



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Duffield & 38 others

**Respondent:** Speedclad Limited (in Administration)

## JUDGMENT

The judgment of the Tribunal is that:

1. The Tribunal makes a protective award in respect of the Claimants whose names are set out in the attached 'Schedule of Claimants' who were dismissed as redundant by the Respondent on **17 August 2022**.
2. The Respondent is ordered to pay remuneration to the Claimants for the protected period. The protected period begins on **17 August 2022** and is for a period of 90 days.

## REASONS

1. The Respondent company was placed in administration on **16 August 2022**.
2. On **24 October 2022**, Mr Duffield and 38 of his former colleagues presented a Claim Form (Form ET1). The claimants claimed, under section 189(1)(d) Trade Union & Labour Relations (Consolidation) Act 1991, that their former employer, Speedclad Ltd failed to comply with its statutory obligations to inform and consult on collective redundancies. They sought a protective award. The Secretary of State was identified as an Interest Party and in accordance with rule 96 of the ET Rules was invited to say whether he wished to be heard. The Secretary of State sent a response (in the form of an ET3) on **14 November 2022**. He neither supported nor resisted the claims. However, he made submissions which he asked the Tribunal to consider before arriving at any decision.
3. On **16 November 2022**, the Administrators (James Lumb and Howard Smith) presented an ET3. They gave consent for the claims for a protective award to be heard by the Tribunal in the case of those identified on the ET3. The administrators indicated that they do not defend the claims for a protective award

by those identified. Those individuals in respect of whom the Administrators consented initially consisted of 37 of the 38 claimants. For some reason, Mr William Moore was not identified on the list of agreed claims. This was an oversight. The Administrators later corrected this and, on **28 March 2023**, gave consent for the claim of Mr Moore for a protective award to be determined by the tribunal.

4. Neither the Administrators nor the Secretary of State intended to participate at any hearing of this case.
5. Under rule 21 of the Tribunal Rules of Procedure 2013, where on the expiry of the time limit in rule 16 no response has been presented and no application for a reconsideration is outstanding, **or where the respondent has stated that no part of the claim is contested**, an employment Judge shall decide whether on the available material, a determination can properly be made of the claim or part of it. If there is, the judge shall issue a judgment, otherwise a hearing must be fixed before a judge alone. As this case is not contested, it is suitable for a rule 21 judgment to be considered but only if a judge is satisfied that a determination can properly be made without a hearing.
6. On **23 December 2022**, the Claimants' legal representative wrote to the Tribunal attaching a statement from the lead Claimant, Adam Duffield and asked for a Rule 21 judgment to be considered in this matter so as to dispense with any hearing. That statement contained an error, which was corrected by serving an amended statement of Mr Duffield's on **26 April 2023**.
7. The issues I had to decide were:
  - 1.1 Were the claimants dismissed by the Respondent?
  - 1.2 Did the Respondent propose to dismiss/dismiss as redundant 20 or more employees at one establishment within a period of 90 days?
  - 1.3 Were the employees of a description in respect of which there was an independent trade union recognised by the Respondent?
  - 1.4 If not, were there employee representatives appointed or elected by the affected employees, who had authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf?
  - 1.5 If not, were there employee representatives elected by the affected employees, for the purposes of section 188 Trade Union & Labour Relations (Consolidation) Act 1992, in an election satisfying the requirements of section 188A(1) of that Act?
  - 1.6 Has the Respondent failed to comply with a requirement of section 188 or section 188A of the Act?
  - 1.7 If so, should the Tribunal make a protective award?

1.8 If so, what award should be made?

### Findings

8. The day following the appointment of the Administrators on **16 August 2022**, 53 staff were made redundant (see section 6.1 of the ET3). All the employees in these proceedings and whose names appear in the Schedule of Claimants worked at Thurston House, Thurston Business Park DL6 2XQ' and were among the 53 made redundant. It is, therefore, undisputed that all the employees were dismissed on **17 August 2022** and that more than 20 employees at that one establishment were dismissed within a period of 90 days.
9. It is not in dispute and Mr Duffield's statement confirms – and I so find - that there was no independent trade union recognised by the Respondent. Nor was there any employee representative elected or invited to be elected. Further, it is not in dispute as confirmed by Mr Duffield's statement that there was no consultation or provision of information provided by the Respondent for the purposes of consultation at all prior to the announcement of redundancies.

### Relevant law

10. Under section 188 Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA'), an employer is required to consult 'appropriate representatives' of employees who may be affected by dismissals, or measures taken in connection with them. If the employer recognises a trade union for purposes of collective bargaining in respect of employees affected by the dismissals, they are obliged to consult the appropriate trade union official. If there is no recognised trade union, the employer is obliged to consult either an existing body of employees' representatives who have been appointed or elected for other consultation purposes but who have authority to be consulted about the proposed dismissals, or representatives who have been elected specifically for the purpose of the redundancy consultation.
11. An employee may bring a claim for a protective award on his own behalf only if there is no recognised trade union or elected employee representative, or if the claim relates to the employer's failure to arrange the election of employee representatives.
12. Section 188 requires there to be a proposal to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. There have been a number of cases both domestic and European concerning the meaning of 'establishment' for these for these purposes. In **Martime Ltd v Nautilus International** [2019] IRLR 286, CA, Underhill LJ made clear that the focus of the authorities was on the functional and organisational characteristics of the establishment and on whether it constituted a unit. Closely related to this is whether it is located at a single 'place'. The EU authorities made clear that the term was to be defined broadly: **Rockfon A/S v Specialarbejderforbundet i Danmark** [1996] I.C.R.R 673, ECJ and **Athinaiiki Chartopoiia AE v Panagiotidis and others** [2007] 284, ECJ.

13. Basically, the 'establishment' is the unit, or place of work, to which the redundant employees are assigned to carry out their duties. In some cases (where a business does not have several distinct units) the establishment and the company (or the head office from which it operates) will be one and the same thing. However, in other cases, there may be several different 'establishments' to which employees are assigned and where those establishments are all part of a larger undertaking. There must be at least 20 based at each establishment before the duty to collectively consult is triggered in relation to that establishment.
14. The remedy for a failure to comply with section 188 is set out in section 189 TULRCA. The award is for a 'protected period', beginning 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 earlier). It continues for however long the tribunal decides is just and equitable (section 189(4) TULRCA). The award is subject to a 90-day maximum.
15. The authorities make it clear that the protective award is designed to be putative rather than compensatory: **Susie Radin Ltd v GMB & Others** [2004] I.C.R. 893. In that case, the court identified five factors which tribunals should have in mind when considering section 189 TULRCA:
  - 15.1 The purpose of the award is to provide a sanction,
  - 15.2 The focus must be on the seriousness of the employer's default – albeit the tribunal has a wide discretion as to what it considers just and equitable,
  - 15.3 The default may vary in seriousness from the technical to a complete failure, both to provide the required information and to consult,
  - 15.4 The deliberateness of the failure may be relevant, as may the availability to the employer of legal advice about its obligations under section 188 and
  - 15.5 How the tribunal assesses the length of the period is a matter for the tribunal but that a proper approach where there has been no consultation is to start with the maximum of 90 days and reduce it only if there are mitigating circumstances justifying a reduction to an extent to which the tribunal considers appropriate.

## Conclusions

16. As observed by the Secretary of State in these proceedings, the Tribunal has to satisfy itself, among other things, that:
  - 16.1 The claimants are eligible to bring the claims.
  - 16.2 The Respondent must have proposed to dismiss/dismissed as redundant 20 or more employees at one establishment within a period of 90 days or less. If the dismissals were of employees based at multiple establishments, where fewer than 20 employees were affected, the duty to consult would not arise and no protective award would be available to employees at that establishment.

17. I was satisfied from the material that there was no appropriate representative and that all the employees in these proceedings worked at a 'single establishment' which consisted of 20 or more affected employees all of whom were dismissed on **17 August 2022**.
18. The claimants are seeking an award of 90 days on the basis that there was zero consultation or information given in advance of the redundancies. There does not appear to be any dispute about this – indeed, the Administrators confirm that as soon as they were appointed, the redundancies were effected. There was nothing indicated to the employees prior to the appointment of the Administrators.
19. There is no suggestion that a protective award should not be made and I conclude that it is appropriate to make one. In the absence of any challenge to Mr Duffield's evidence and given the decision in **Susie Radin Ltd v GMB & Others** [2004] I.C.R. 893 and in the absence of any submissions that an appropriate award would be less than 90 days, an appropriate award would, in my judgment, be 90 days, the period running from **17 August 2022**.

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**Employment Judge Sweeney**

Date: 26 May 2023

## **SCHEDULE OF CLAIMANTS**

2501727/2022 Mr Adam Duffield -v- Speedclad Limited  
2501728/2022 Mr alexander love -v- Speedclad Limited  
2501729/2022 Mr anthony blake -v- Speedclad Limited  
2501730/2022 Mr aston blake -v- Speedclad Limited  
2501731/2022 Mr calum mackay -v- Speedclad Limited  
2501732/2022 Mr chris salmon -v- Speedclad Limited  
2501733/2022 Mr dale middleton -v- Speedclad Limited  
2501734/2022 Mr daniel foxall -v- Speedclad Limited  
2501735/2022 Mr daniel rafiq -v- Speedclad Limited  
2501736/2022 Mr david hunter -v- Speedclad Limited  
2501737/2022 Mr dean oulton -v- Speedclad Limited  
2501738/2022 Ms fiona wells -v- Speedclad Limited  
2501739/2022 Mr flaviu pascori -v- Speedclad Limited  
2501740/2022 Mr fraser brown -v- Speedclad Limited  
2501741/2022 Mr giles cressey -v- Speedclad Limited  
2501742/2022 Ms hannah jeffrey -v- Speedclad Limited  
2501743/2022 Mr hassan munir -v- Speedclad Limited  
2501744/2022 Mr james fordham -v- Speedclad Limited  
2501745/2022 Mr jamie mcgown -v- Speedclad Limited  
2501746/2022 Ms jill foster -v- Speedclad Limited  
2501747/2022 Mr jodie thomas -v- Speedclad Limited  
2501748/2022 Mr john hough -v- Speedclad Limited  
2501749/2022 Ms kati beattie -v- Speedclad Limited  
2501750/2022 Ms kirsty dunn -v- Speedclad Limited  
2501751/2022 Ms leaona wilson -v- Speedclad Limited  
2501752/2022 Mr matthew hall -v- Speedclad Limited  
2501753/2022 Mr matthew auger -v- Speedclad Limited  
2501754/2022 Mr michael ryder -v- Speedclad Limited  
2501755/2022 Ms nicole siswick -v- Speedclad Limited  
2501756/2022 Ms nima irani -v- Speedclad Limited  
2501757/2022 Mr patrick smith -v- Speedclad Limited  
2501758/2022 Mr paul huyton -v- Speedclad Limited  
2501759/2022 Mr paul flanaghan -v- Speedclad Limited  
2501760/2022 Mr paul anderson -v- Speedclad Limited  
2501761/2022 Ms amanda blake -v- Speedclad Limited  
2501762/2022 Ms sarah thomas -v- Speedclad Limited  
2501763/2022 Mr stephen cropper -v- Speedclad Limited  
2501764/2022 Mr stuart webber -v- Speedclad Limited  
2501765/2022 Mr william moore -v- Speedclad Limited