



EMPLOYMENT TRIBUNALS

Claimants: Ms N Walker & Others (see schedule)

Respondents: 1. PFP Energy Limited (in Administration)
2. Secretary of State for Business, Energy and Industrial Strategy

Heard at: Manchester (by CVP)

On: 8 June 2023

Before: Regional Employment Judge Franey
(sitting alone)

REPRESENTATION:

Claimants: Mr J Thompson (Consultant)

Respondents: No attendance

JUDGMENT

1. Permission is granted for the claim form in case number 2415392/2021 brought by Ms Demi Brown to be amended so that it now includes the following sentence:

“In the alternative I bring this claim as an employee representative under section 189(1)(b) of the Trade Union & Labour Relations (Consolidation) Act 1992.”

2. The claim brought by Ms Demi Brown as an employee representative under case number 2415392/2021 succeeds. The first respondent failed in its duty to inform and consult employee representatives under section 188 of the Trade Union & Labour Relations (Consolidation) Act 1992. A protective award is made requiring the first respondent to pay remuneration for a protected period of 90 days from 1 October 2021 (the date the first dismissal took effect) to all 52 affected employees, including the individuals identified as claimants in the schedule to this Judgment.
3. The recoupment regulations apply to the protective award.

4. All claims set out in the attached schedule, save that brought by Ms Demi Brown under case number 2415392/2021, are claims brought under section 189(1)(d) of the Trade Union & Labour Relations (Consolidation) Act 1992 by claimants in their individual capacity and are dismissed because they did not have standing to bring such claims.

Regional Employment Judge Franey

8 June 2023

JUDGMENT SENT TO THE PARTIES ON

13 June 2023

FOR THE TRIBUNAL OFFICE

Note

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Schedule

Case Number

Claimant

2415386/2021
2415387/2021
2415388/2021
2415389/2021
2415390/2021
2415391/2021
2415392/2021
2415393/2021
2415394/2021
2415395/2021
2415396/2021
2415397/2021
2415398/2021

Ms Naomi Walker
Mr Adam Lee
Ms Niki Mcintosh
Ms Rebecca Morrall
Ms Chloe Hartley
Mr Michal Wasielewski
Ms Demi Brown
Ms Nichola Simpson
Mr Paul Crokken
Ms Misha Panchal
Ms Rebecca Warren
Ms Ashleigh Niland
Mr Kunal Baweja

Claimant: N Walker and others

Respondent: 1. PFP Energy Limited (In Administration)
2. Secretary of State for Business Energy & Industrial Strategy

**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.

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.