



EMPLOYMENT TRIBUNALS

Claimants: D Belshaw and others (see schedule)
Respondent: Testerworld Limited (in administration)
Rule 96 party: Secretary of State for Business and Trade

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

1. The claimants' claims that the respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 in respect of their dismissals are well founded.
2. The Tribunal orders the respondent, by way of protective award under section 189(3) of the 1992 Act, to pay to each of the claimants a payment equivalent to remuneration for the period of 90 days beginning on 9 May 2022.

Recoupment

3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to these awards. In each case the protected period is the period of 90 days beginning on 9 May 2022.

Reasons

1. Each of the claimants named in the schedule has made a complaint under 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 in respect of his or her dismissal. The respondent company's administrators have given consent for the claims to continue.
2. The respondent has not presented a response to the claims.
3. I have decided that a determination can properly be made of the claimants' complaints on the available material.
4. On the available material I am satisfied of the following.

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- a. As at 9 May 2022 the respondent was proposing to dismiss as redundant at each of the following sites/depots, within a period of 90 days or less, 20 or more employees who were assigned to carry out their duties at the respective site/depot:
 - i. its depot/site at Shortwood Business Park, Barnsley;
 - ii. its depot/site at Low Prudhoe Industrial Estate, Prudhoe;
 - iii. its depot/site at Trafford Park;
 - iv. its depot/site at Rokeby Court, Runcorn;
 - v. its depot/site at Hainge Park, Tividale, Oldbury; and
 - vi. its depot/site at Waterglade Industrial Estate, West Thurrock.
- b. The claimants were employees of the respondent who may be affected by the proposed dismissals. They were assigned to carry out their duties at one of the sites/depots listed above. They were dismissed as redundant on 9 May 2022.
- c. For the purposes of section 188 Trade Union and Labour Relations (Consolidation) Act 1992, each of the respondent's depots/sites listed above was either an establishment in itself or it was part of a larger unit constituting an establishment. In order to determine the claimants' claims it is unnecessary for me to decide which of those possibilities was in fact the case.
- d. The respondent was required to consult about the dismissals all the persons who were appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals: section 188 Trade Union and Labour Relations (Consolidation) Act 1992. For the purposes of the consultation, the respondent was required to disclose in writing to the appropriate representatives the information set out at section 188(4) of the Act.
- e. The claimants were not employees of a description in respect of which an independent trade union was recognised by the respondent.
- f. There were no employee representatives appointed or elected by the affected employees otherwise than for the purposes of section 188, who had authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf.
- g. There were no employee representatives elected by the affected employees, for the purposes of section 188, in an election satisfying the requirements of section 188A(1). The respondent did not invite the affected employees to elect such representatives.
- h. The claimants are entitled to make a complaint under 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.
- i. The respondent failed to comply with the requirements of section 188 in respect of the claimants' dismissals.
- j. The respondent has not shown that there were special circumstances which rendered it not reasonably practicable for the employer to comply with any requirement of section 188.
- k. Each of the complaints was presented to the tribunal within the period of three months beginning with the date on which the claimant's dismissal took effect (taking into account section 292A).

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5. The claimants' complaints under s189 are well founded.
6. I have determined that it is appropriate to make a protective award under section 189.
7. In determining the length of the protected period I have had regard to the seriousness of the employer's default in complying with the requirements of section 188 and borne in mind guidance given in the case of *GMB v Susie Radin Ltd* [2004] EWCA Civ 180, [2004] IRLR 400.
8. I am satisfied on the material available that this a case where there has been no consultation at all in relation to the proposed dismissals and there are no mitigating circumstances. Therefore, it is just and equitable that the length of the protected period in the case of each claimant should be the maximum of 90 days.

Employment Judge **Aspden**

Date: 17 October 2023

Schedule of claimants

2501273/2022 and 2501274/2022	Diane Belshaw
2501275/2022	Marc Payne
2501276/2022	Michelle Gleed
2501277/2022	Kirsty Tambini
2501278/2022	Yvonne Walton
2501279/2022	Ian Haworth
2501280/2022	Jessica Stables
2501281/2022	James Crowther
2501282/2022	Neil Candy
2501283/2022	Baljit Hundal
2501284/2022	Stephen Round
2501285/2022	Jaktar Mann
2501286/2022	Rayhun Choudhury
2501287/2022	Shahale Little
2501289/2022	Oliver Hill
2501293/2022	Victoria Best
2501296/2022	Stephen Piggott
2501297/2022	Paul Walters
2501298/2022	Paul Barrow
2501299/2022	Scott Walters
2501300/2022	Saul Yarbasi
2501302/2022	Daniela Rasteanu
2501303/2022	Sylwia Melon
2501304/2022	Costel Iulian Birsa
2501305/2022	Carmen Nicoleta Birsa
2501306/2022	Kamila Nowak
2501307/2022	Ioan Adrian Borza
2501308/2022	Ecaterina Apostu
2501309/2022	Anna Hryckiewicz
2501310/2022	John Cochlin
2501311/2022	Pawel Sobieski
2501312/2022	Alexandru-cristian Tudoran
2501313/2022	Madalina Andreea Rotaru
2501314/2022	Mioara Apreutesei
2501317/2022	Mihaela Dinu
2501318/2022	Karl Brodie
2501319/2022	Ioana Caprar
2501320/2022	Andreea-Loredana Dragnea
2501321/2022	Andreea Madalina Ene
2501322/2022	Gary Snowball
2501323/2022	Kylie Sherriff

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2501324/2022	Ellis Hine
2501325/2022	Danny Oughton
2501326/2022	Lana O'hara
2501327/2022	Simeon Brown
2501328/2022	Andrei Izdrescu
2501329/2022	Chantell Bennett
2501330/2022	Volha Maisak Kosior
2501331/2022	Lynn Gration
2501332/2022	Louise Whittington
2501333/2022	Gina-Simona Catrinoiu
2501334/2022	Liam Keates
2501335/2022	Florentina Stoian
2501336/2022	Anthony Brindley
2501337/2022	Antony Savage
2501339/2022	Michael Hall
2501344/2022	Mike Myers
2501345/2022	Glenn Sheerin
2501346/2022	Eddie Booth
2501347/2022	Paul Marsh
2501349/2022	Manole Toma
2501350/2022	Summer Coneley
2501351/2022	Sophie Low
2501352/2022	Nitin Patel
2501353/2022	Claire Marshall
2501355/2022	Lee Smith
2501356/2022	Kristine Valte
2501357/2022	Magdalena Szymczak
2501359/2022	Natalja Gorska
2501360/2022	Linda Gravele
2501362/2022	Ewa Zylinska
2501363/2022	Mark Jeffryes
2501366/2022	Andrew Hope
2501367/2022	Ravinder Shinmar
2501368/2022	Olivia Benson
2501370/2022	Dave Markland
2501373/2022	Mina Patel
2501375/2022	Danny Shields
2501376/2022	Lisa Shields
2501378/2022	Radu Caprar
2501379/2022	Voicu Mogosan
2501380/2022	Christopher Howard
2501381/2022	Vicki Gulson
2501383/2022	Kerry-anne Wilson
2501384/2022	Niculina Chirla
2501385/2022	Rachael Dorrell

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2501386/2022	Ricky Gulson
2501387/2022	Jonathan Hall
2501388/2022	Alexander Urmston
2501389/2022	Steven Ward
2501390/2022	Shahnoor Miah
2501391/2022	Dorin Dinescu
2501394/2022	Jay Berry
2501396/2022	Mariola Szolkowska
2501397/2022	Leslie Pulman
2501398/2022	MalGorzata Glowacka
2501400/2022	Aleksandra Maslowska
2501401/2022	Mark Hanna
2501404/2022	Andrea Stoean
2501405/2022	Kevin Senior
2501407/2022	Jonathan Bell
2501408/2022	Marina-Alina Irimia
2501409/2022	Richard Freedman
2501410/2022	David Floyd
2501411/2022	William Raine
2501413/2022	Tony Reeves
2501414/2022	Trevor Walker
2501415/2022	Sylwia Pawelczyk
2501416/2022	Salik Miah
2501417/2022	Christopher Frain
2501418/2022	Raymond Taylor
2501419/2022	Abigail Keers
2501421/2022	Christie Fletcher
2501424/2022	Michelle Clark
2501425/2022	Tracey Matthews
2501426/2022	Ben Jones
2501427/2022	Mihail Temelakiev
2501429/2022	Steven Marlowe
2501430/2022	Martin Dyer
2501431/2022	Sharon Fox
2501432/2022	Elizabeth Harbidge
2501433/2022	Trevor Barker
2501436/2022	Joseph Dixon
2501437/2022	Paul Hill
2501438/2022	Leslie Bestford
2501439/2022	Richard Sherwin
2501440/2022	Lee Phenix-Naretti
2501442/2022	John Batey
2501444/2022	Gary Lanaway
2501445/2022	Diane Batey
2501446/2022	Kevin Urwin

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2501447/2022	Julie Gosling
2501450/2022	Raymond Wilkinson
2501451/2022	Jurgita Juskelyte
2501452/2022	Carmen Cristina Draghici
2501453/2022	Anthony Greenville
2501454/2022	Mohammed Adjei
2501456/2022	Dinh Vu
2501457/2022	Kevin Williams
2501458/2022	Mark Newton
2501459/2022	Stephen Brady
2501460/2022	Kevin Walker
2501461/2022	Ashley Duffy
2501463/2022	Paul Marshall
2501465/2022	Stacey Lee
2501466/2022	Tajinder Nahal
2501467/2022	Nicola Ross
2501468/2022	Gillian Thompson
2501471/2022	Chelsea Robson
2501472/2022	Nick Howe
2501473/2022	Terence Cullen
2501474/2022	Andrew Williams
2501475/2022	Toni Fitzgerald
2501476/2022	Ryan Shakeshaft
2501477/2022	Lynn Worrall
2501478/2022	Neil Griffiths
2501479/2022	Ashley Slater
2501480/2022	Alexandra Montgomery
2501481/2022	Elzbieta Domanska
2501483/2022	Carmen Espejo
2501484/2022	Doreen West
2501485/2022	Mariusz Ciupinski
2501486/2022	Penelope Smith
2501488/2022	Adam Smith
2501489/2022	Terry Whitehouse
2501490/2022	Kim Bell
2501492/2022	Keyleigh Morrison
2501493/2022	James Mutch
2501494/2022	Kieran Mckeever
2501496/2022	Lewis Fenlon
2501497/2022	Aneta Piotrowska
2501498/2022	Diana Todorova
2501501/2022	Helen Frith
2501502/2022	John Indriks
2501503/2022	Katie Parker
2501504/2022	Steven Miller

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2501507/2022	Lanre Adeniyi
2501508/2022	Matthew Cuthbert
2501509/2022	Barbara Konieczna
2501510/2022	Dave Hargate
2501511/2022	Michael Robson