



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr L Marsh-O'Connor  
**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 claimant's claim 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 the claimant's dismissal is well founded.
2. The Tribunal orders the respondent, by way of protective award under section 189(3) of the 1992 Act, to pay to the claimant a payment equivalent to remuneration for the period of 90 days beginning on 9 May 2022.
3. The claim of unfair dismissal is dismissed, having been withdrawn by the claimant.

### Recoupment

4. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award. The protected period is the period of 90 days beginning on 9 May 2022.

### Reasons

1. The claimant 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 the claimant's dismissal. The respondent company's administrators have given consent for the claim 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 that complaint on the available material.

4. On the available material I am satisfied of the following.
- a. As at 9 May 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 the respondent's depot at Hainge Park, Tividale, Oldbury.
  - b. The claimant was an employee of the respondent who may be affected by the proposed dismissals. The claimant was assigned to carry out their duties at the respondent's depot at Hainge Park, Tividale, Oldbury. The claimant was dismissed as redundant on 9 May 2022.
  - c. For the purposes of section 188 Trade Union and Labour Relations (Consolidation) Act 1992, the respondent's depot at Hainge Park, Tividale, Oldbury 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 two 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 claimant was not an employee 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).
5. The claimant's complaint 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 should be the maximum of 90 days.

Employment Judge **Aspden**

Date: 31 October 2023