



EMPLOYMENT TRIBUNALS

Claimant: Ms C Ayres and 14 others
Respondent: Clements Limited (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
Decided on the papers
On: 13 June 2023
Before: Employment Judge Adkinson sitting alone
Appearances
For the claimant: Submissions on the papers
For the respondent: No attendance (1)
Submissions on the papers (2)

JUDGMENT

For the reasons set out below, the Tribunal's judgment is that:

1. The claimants' 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
 - 2.1. 21 September 2022 for those claimants that it dismissed on that date because they were redundant, and
 - 2.2. 4 November 2022 for those claimants that it dismissed on that date because they were redundant;
3. All other claims are dismissed because the claimants have withdrawn them.

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 witness statements of
 - 1.1.1. Alexandra Robertson-Park,
 - 1.1.2. Jamey Johnson, and
 - 1.1.3. Linda Inskip;
 - 1.2. the documents in the bundle of 52 pages prepared by the claimants in support of their claim;
 - 1.3. the claimants' claim and written submissions;
 - 1.4. the contents of the second respondent's response; and
 - 1.5. the consent of the administrators for the claims to continue given in writing on 10 January 2023.
2. The Tribunal notes:
 - 2.1. The first respondent has not filed a response, evidence or submissions and in particular has proffered no mitigating circumstances for the Tribunal to consider;
 - 2.2. The second respondent neither admits nor denies the claim but requires the claimant to prove her claim;
 - 2.3. The claimants on 18 May 2023 withdrew all other claims before the Tribunal except for their claims for a protective award.
 - 2.4. The claimants presented their claim to the Tribunal on 20 December 2022 following early conciliation between 14 and 19 December 2022;
3. After considering the above, the Tribunal makes the following findings of fact on the balance of probabilities.

- 3.1. All claims were presented within the time limits for presenting such claims.
- 3.2. The claimants and their fellow other employees worked at a single establishment known as and located at Clements Limited, 30 Waterside Road, Hamilton, Leicester, LE5 1TL (“the establishment”);
- 3.3. There were at least 20 employees at the establishment whom the first respondent was proposing to dismiss because they were redundant;
- 3.4. The first respondent implemented that proposal in 2 tranches:
 - 3.4.1. On 21 September 2022 (“the first dismissal date”) the respondent summarily dismissed most of the claimant and other employees at the establishment because they were redundant, and
 - 3.4.2. On 4 November 2022 (“the second dismissal date”) the remaining claimants were dismissed because they were redundant;

The claimants have not set out which claimants were dismissed on which date, but I am satisfied all were dismissed by the second dismissal date, and in the two tranches I refer to above.

- 3.5. The first and second dismissal dates were all part of the same redundancy process and exercise. The first respondent made one proposal to dismiss them – it merely staged the dates of dismissal;
- 3.6. Before their dismissal and in breach of the **Trade Union and Labour Relations (Consolidation) Act 1992 (“TULCRA”) sections 188 and 189**,
 - 3.6.1. there was no recognised trade union;
 - 3.6.2. the first respondent:
 - 3.6.2.1. failed to organise the election of employee representatives or to consult with them;
 - 3.6.2.2. did not consult in any way with the claimants or any of the other employees there; and
 - 3.6.2.3. None of the claimants is a Trade Union nor an employee’s representative as set out in **TULCRA sections 188 and 189**. They claim only for themselves.

4. 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:

- 4.1. **TULCRA sections 188 and 189;**
 - 4.2. **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);
 - 4.3. **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).
5. The Tribunal thus concludes:
- 5.1. The respondent proposed to dismiss as redundant at least 20 employees at the establishment defined above;
 - 5.2. The establishment is a single establishment;
 - 5.3. The claimants were among those employees and worked at that establishment;
 - 5.4. The first respondent implemented that proposal and dismissed the claimants because of redundancy;
 - 5.5. It dismissed them in 2 tranches: some on the first dismissal date and the remainder on the second dismissal date;
 - 5.6. The claimants are not representative employee and cannot therefore claim on behalf of others;
 - 5.7. The consultation scheme in **TULCRA sections 188-189** applied;
 - 5.8. The first respondent failed to comply with the consultation scheme set out in **TULCRA sections 188-189**; and
 - 5.9. There are no circumstances that mitigate the first respondent's failure to consult.
6. For those reasons the claim for a protective award succeeds and the Tribunal makes the order set out above. It will be for the claimants to confirm their dismissal date in any claim to the second respondent for payment out of the national insurance fund.
7. All other claims are dismissed on withdrawal.

Employment Judge Adkinson

Date: 13 June 2023

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