



EMPLOYMENT TRIBUNALS

Claimants

1. Community Union
2. Mrs Margaret Beattie and others

v

Respondents

1. Sargent Shoes Online Limited
(in liquidation)
2. Secretary of State for Business,
Energy and Industrial Strategy

JUDGMENT ON APPLICATION FOR RECONSIDERATION

1. The first claimant's application for reconsideration of the decision dated 17 February 2023 is granted in the interests of justice.
2. The claim brought by Community Union under section 189(1)(c) that the first respondent breached s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992 [TULRCA 1992] by failing to consult in respect of redundancies proposed at its establishment is well founded and succeeds in respect of the class of employees whom it represents, which are all production and distribution workers.
3. The claim brought by Mr Paul Sargent under section 189(1)(d) of the TULRCA 1992 that the first respondent breached s. 188 of the TULRCA 1992 by failing to consult in respect of redundancies proposed at its establishment is well founded and succeeds.
4. The Tribunal makes a protective award in accordance with s.189 TULRCA 1992.
5. The protected period to which the award relates is 90 days.
6. The claims brought by all other claimants are dismissed.

REASONS

1. I am of the view that it is in the interests of justice to grant the application because the original decision did not fully encompass the description of

employees in respect of whom Community Union was recognised. This was not the intention of my decision and so I have corrected it.

Procedure

2. The first claimant applied in writing for my judgment to be reconsidered. I sought representations from the respondents. There was no objection from the second respondent. The liquidator appointed said that first respondent supported the application.
3. I decided that a hearing was not necessary in the interests of justice. The parties have been able to make written representations. Further, this reconsideration simply reflects my original intention rather than a material change in my interpretation of the law and facts. I have considered the overriding objective, which requires me to deal with cases fairly and justly.

Issue

4. There are five employees within the class of people that the Community Union is recognised as representing. They were not members of Community Union. My original decision had the effect of restricting the protective award to members of Community Union, rather than people who matched the description of those it was recognised as representing.

The law

5. Section 188(1) of the TULCA 1992 states that 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.
6. Section 188(1B)(a) deals with the appropriate representatives of affected employees. It states that if the employees are of a description in respect of which an independent trade union is recognised by their employer, then representatives of the trade union are the appropriate representatives.
7. Section 189(1) of the TULCA 1992 states that:

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.

8. Section 189(2) of the TULRCA 1992 states that if the tribunal finds a complaint well-founded it shall make a declaration to that effect and may also make a protective award.

9. Section 189(4) of the TULRCA 1992 states that:

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.

10. In the case of *Susie Radin Ltd v GMB and others* [2004] EWCA Civ 180 the Court of Appeal identified the following matters that tribunals ought to take into account when considering whether or not to make a protective award (see paragraph 45 of that judgment):

- “(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 tribunal 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 tribunal assesses the length of the protected period is a matter for the tribunal, 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 tribunal consider appropriate.”*

Conclusions

11. The period of the protective award begins on 15 January 2021.

12. It is just and equitable in all the circumstances for the period of the protective award to be for 90 days. The reasons for this are set out in my original judgment dated 17 February 2023.
13. Mr Paul Sargent is entitled to a protective award and has brought a claim in his own right that is well-founded and succeeds.
14. The complaint for a protective award by Community Union is well-founded and succeeds in respect of the class of employees that it represents. The class of employees that it represents are production and distribution workers.
15. In light of my findings, the claims brought by all other claimants (except Community Union and Mr Paul Sargent) are dismissed.

Employment Judge Rebecca Freshwater

Date: 20 June 2023

Sent to the parties on: 26 June 2023

For the Tribunal Office