



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr PJ Bell

**Respondent:** Short Richardson and Forth Limited In Voluntary Liquidation

## JUDGMENT ON RECONSIDERATION

On reconsideration, paragraph 1 of the Judgment dated 4 July 2023 is varied in accordance with Rules 70 to 72 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013, Schedule 1 in the following terms:

1. The claimant's claim 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 requirements of section 188 of the 1992 Act is well-founded. The claimant is not entitled to receive a protective award.

Paragraph 2 of the Judgment dated 4 July 2023 is confirmed.

### REASONS

1. On 19 July 2023 the claimant submitted an application to the Tribunal requesting the Judgment dated 4 July 2023 to be reconsidered on the grounds that an error had been made in respect of the claim for a protective award following a failure by the respondent to carry out the collective consultation as required by section 188 of the 1992 Act.
2. The Tribunal wrote to the respondent and the Secretary of State, as an interested party in these proceedings, on 18 September 2023 and both were required to write to the Tribunal by 2 October 2023 with any objections to the requested reconsideration and with their views on whether the application could be determined without a hearing. Neither the respondent nor the Secretary of State have replied to the Tribunal's letter dated 18 September 2023.
3. The claimant indicated in their letter to the Tribunal dated 29 September 2023 that an oral hearing was not required to deal with this application.
4. As neither party requested an oral hearing, the above Judgment has been entered without a hearing on the basis of information provided by the claimant in accordance with Rules 70 to 72 of the Employment Tribunal Rules of Procedure 2013.

5. I accept the claimant's submissions that he was an employee affected by the respondent's proposal to dismiss 20 or more employees within a period of 90 days, in accordance with section 188 of the 1992 Act. As such, the previous decision was entered in error and I am satisfied that it is in the interests of justice to vary the decision at paragraph 1 of the Judgment dated 4 July 2023 to the effect that the claimant is entitled to a declaration that his claim under section 189 of the 1992 Act is well-founded.
  
6. I am not satisfied that the claimant is entitled to a protective award pursuant to section 189(3) of the 1992 Act because, as at the date of the Tribunal's decision (4 July 2023), the claimant had not been dismissed as redundant by the respondent nor was the respondent proposing to dismiss the claimant as redundant. The 1992 Act does not cover an employee whom the employer originally proposed to dismiss but is no longer proposing to dismiss as redundant at the time the protective award is made. Such individuals may be employees whom it was proposed to dismiss, but they are not employees whom it *is* proposed to dismiss and they cannot, therefore, claim the benefit of a protective award: Securicor Omega Express v GMB [2004] IRLR 9; Cranswick County Foods plc v Beall [2007] ICR 691.

**Employment Judge Arullendran**

Date: 16 October 2023