



EMPLOYMENT TRIBUNALS

Claimant: Mr Russell Richardson

Respondent: Se-Tek Limited (in administration)

Rule 96 party: Secretary of State for Business and Trade

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claimant's complaint under section 189 of the Trade Union & Labour Relations (Consolidation) Act 1992 that the respondent failed to comply with a requirement of section 188 or section 188A succeeds;
2. The respondent is ordered to pay by way of a protective award under section 189(3) of the Act a payment equivalent to remuneration for the period of 90 days beginning on 1 July 2022.
3. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to this award.

REASONS

1. The claimant has made a complaint pursuant to section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 on the ground that the respondent failed to comply with a requirement of section 188.
2. The respondent's administrator has given consent for the claim to continue.
3. I have decided that a determination can properly be made of that complaint on the available material.
4. I am satisfied of the following matters.
5. As at 22 June 2022, the respondent was proposing to dismiss as redundant, within a period of 90 days or less, 20 or more employees who were assigned to carry out their duties at West Quay Road, Sunderland Enterprise Park, Sunderland SR5 2TD.
6. The claimant was an employee of the respondent who may be affected by the proposed dismissals. The claimant was assigned to carry out his duties

at the respondent's site at West Quay Road, Sunderland Enterprise Park, Sunderland SR5 2TD.

7. The site at West Quay Road, Sunderland Enterprise Park, Sunderland SR5 2TD was an establishment within the meaning of section 188.
8. By section 188(1), the respondent was required to consult about the dismissals all persons who were appropriate representatives of any employees who may be affected by the proposed dismissals, or may be affected by measures taken in connection with those dismissals.
9. The claimant was not an employee of a description in respect of which an independent trade union was recognised by the respondent. There were no employee representatives appointed or elected by the affected employees within the meaning of section 188(1B)(b).
10. The claimant is therefore entitled to present a complaint under section 189 on the ground that the respondent has failed to comply with section 188.
11. The complaint was presented within the primary time limit at section 189(5).
12. The respondent has failed to comply with section 188. There is no information before me to suggest that it was not reasonably practicable for the respondent to comply with its obligations to consult.
13. The complaint pursuant to section 189 is well founded.
14. I am satisfied that it is appropriate to make a protective award.
15. There is no information before the Tribunal that any consultation took place in the manner required by section 188(4) or of any mitigating circumstances. Taking into account the guidance in the case of Susie Radin Ltd v GMB, I am satisfied that it is just and equitable that the length of the protected period should be the maximum of 90 days.

Employment Judge Jeram

18 August 2023
