



EMPLOYMENT TRIBUNALS

Claimant: Ms Georgia Stone

Respondent: Joules Ltd (in Administration) (1)
Secretary of State for Business, Energy and Industrial Strategy (2)

Heard at: Leicester Hearing Centre, Kings Court, 5A New Walk, Leicester, LE1 6TE
By video link

On: 19 May 2023

Before: Employment Judge Adkinson sitting alone

Appearances

For the claimant: In person

For the respondent: No attendance (1)
No attendance (2)

JUDGMENT

Amended under slip rule 69 on 27 June 2023

For the reasons set out below, the Tribunals judgment is that

1. The claimant's complaints under **TULCRA section 189** of a failure by the first respondent to comply with the requirements of **TULCRA section 188** are well-founded; and
2. The first respondent must pay a protective award equivalent to remuneration for the period of 90 days beginning on 21 ~~December~~ November 2022 ("the dismissal date") to the claimant.

Obligation on the first respondent to notify the Secretary of State

The first respondent is reminded of its obligation under **Employment Protection (Recoupment of Benefits) Regulations 1996/2349 regulation 6** which says:

"(1) Where an employment tribunal makes a protective award under section 189 of the 1992 Act against an employer, the employer shall give 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 (or proposed termination) of the employment of each such employee.

“(2) Subject to paragraph (3) below the employer shall comply with paragraph (1) above within the period of ten days commencing on the day on which the employment tribunal at the hearing announces to the parties the effect of a decision to make a protective award or (in the case where no such announcement is made) on the day on which the relevant decision is sent to the parties.

“(3) Where, in any case, it is not reasonably practicable for the employer to comply with paragraph (1) above within the period applicable under paragraph (2) above he shall comply as soon as reasonably practicable after the expiration of that period.”

REASONS

1. The Tribunal has taken the following into account when deciding this case:
 - 1.1. the oral evidence of the claimant on oath;
 - 1.2. the contents of the first respondent’s response;
 - 1.3. the contents of the second respondent’s response.
2. The Tribunal notes:
 - 2.1. The first respondent does not defend the claim and proffers no mitigating circumstances, and
 - 2.2. The second respondent neither admits nor denies the claim but requires the claimant to prove her claim.
3. The Tribunal notes the following background facts:
 - 3.1. The first respondent is in administration;
 - 3.2. The first respondent’s administrator consented on 4 January 2023 to the claim continuing to be heard and determined;
 - 3.3. The claimant presented their claim to the Tribunal on 30 November 2022 following early conciliation between 28 and 30 November 2022;
4. After hearing the claimant’s evidence and considering the responses, the Tribunal makes the following findings of fact on the balance of probabilities.
 - 4.1. The claimant and her fellow other employees worked at a single establishment known as and located at Joules Ltd, The Barn, Rockingham Road, Market Harborough, Leicestershire LE16 7QD (“the establishment”);
 - 4.2. On 21 November 2022 (“the dismissal date”) the respondent summarily dismissed the claimant and other employees at the establishment because they were redundant;
 - 4.3. The number of employees the first respondent dismissed at the establishment was 39 persons;
 - 4.4. before their dismissal and in breach of the **Trade Union and Labour Relations (Consolidation) Act 1992 (“TULCRA”) sections 188 and 189**, the first respondent:

- 4.4.1. failed to organise the election of employee representatives or to consult with them;
 - 4.4.2. did not consult in any way with the claimant or any of the other employees there or any relevant trade union; and
 - 4.5. The claimant is not a Trade Union nor an employee's representative as set out in **TULCRA sections 188 and 189**. She claims only for herself.
5. The Tribunal has taken account of the law set out in the second respondent's response but, based on the findings of fact, it finds the following law particularly relevant:
 - 5.1. **TULCRA sections 188 and 189**;
 - 5.2. **Independent Insurance Co Ltd v Aspinall [2011] IRLR 716 EAT** (which says claimants who are not Trade Union representatives or employee representatives can claim a protective award only for themselves and not on behalf of others);
 - 5.3. **Union of Shop, Distributive and Allied Workers v WW Realisation 1 Limited (in liquidation) (C-80/14) [2015] ICR 675 ECJ** ("establishment" in Directive 98/59 (and so in TULCRA sections 188 and 189 must be interpreted as referring to the entity to which the workers made redundant were assigned to carry out their duties.);
 - 5.4. **Susie Radin v GMB [1994] ICR 893 CA** (which indicates that where there has been no consultation, one starts from the position that a protective award should be for 90 days, reduced only to reflect any mitigating circumstances).
6. The Tribunal thus concludes:
 - 6.1. The claimant and 38 other employees all worked at the establishment defined above at the dismissal date;
 - 6.2. The establishment is a single establishment;
 - 6.3. The claimant and those employees who worked at the establishment on the dismissal date were dismissed summarily that day because of redundancy;
 - 6.4. The claimant is not a representative employee and cannot therefore claim on behalf of others.
 - 6.5. The consultation scheme in **TULCRA sections 188-189** applied;
 - 6.6. The first respondent failed to comply with the consultation scheme set out in **TULCRA sections 188-189**;
 - 6.7. There are no circumstances that mitigate the first respondent's failure to consult.
7. For those reasons the claim succeeds and the Tribunal makes the order set out above.

Employment Judge Adkinson

Date: 19 May 2023

Amended on 27 June 2023

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