



EMPLOYMENT TRIBUNALS

Claimant: Mr R Brown (1) Mr S Orpen (2) Mr I Marshall (3)

Respondent: MOLD Systems (Europe) Limited

JUDGMENT ON LIABILITY AND REMEDY

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Judgment of the Employment Tribunal is as follows:

1. The claimants' claims under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") of a failure by the respondent to comply with the requirements of section 188 of the 1992 Act are well-founded.
2. The Tribunal orders the respondent by way of a protective award under section 189(3) of the 1992 Act to pay to the claimants a payment equivalent to remuneration for the period of 90 days beginning on 28 November 2022.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to the protective award for a period of 90 days beginning on 28 November 2022.

REASONS

1. The claimants submitted their ET1 form to the Employment Tribunal on 16 March 2023. A copy of the claim form was forwarded to the respondent at their registered office address by the Tribunal on 6 April 2023 and the respondent had until 4 May 2023 to file a response.
2. The respondent entered into administration on 28 November 2022. The administrator wrote to the Tribunal on 11 May 2023 stating that they agreed to lifting the moratorium to enable the claims to proceed but did not intend to admit or defend any claim.

3. On 28 November 2022 the administrators told the claimant that the business was closing and that they were dismissed with immediate effect. The first dismissal took effect on 28 November 2022 and the last dismissal took effect on 30 November 2022. The respondent dismissed as redundant 26 employees between 28 November 2022 and 30 November 2022.
4. There was no proper warning or consultation undertaken with a recognised trade union or the claimants. There was no consultation with the claimants and no employee representatives had been elected or appointed for any such consultation within section 188A of the 1992 Act.
5. In the circumstances, the respondent is in breach of the duty under section 188 of the 1992 Act and the Tribunal makes an award under section 189 in favour of the claimants for the maximum protected period of 90 days commencing on 28 November 2022.
6. The respondent is advised of the provisions of regulation 6 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within ten days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the respondent must comply with the provisions of regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:
 - a. The names, addresses and national insurance numbers of the claimants to whom the award relates; and
 - b. The date of termination of the employment of the claimants.
7. The respondent will not be required to make any payment under the protective award until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the respondent.
8. As no response has been received by the Tribunal from the Respondent, the above Judgment has been entered without a hearing on the basis of the information provided by the claimant and in accordance with Rule 21 of the Employment Tribunal Rules of Procedure 2013.

Employment Judge Arullendran

Date: 18 July 2023