



# EMPLOYMENT TRIBUNALS

Claimant: Maxime Bedouet & others

Respondent: Power By Britisvolt Limited (in Administration)

## JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The judgment of the Tribunal is that:

1. The Respondent failed to comply with the requirements of section 188 Trade Union & Labour Relations (Consolidation) Act 1992 ('the Act'). The claims of the Claimants in the attached 'Schedule of Claimants' for a protective award are well founded and succeed.
2. The Tribunal makes a protective award under section 189 of the Act in respect of the Claimants listed in the Schedule of Claimants. The protected period begins on **17 January 2023**.
3. The Respondent is ordered to pay remuneration to the Claimants for a protected period of 56 days beginning on **17 January 2023**.

## REASONS

1. The Respondent company was placed in administration on **16 January 2023**, the appointed joint administrators being Dan Hurd, Joanne Robinson and Alan Hudson.
2. On **14 February 2023**, Thompsons solicitors presented a Claim Form on behalf of 53 individual claimants (albeit with 54 case numbers – Mr Bedouet's claim having been allocated two numbers). The claimants claimed, under section 189(1)(d) Trade Union & Labour Relations (Consolidation) Act 1991, that their former employer, Power By Britishvolt Limited failed to comply with its statutory obligations to inform and consult on collective redundancies. They sought a protective award. Proceedings were served at the address of the Administrator, which was by then the registered office of the Respondent company.

**Case Number: 2500243/2023 & others (see Schedule of Claimants)**

3. On **04 April 2023**, solicitors for the Claimants applied to amend the Claim Form to add a further 24 claimants as parties. The Administrators have given their consent for the claims to proceed did not object to the application to amend to add the Claimants, which was permitted by the Tribunal.
4. The Respondent has served no response to the Claim. On **05 April 2023**, the administrators wrote to the Tribunal, with the consent and agreement of the Claimants' solicitors, to concede liability for failure to inform and consult under section 188 Trade Union and Labour Relations (Consolidation) Act 1992 and that a protective award should be made in respect of the protected period starting on **17 January 2023** for a period of 56 days. Attached to the email was a schedule of 79 claimants to whom – should the Tribunal agree – any such award would apply. Further claimants were subsequently added by amendment, bringing the total number of individual claimants to 81 (albeit there are 82 claims, due to Mr Bedouet, the lead Claimant, having been named twice).
5. The Secretary of State was identified as an Interested Party and in accordance with rule 96 of the ET Rules was added as a party on **11 July 2023**. The Secretary of State sent a response (in the form of an ET3) on **17 July 2023**. She neither supported nor resisted the claims. However, she made submissions which she asked the Tribunal to consider before arriving at any decision.
6. Under rule 21 of the Tribunal Rules of Procedure 2013, where on the expiry of the time limit in rule 16 no response has been presented and no application for a reconsideration is outstanding, **or where the respondent has stated that no part of the claim is contested**, an employment Judge shall decide whether on the available material, a determination can properly be made of the claim or part of it. If there is, the judge shall issue a judgment, otherwise a hearing must be fixed before a judge alone. As this case is not contested, it is suitable for a rule 21 judgment to be considered but only if a judge is satisfied that a determination can properly be made without a hearing.
7. The issues I had to decide were:
  - 1.1 Were the claimants dismissed by the Respondent?
  - 1.2 Did the Respondent propose to dismiss/dismiss as redundant 20 or more employees at one establishment within a period of 90 days?
  - 1.3 Were the employees of a description in respect of which there was an independent trade union recognised by the Respondent?
  - 1.4 If not, were there employee representatives appointed or elected by the affected employees, who had authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf?
  - 1.5 If not, were there employee representatives elected by the affected employees, for the purposes of section 188 Trade Union & Labour Relations (Consolidation) Act 1992, in an election satisfying the requirements of section 188A(1) of that Act?

## Case Number: 2500243/2023 & others (see Schedule of Claimants)

- 1.6 Has the Respondent failed to comply with a requirement of section 188 or section 188A of the Act?
- 1.7 If so, should the Tribunal make a protective award?
- 1.8 If so, what award should be made?

### Findings

8. There is an unchallenged account given in the Claim Form that all the claimants were based at the Respondent's premises at Blyth, at which establishment the Respondent employed significantly more than 20 employees, whom it proposed to dismiss as redundant within a period of 90 days. There is a further unchallenged account that there were no employee representatives appointed or elected by affected employees and that the Respondent made no arrangements for their appointment. There is also an unchallenged account that there was no recognised trade union. Finally, there is an unchallenged account by the Claimants that the Respondent failed to inform and consult with the employees in accordance with the obligations under section 188 Trade Union and Labour Relations (Consolidation) Act 1992.
9. That unchallenged account is reflected in an agreed consent order, drawn up by the Claimants' legal representatives and the liquidators. The Respondent's failures are explicitly acknowledged by the liquidators. It is conceded that a protective award should be made to the Claimants.

### Relevant law

10. Under section 188 Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA'), an employer is required to consult 'appropriate representatives' of employees who may be affected by dismissals, or measures taken in connection with them. If the employer recognises a trade union for purposes of collective bargaining in respect of employees affected by the dismissals, they are obliged to consult the appropriate trade union official. If there is no recognised trade union, the employer is obliged to consult either an existing body of employees' representatives who have been appointed or elected for other consultation purposes but who have authority to be consulted about the proposed dismissals, or representatives who have been elected specifically for the purpose of the redundancy consultation.
11. An employee may bring a claim for a protective award on his own behalf only if there is no recognised trade union or elected employee representative, or if the claim relates to the employer's failure to arrange the election of employee representatives.
12. Section 188 requires there to be a proposal to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less. There have been a number of cases both domestic and European concerning the meaning of 'establishment' for these for these purposes. In **Martime Ltd v Nautilus International** [2019] IRLR 286, CA, Underhill LJ made clear that the focus of the authorities was on the functional and

**Case Number: 2500243/2023 & others (see Schedule of Claimants)**

organisational characteristics of the establishment and on whether it constituted a unit. Closely related to this is whether it is located at a single 'place'. The EU authorities made clear that the term was to be defined broadly: **Rockfon A/S v Specialarbejderforbundet i Danmark** [1996] I.C.R.R 673, ECJ and **Athinaiki Chartopoiia AE v Panagiotidis and others** [2007] 284, ECJ.

13. Basically, the 'establishment' is the unit, or place of work, to which the redundant employees are assigned to carry out their duties. In some cases (where a business does not have several distinct units) the establishment and the company (or the head office from which it operates) will be one and the same thing. However, in other cases, there may be several different 'establishments' to which employees are assigned and where those establishments are all part of a larger undertaking. There must be at least 20 based at each establishment before the duty to collectively consult is triggered in relation to that establishment.
14. The remedy for a failure to comply with section 188 is set out in section 189 TULRCA. The award is for a 'protected period', beginning with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award (whichever is earlier). It continues for however long the tribunal decides is just and equitable (section 189(4) TULRCA). The award is subject to a 90-day maximum.
15. The authorities make it clear that the protective award is designed to be punitive rather than compensatory: **Susie Radin Ltd v GMB & Others** [2004] I.C.R. 893. In that case, the court identified five factors which tribunals should have in mind when considering section 189 TULRCA:
  - 15.1 The purpose of the award is to provide a sanction,
  - 15.2 The focus must be on the seriousness of the employer's default – albeit the tribunal has a wide discretion as to what it considers just and equitable,
  - 15.3 The default may vary in seriousness from the technical to a complete failure, both to provide the required information and to consult,
  - 15.4 The deliberateness of the failure may be relevant, as may the availability to the employer of legal advice about its obligations under section 188 and
  - 15.5 How the tribunal assesses the length of the period is a matter for the tribunal but that a proper approach where there has been no consultation is to start with the maximum of 90 days and reduce it only if there are mitigating circumstances justifying a reduction to an extent to which the tribunal considers appropriate.

## **Conclusions**

16. As observed by the Secretary of State in these proceedings, the Tribunal has to satisfy itself that the Claimants are eligible to bring the claims. In light of my findings above I was satisfied from the material that there was no appropriate representative and that all the employees in these proceedings worked at a 'single establishment' which consisted of 20 or more affected employees all of whom were dismissed on or within a period of 90 days from **17 January 2023**. I am satisfied that there was a failure to comply with the obligation to inform and consult under section 188 TULR(C)A. I consider it appropriate to make a protective award.

**Case Number: 2500243/2023 & others (see Schedule of Claimants)**

17. This is a case where all sides have access to professional advice and representation. Very helpfully, the Claimants' solicitors and the liquidators have cooperated and agreed that the length of the protected period should be 56 days. They are best placed to know the extent to which there had been relevant failures on the part of the Respondent and the seriousness of the default. It is in keeping with the overriding objective to encourage parties to resolve and agree issues to keep costs to a minimum and to avoid unnecessary litigation which takes up tribunal resources. Having regard to that and to the seriousness of the Respondent's unchallenged failures and the agreement reached, I consider it to be just and equitable to fix the length of the period as that which has been agreed between the representatives.

**Employment Judge Sweeney**

Date: 19<sup>th</sup> September 2023

JUDGMENT SENT TO THE PARTIES ON  
28<sup>th</sup> September 2023

S Stoker  
FOR THE TRIBUNAL OFFICE

**SCHEDULE OF CLAIMANTS**

Case Number	Claimant Name
2500243/2023	Maxime Bedouet
2500244/2023	Mr corey mumbly
2500245/2023	Mr graeme o'dowd
2500246/2023	Ms hayley brown
2500247/2023	Mr maxime bedouet
2500248/2023	Mr ben kilbey
2500249/2023	Mr jonathan maclean
2500250/2023	Mr daljit singh boughan
2500251/2023	Ms swapna velayudham
2500252/2023	Mr david betteridge
2500253/2023	Mr ian green
2500254/2023	Mr alireza soleimany mehranjani
2500255/2023	Mr richard taylor
2500256/2023	Mr dimitrios presvytis
2500257/2023	Mr jagdeep singh sagu
2500258/2023	Mr nick darlow
2500259/2023	Mr jonathan radcliffe
2500260/2023	Mr syed yasin musawi
2500261/2023	Mr guy stewart
2500262/2023	Mr yasha malekzad
2500263/2023	Mr yufeng guo
2500264/2023	Mrs kathryn mclaughlin
2500265/2023	Mr jochen schmerbitz
2500266/2023	Mrs edyta stenzel
2500267/2023	Mr emillio lopez lopez
2500268/2023	Mr amarjit bains
2500269/2023	Mr iain thomson
2500270/2023	Mr yashashchanda joginapally
2500271/2023	Mrs surabhi gautam
2500272/2023	Mr liam allan
2500273/2023	Miss gemma lee
2500274/2023	Mr terry day
2500275/2023	Mr ryan sinkinson
2500276/2023	Miss tracy machnicki
2500277/2023	Mr lewis kirkup
2500278/2023	Mr owen jozef von morgen
2500279/2023	Miss laura keiko diosdado
2500280/2023	Mr james corbin
2500281/2023	Mr clint kurinjirappalli
2500282/2023	Mr matthew shaw
2500283/2023	Mrs charlotte sheffield
2500284/2023	Mrs andril koval
2500285/2023	Mr ricardo penica

**Case Number: 2500243/2023 & others (see Schedule of Claimants)**

2500286/2023 Mr matt stock  
2500287/2023 Mrs joanna elliott  
2500288/2023 Miss michelle collie  
2500289/2023 Mr paul miller  
2500290/2023 Mr matthew william baldry  
2500291/2023 Mr david lathan  
2500292/2023 Mrs ting chen  
2500293/2023 Ms julia potts  
2500294/2023 Mr chaou choak tan  
2500295/2023 Mr lewis pearson  
2500296/2023 Mr kayode omojola  
2500297/2023 Mr tony campbell  
2501550/2023 Mrs Rajvinder Mandara  
2501551/2023 Mr Teweldemedhin Issak Teclerariam Teclerariam  
2501553/2023 Mr Mark Armstrong  
2501554/2023 Mr Alex Batten  
2501556/2023 Mr Pranay Kumar Reddy Kottam  
2501557/2023 Ms Shamila Balu  
2501558/2023 Mr Piotr Chmielewski  
2501559/2023 Miss Hannah Mather  
2501560/2023 Mr Jonathan Joseph Huntley  
2501561/2023 Mr Thomas Reid  
2501562/2023 Dr Georgios Triantafyllou  
2501563/2023 Mr Harry Bettinson  
2501564/2023 Mr James Thyer  
2501565/2023 Mr George Greenway  
2501566/2023 Mrs Alexandra Kedzierska  
2501567/2023 Ms Jayna Patel  
2501568/2023 Mr Thomas Halsted  
2501569/2023 Mr Rouzbeh Jarkaneh  
2501570/2023 Mr Ryan Curtis  
2501571/2023 Ms Jennifer Jones  
2501572/2023 Mr Elijah Marshall  
2501573/2023 Mr David Hewitt  
2501574/2023 Mr Gregory Leech  
2501575/2023 Dr Diana Mehta  
2501576/2023 Mr Lewis Allen  
2501577/2023 Mr Leuan Lewis  
2501578/2023 Mr Farhan Mohammed