Employment Tribunal have jurisdiction to consider Mr Saunders' claim (Case No: 3301504/2021)

5. By the case management order that was sent to the parties on 14 July 2022, paragraph 5, Employment Judge George explained that it appeared that Mr Saunders' claim for a proactive award may have been presented more than three months after the date of his dismissal. He was informed that at this hearing he would need to demonstrate that it was not reasonably practicable for him to present the claim with the applicable time limit.

6. In Mr Saunders' case, the effective date of termination of employment was stated to be 3 September 2020 (although it may have been 2 September which makes not material difference). Early conciliation took place between 20 and 22 February 2021 and the claim form was presented on 26 February 2021. It appears therefore that the contact with ACAS was more than three months after the date of termination of his employment.

7. It is for the claimant to show that they have brought the claim in time. Section 189(5) TULR(C)A states that an Employment Tribunal shall not consider a complaint under that section unless it is presented within three months beginning with the last of the dismissals or, where the Tribunal is satisfied that it was not reasonably practicable for the complaint to have been presented during the three-month period, within such further period as it considers reasonable. The consequence of that wording is that, if the claim was not presented within that time limit, the Tribunal "shall not consider it"; the Tribunal does not have jurisdiction to consider it.

8. What was needed in order to show that the claim was in time was made plain to Mr Saunders by that paragraph in the order sent to the parties on 14 July 2022. He has not provided any evidence or any explanation for the delay and has not attended today. We reach the conclusion that the Tribunal does not have jurisdiction to hear his claim and it is dismissed.

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9. We then go on to consider the claims by the other claimants in the above case numbers. The issues, as set out in paragraph 10 of the case management order sent to the parties on 5 September 2022 are:

9.1 Did the respondent propose to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less?

9.2 Were the claimants in Case Nos: 3311451/2020, 3311463/2020, 3311464/2020, 3311470/2020 and 3311783/2020 or any of them assigned to that establishment or establishments?

9.3 Did the respondent comply with the requirement to consult with its employees as set out in s.188 of TULR(C)A?

9.4 Are those claimants entitled to bring a complaint under s.189 of TULR(C)A?

9.5 Is that complaint well-founded?

9.6 Are those claimants entitled to a protective award? If so, what is the protected period.

10. To give brief dates of the employment and relevant details in respect of the remaining claimants, Ms Dyer started employment with the respondent on 6 May 2014 and, like the other remaining claimants, her effective date of termination was 2 September 2020 when they were dismissed without any consultation. She therefore had 4 years of employment at the time of dismissal and at the time that she was made redundant she was a Store Manager and her usual place of work was the Milton Keynes store.

11. Miss Mears started her employment on 1 August 2017 and it ended on 2 September 2020. She had therefore 3 years' continuous employment, most recently as the Assistant Manager and her usual place of work was the St Albans store.

12. Miss Mircheva started employment on 4 March 2019. She was a Travel Expert. Her usual place of work was at London Victoria.

13. Ms Risk had started work on 28 February 1994, she therefore had 16 years' continuous employment and she was a Travel Expert based at the Cambridge Store.

14. Ms Meads had started work on 12 May 2017 and therefore had 3 years' service most recently as an Assistant Store Manager with her usual place of work being the Reading store up to the start of the national pandemic. All bar Ms Meads were placed on furlough when there was the national lockdown. Ms Meads was transferred to the Covid Task Force and she was working there when the redundancies took place.

15. With the exception of Ms Meads, early conciliation took place on 4 September 2020 and the claim forms were presented on the same day.

16. Since the date of the hearing, the Department for Business, Energy and Industrial Strategy as been dissolved and superceded by the Department for Business & Trade. Accordingly, the successor department is substituted as the

second respondent. The Secretary of State and the Liquidators have been served with the notice of today's hearing. They have taken the decision to play no part and the Liquidators wrote on 3 October 2022 saying that they did not intend to appear at today's hearing.

The law

17. The relevant law may be stated fairly briefly. There is a duty on an employer to consult the appropriate representative by s.188 TULR(C)A and, if there has been a failure to comply with the requirement to consult, then s.189 provides that an employee who has the right to complain under that section, as all of these employees do, may present a claim to the Employment Tribunal on that ground.

18. The obligation to consult in s.188 applies where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. In recent times the question of how the term "establishment" is to be interpreted in that section has received a considerable amount of attention. It is only if the establishment has 20 employees or more that the obligation for collective consultation applies.

19. The cases of Rockfon A/S v Specialarbejderforbundet I Danmark [1996] ICR 673 ECJ and USDAW and anor v Ethel Auston Ltd and ors [2015] ICR 675, are authority for the proposition that an establishment may consist of a distinct entity having a certain degree of permanence and stability which is assigned to perform one or more given tasks and which has a workforce, technical means and a certain organizational structure allowing for the accomplishment of those tasks. The entity may not need to have any legal, economic, financial, administrative, or technological autonomy in order to be regarded as an establishment and it is not essential for the unit in question to be endowed with the management that can independently affect collective redundancies.

20. So, in the present case, the determinative question is whether, as the claimants allege, the unit to which they were assigned should be regarded as the whole of the undertaking or whether, since they had usual places of work of a store, the establishment should be regarded as being the store. It is clear from the authorities that the simple fact that a local unit does not having a managerial function for particular aspects of work is not something that precludes it being regarded as an establishment within the meaning of s.188.

21. The respondent company STA Travel UK Limited was a nationwide presence on the high street prior to its administration providing travel services to initially, and most famously, for students. It operated a London based Head Office which included and HR function and divided the rest of the country, which had some 52 branches, into 4 regions. There was also a Call Centre in Manchester.

22. There are a number of matters that are relied on by the claimants in support of their argument that the unit to which they were assigned should be the whole of the establishment.

22.1 They argue that they had contracts which required them to be willing to move, although the contracts that we have seen are not all in identical terms and they do, in a schedule, identify a designated normal place of work. In this respect, we think that the fact that the individuals may be required to move or may be required to have a mobility, is not particularly helpful in us deciding whether there is a unit that has some kind of cohesion to which they are assigned for the purposes of which they are carrying out work.

22.2 They also argue that the resources of the company meant that people were organised in the way that meants that they were able to call on people who were nominally assigned to one store to carry out particular tasks that had been initiated at a different store. They argued that people could be assigned to a different store to provide cover on a temporary basis. Miss Mears stated that she would be required to do so at least once a month.

22.3 They say that the training - which was cascaded down - was organised from head office but often took place at different stores. Miss Mears gave evidence about occasions on which a large number of individuals could be attending the St Albans store for training. We do not think that the St Albans store could say that there were 20 people assigned to that unit if the store-based unit approach was the correct one simply because some were attending even for training that took place over a number of weeks. However, our finding that activities were not limited to a particular location is relevant to the identity of the establishment.

22.4 The claimants stated that recruitment was organised from head office. Ms Risk and Miss Mears both said that they had been appointed Travel Experts without the advertisement designated a particular store at which the Travel Expert would be located. In the case of Miss Mears, she had applied for a Travel Expert role in the London area. The manager of a store would be sent a limited number of applications with pre-sifting being done by head office. This simple fact, without more, would not be sufficient to disprove the establishment being regarded as the local unit.

22.5 The claimants all pointed to the degree to which organisation of work required team working across regions and stores, and this is the matter that we think we give more weight to.

22.6 An example is that commissions were accrued on an individual basis rather than on a store basis and incentives allocated by region, not to an individual store. It was apparently common for staff at one store to be required to complete or change bookings that had been initiated at another store. This could happen if the client had visited one store originally and then attended another to compete or change the booking or if the claimant had visited a store originally and then used the national call number to make changes and complete a booking. That would explain why incentives were allocated to individuals and not on a store basis but showed that work done for a customer could be carried out at multiple sites.

22.7 Since booking had to be approved by a manager, there was very frequent recourse to fellow employees located outside the individual store during the course of the working day, because managers were not always present on site. This was also evidence of interrelated and connected ways of working.

22.8 Ms Risk, in particular, gave evidence that we accept about a single national call number so individual employees would log in, in the morning, into the call system and also to the online chat system. If the individual employee was available to pick up a call they might be allocated a call from anywhere in the country and they were therefore logging into a centralised call system. The client dialling the national number might get someone in the call centre or they might get someone in a store in any part of the country. Call selling was therefore done on a national basis. This was the situation prior to lockdown.

22.9 Individual entries on the system were carefully coded to ensure that the right sales adviser was credited with commission. This required high level cooperation between the stores and store managers.

23. When we come to consider the question of what is the unit to which these employees were assigned to carry out their duties, we give particular weight to the way in which they shared work on bookings to the central call system and the chat function. On the balance of probabilities the evidence as a whole causes us to conclude that the unit to which the claimants were assigned was the whole undertaking and not the individual local store. We also conclude that the number of employees in that undertaking should be viewed as the number of employees for the purposes of the s.188 duty to consult, rather than the number of employees at the particular stores.

24. We do bear in mind that a unit can be something without its own management function and therefore the head office role in HR, disciplinary, recruitment and marketing is not persuasive. The sharing of work across stores is a factor to which we give weight and that is the basis for our conclusion.

25. We do not therefore need to go on to consider the secondary argument raised by Rachel Meads that, at the time the redundancy, she was in fact assigned to a different unit because there had been reorganisation and a pulling together of employees from different parts of the county on the Covid Task Force. This took place when large numbers were furloughed at the beginning of April 2020. A small number of regional managers ran some teams headed by assistant managers such as Ms Meads, and a total of 72 people amongst these teams dealt with all of the enquiries for all of the clients working from home in the circumstances that we are all very familiar with at the start of the covid pandemic. The teams were made up of people who normally worked in very geographically disparate regions, and we can see from the evidence that we have been given, that a team might be comprised of individuals who would normally work in Leeds working alongside those from Warick and Scotland.

26. To the extent that it is relevant to the decision, given our conclusion on the primary argument, we think that the fact that the company was able to put this

in place so quickly supported our conclusion that they were already operating a national unit. However, we do not need to rule on this secondary argument. It does strike us that this was put together under unusual circumstances and it did not reflect how the organisation usually worked.

27. We should make clear that the evidence that we have accepted from Ms Mircheva is that she worked at the Victoria store throughout. It always had more than 20 employees, according to the information that she has provided in her statement. Therefore, regardless of the decision that we have made in respect of Ms Risk, Miss Dyer, Ms Meads and Miss Mears, the claim by Miss Mircheva would have succeeded because of the number allocated to the store at which she worked.

28. Our decision on the first issue is therefore that the respondent did propose to dismiss as redundant 20 more employees at one establishment within a period of 90 days or less. Our decision on the second is that the claimants were assigned to that establishment. As to the third issue, it is clear from what we have been told, that the respondent did not comply with their requirement to consult with employees. Therefore that the claims for protected awards are well founded. These are the only claims that remain to be brought by all of these claimants because any other claims that were initially brought had been satisfied by the insurance fund and have been dismissed on withdrawal.

29. We therefore conclude that the remaining claimants, with the exception of Mr Saunders, are entitled to a protective award. There were apparently no attempts to carry out consultation and no mitigating factors have been put forward by the first respondent justifying a reduction of the maximum period of 90 days and the Tribunal has discovered none. Therefore, applying the applicable law, the appropriate award is that the protected period is 90 days.

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Employment Judge George

Date: …23 April 2023……..

Sent to the parties on: ..25/4/23

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For the Tribunal Office