



EMPLOYMENT TRIBUNALS

Claimants: (1) Unite the Union
(2) Mr J O'Malley
(3) Mr A Murphy

Respondents: (1) SHS Integrated **Services** (Transmission) Ltd
(2) Secretary of State for Business, Energy and Industrial Strategy

Heard at: Cardiff (by CVP) **On:** 2 June 2023

Before: Employment Judge C Sharp
(sitting alone)

Representation:
Claimants: Mr L Bronze (Counsel)
Respondents: Not in attendance

JUDGMENT

The judgment of the Employment Judge sitting alone is that:

1. The Second Respondent was added as a party on its own application;
2. The claims brought by the Second and Third Claimants (1600511/17 and 1600513/17) are dismissed on the basis that they did not have standing to bring claims due to the recognition of the First Claimant;
3. The complaint that the First Respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded.
4. UNITE the Union (the First Claimant) was recognised by the Respondent under the terms of the National Agreement for the Engineering Construction Industry

(NAECI) ‘Blue Book’ and covered all manual workers below the level of management of the First Respondent.

5. The Tribunal makes a protective award in respect of all employees of the First Respondent who were members of the collective bargaining unit represented by the First Claimant and assigned work from its premises at 15A Atlantic Business Park, Barry, Vale of Glamorgan CF63 3RF (the establishment) who were dismissed as redundant on or after 2 March 2017 and were not subject to a protective award made by consent on 19 March 2019 in respect of SHS Integrated Services Ltd – in Administration (1600495/17). Appendix 1 to this Judgment sets out the names of the affected employees represented by the Union, who were mobile employees, but part of the establishment.
6. The Tribunal orders the First Respondent to pay those employees remuneration for the protected period of 90 days beginning on 2 March 2017. The Recoupment Regulations apply.
7. This judgment does not prevent a claim being made to the Second Respondent for payment from the National Insurance fund in respect of the First Respondent’s liability.

Employment Judge C Sharp

Dated: 2 June 2023

Corrected: 12 June 2023 & 10 July 2023

JUDGMENT SENT TO THE PARTIES ON 12 July 2023

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS Mr N Roche

NOTE:

This is a written record of the Tribunal’s decision. Reasons for this decision were given orally at the hearing. Written reasons are not provided unless (a) a party asks for them at the hearing itself or (b) a party makes a written request for them within 14 days of the date on which this written record is sent to the parties. This information is provided in compliance with Rule 62(3) of the Tribunal’s Rules of Procedure 2013.

APPENDIX 1: CLAIMANTS WITHIN THESE PROCEEDINGS

Mr Ashley Murphy 1 Tedburn Close, Gateacre, Liverpool, Merseyside, L25 3NS

Mr James O'Malley 44 Daffodil Road, Wavertree, Liverpool, Merseyside, L15
6UQ

ANNEX TO THE JUDGMENT

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance, universal credit and Income Support Protective Awards

Under the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, it is the responsibility of the respondent to inform the Department for Work and Pensions (DWP) of the following information in writing:

- a) name, address and National Insurance number of every employee the award relates to; and
- b) the date of termination (or proposed termination) of every employee the award relates to.

This information should be sent to the DWP within 10 days of the judgment being announced at the hearing or within 10 days of the date that the judgment was sent to the parties if the judgment was reserved. If it is not reasonably practicable for the respondent to meet this deadline, the information must be sent as soon as is reasonably practicable after the 10 day period.

The remuneration due to an employee under the award should not be paid immediately. This is because the Department for Work and Pensions (DWP) has the right to recover (recoup) any Jobseeker's Allowance, income-related Employment and Support Allowance, universal credit or Income Support which it paid to the claimant after dismissal. This will be done by way of a Recoupment Notice which will be sent to the respondent usually within 21 days of receiving the above information from the respondent.

When the DWP sends the Recoupment Notice, the respondent must pay the amount specified in the Notice by the Department. The balance of the remuneration under the award is then payable to the employee(s) subject to the deduction of any tax or social security contributions. If the DWP informs the respondent that it does not intend to issue a Recoupment Notice, the respondent must immediately pay the whole of the remuneration to the claimant.

The claimant will receive a copy of the Recoupment Notice from the DWP. If the claimant disputes the amount in the Recoupment Notice, the claimant must inform the DWP in writing within 21 days. The tribunal has no power to resolve such disputes which must be resolved directly between the claimant and the DWP.