

Claim Numbers: 1307858/2022 and others and 1305522/2022 and others  
(see schedules attached)

## EMPLOYMENT TRIBUNALS

**Claimants:**

(1) Mr J Hunt-King and others v  
(2) Mr R Fitzgerald and others

(see schedules attached)

**Respondents:**

(1) Richmann Walsh Engineering Limited (In Administration)

(2) The Secretary of State for Business Enterprise and Industrial Strategy

### FINAL (MERITS) HEARING (CONDUCTED BY CONSENT ON THE PAPERS)

Heard at: **Birmingham** On: **10 August 2023**  
Before: **Employment Judge Perry**

## JUDGMENT

These two sets of claims were consolidated by an order of Regional Employment Judge Findlay on 4 January 2023.

Consents having been provided by the Administrator of the First Respondent to these claims being pursued.

The claims have been determined on the papers following an application from some of the claimants that was granted by Employment Judge Broughton, the respondents having not expressly indicated they intend to contest the claims.

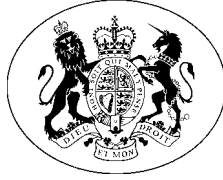
1. The complaints that the First Respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 are well founded.
2. I make a protective award in respect of all the Claimants listed in the schedules attached and order the First Respondent to pay to each of the Claimants remuneration for the protected period of 90 days beginning on 20 July 2022.
3. The recoupment notice attached applies in relation to the protective awards.
4. Any remaining claims are dismissed.

**Employment Judge Perry**  
10 August 2023

**Notes**

Having been determined on the papers, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

The Employment Tribunal is required to maintain a register of all judgments and written reasons. The register must be accessible to the public. Shortly after a copy of all judgments and reasons are sent to the parties a copy will be published, in full, at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions). The Employment Tribunal has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the Employment Tribunal for an order



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to that effect under Rule 50 of the Employment Tribunal's Rules of Procedure. Such an application would need to be copied to all other parties for comment.

## **ANNEX TO THE JUDGMENT (PROTECTIVE AWARDS)**

### Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The respondent is under a duty to give the Secretary of State the following information in writing: (a) the name, address and National Insurance number of every employee to whom the protective award relates; and (b) the date of termination (or proposed termination) of the employment of each such employee.

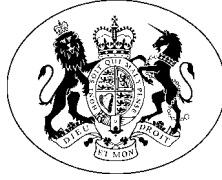
That information shall be given within 10 days, commencing on the day on which the Tribunal announced its judgment at the hearing. If the Tribunal did not announce its judgment at the hearing, the information shall be given within the period of 10 days, commencing on the day on which the relevant judgment was sent to the parties. In any case in which it is not reasonably practicable for the respondent to do so within those times, then the information shall be given as soon as reasonably practicable thereafter.

No part of the remuneration due to an employee under the protective award is payable until either (a) the Secretary of State has served a notice (called a Recoupment Notice) on the respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the respondent in writing that no such notice is to be served.

This is without prejudice to the right of an employee to present a complaint to an Employment Tribunal of the employer's failure to pay remuneration under a protective award.

If the Secretary of State has served a Recoupment Notice on the respondent, the sum claimed in the Recoupment Notice in relation to each employee will be whichever is the less of:

- (a)** the amount (less any tax or social security contributions which fall to be deducted therefrom by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Secretary of State receives from the employer the information referred to above; OR
- (b)** (i) the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or income support to the employee for any period which coincides with any part of the protected period falling before the date described in (a) above; or
- (ii)** in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of universal credit for the UC period that would not have been paid if the person's earned income for that



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period was the same as immediately before the period to which the prescribed element is attributable.

The sum claimed in the Recoupment Notice will be payable forthwith to the Secretary of State. The balance of the remuneration under the protective award is then payable to the employee, subject to the deduction of any tax or social security contributions.

A Recoupment Notice must be served within the period of 21 days after the Secretary of State has received from the respondent the above-mentioned information required to be given by the respondent to the Secretary of State or as soon as practicable thereafter.

After paying the balance of the remuneration (less tax and social security contributions) to the employee, the respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the respondent as a debt to the Secretary of State, whatever may have been paid to the employee, and regardless of any dispute between the employee and the Secretary of State as to the amount specified in the Recoupment Notice.