



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

5

**Case No: 2407060/2021 (V)**

**Held at Aberdeen on 24 November 2022**

10

**Employment Judge J M Hendry**

**Miss M Grandison**

**Claimant  
In Person**

15

20

**Peacocks Stores Limited (In Administration)  
C/O FRP Advisory Trading Ltd**

**1<sup>st</sup> Respondent  
No Appearance**

25

**Secretary of State for Business, Energy  
and Industrial Strategy**

**2<sup>nd</sup> Respondent  
No Appearance**

30

35

**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

40 The Judgment of the Tribunal is that:

1. The first respondent, Peacocks Stores Ltd acted in breach of its obligations in terms of s.188 of the Trade Union and Labour Relations (Consolidation) **E.T. Z4 (WR)**

Act 1992: and the first respondent, Peacock Stores Ltd should pay a Protective Award of 90 days remuneration to the claimant in terms of s.192 of the 1992 Act beginning 12 February 2022.

5

## REASONS

1. The claimant brought a claim for a Protected Award in terms of s.189 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“the 1992 Act”). The first respondent is in administration. The second respondents by letter dated 5 January 2022 consented to the current proceedings. The response form was lodged by the second respondents indicating that as statutory guarantor they neither supported nor resisted the claims. The Secretary of State was not represented at the hearing. Nevertheless, I had regard to the terms of the response form submitted by them.

### 15 The hearing

2. The hearing was conducted remotely by video conference using the Cloud Video Platform (“CVP”) system.
- 20 3. I heard evidence from Miss Grandison. I also had regard to an earlier Judgment promulgated in favour of other employees of the first respondents held in Aberdeen on 25 February 2022 by Judge Hosie and intimated to parties on 2 March 2022.
- 25 4. Miss Grandison gave clear and consistent evidence about the circumstances surrounding the termination of her employment. She was unaware of the other proceedings. Her circumstances mirrored findings made by Judge Hosie in his Judgment.
- 30 5. I was also satisfied that the claimant was entitled to make a claim in terms of s.189(1)(d) of the 1992 Act.

**Findings in fact**

6. The claimant was employed as the Store Manager of the first respondent's store situated at 456 Tottenham High Road, London. She was the Store Manager. She was employed from 28 March 1998 until 11 February 2021 when her employment was terminated without notice with effect from the 12 February 2021.
7. The first respondent went into administration on 26 November 2020.
8. The respondents have a number of stores in London. The claimant was not advised that there was a prospect of redundancy. At the time of termination of her employment she was on furlough. Out of the blue the claimant was asked to come into the store and arrange to clear it of stock. The claimant was not told what was likely to happen to her employment whether or not she would be made redundant or transferred.
9. There was no meaningful consultation with the claimant or other members of her staff by the first respondents in relation to proposed redundancies or by the administrators.
10. The claimant was dismissed because of redundancy in terms of s.139 of the Employment Rights Act 1996. At the time of the claimant's dismissal the other staff in her store and staff at other stores in London were dismissed. The first respondents had made more than 20 staff redundant on the date the claimant was dismissed or within the preceding thirty days.

**Discussion and Decision****Special circumstances**

11. I first of all considered whether, in terms of s.188(7) of the 1992 Act, there were special circumstances which rendered it not reasonably practicable for the first respondent to comply with its obligation to consult. As was said in

*Clarks of Hove Ltd v. Bakers' Union* [1978] ICR 1076 a "special circumstance" requires there to be something "exceptional", "out of the ordinary" or "uncommon". Redundancies are the consequence of adverse financial circumstances leading to insolvency. That appears to be the case here. Insolvency itself is not "exceptional" or "out of the ordinary". There were no "special circumstances" in the present case.

5

10

12. I was satisfied that the first respondent failed to comply with the requirements of s.188 of the 1992 Act in that it failed to consult and I shall make a declaration to that effect in terms of s.189(2).

15

13. Section 189(2) also provides that in addition to making such a declaration, a Tribunal "*may also make a protective award*". As I understand it, that issue, and the basis upon which any such award is calculated, is entirely a question for the Tribunal. In reaching my decision, I was assisted by the guidance of the Court of Appeal in *Susie Radin Ltd v. GMB & Others* [2004] IRLR 400:

20

*"A Tribunal in exercising its discretion to make a protective award, and for what period, should have regard:*

25

*(1) to the purpose of the award as a sanction for breach by the employers of their obligations to consult;*

*(2) to exercise of the Tribunal's discretion to do what is just and equitable while focusing on the seriousness of the employer's default, which may vary from the technical to a complete failure, as here, to provide any of the required information and to consult; and*

*(3) to adopt what Lord Justice Gibson described as the 'proper approach' in a case where there has been no consultation by starting with the maximum period and reducing it only if there are mitigating circumstances justifying a reduction."*

30

35

14. In the present case, the claimant was afforded no opportunity of proposing alternative measures which might have avoided or reduced the need for her redundancy or which might have enabled alternative work to be found. There were no mitigating circumstances which would justify a reduction in the maximum period. I decided, therefore, in all the circumstances, that it would be just and equitable to make a protective award for a period of 90 days,

starting from the 12 February 2022 being the date on which the claimant's employment was terminated, with immediate effect.

5 **Employment Judge: J M Hendry**  
**Date of Judgement: 2 December 2022**  
**Date sent to Parties: 2 December 2022**

10