



EMPLOYMENT TRIBUNALS

Claimant: Mr J Reilly

Respondent: Malin Industrial Concrete Floors (in administration)

HELD AT: Manchester (by CVP)

ON: 23 November 2023

BEFORE: Employment Judge Johnson

REPRESENTATION:

Claimant: unrepresented

Respondent: did not attend

JUDGMENT

The judgment of the Tribunal is that:

- (1) The complaint seeking a redundancy payment is dismissed upon withdrawal by the claimant.
- (2) The complaint seeking payment of a protective award under sections 188 and 188A Trade Union & Labour Relations (Consolidation) Act 1992 ('TULR(C)A') is well founded and succeeds.
- (3) The respondent's asserted special circumstances defence is not well founded which means that it was reasonably practicable to comply with the duties imposed by sections 188(1A), (2) and (4) of TULR(C)A.
- (4) The claimant was entitled to bring the claim seeking a protective award and it is just and equitable in all the circumstances to award a sum representing 30 days' pay based upon a gross weekly wage of £700. Accordingly, the respondent must pay to the claimant the total sum of **£3,000 ('Three Thousand Pounds')** in respect of the successful protective award complaint.

REASONS

1. The claimant attended these proceedings today and the administrators Addleshaw Goddard LLP acting on behalf of the respondent company failed to provide any representatives. However, the administrators confirmed on 6 September 2023, confirmed that in order to save costs and in the interests of the respondent's creditors, they would not attend the hearing. Accordingly, they are not criticised for not having a representative present at the final hearing today.
2. The claimant was employed as a person responsible for after care works by the respondent and had worked in this role from 4 April 2015 until his dismissal on 31 January 2023 when he was informed that the respondent company had become insolvent and that he was redundant, by the appointed administrators.
3. A few days before the claimant's employment was terminated on 31 January 2023, he confirmed that he was informed by a manager that he needed to temporarily pay for his own accommodation while working in London and also that he should not take his own van to the usual car hire business used by the respondent. He also discovered that his fuel card which he was provided with by the respondent was no longer valid and he had to pay for his own fuel. He was told by managers that the respondent was having some financial difficulties but was told they were temporary and was not informed that there was any risk of redundancies taking place.
4. The claimant was not a member of a trade union, no trade union was recognised representing his area of work and no employee representatives had been appointed either for general workplace matters or specifically for any proposed collective redundancy consultation process.
5. The claimant was therefore entitled to bring a complaint seeking a protective award in accordance with section 189(1) TULR(C)A.
6. The claimant was paid the gross sum of £700 each week and this represented net pay of £550. At the date of his dismissal, he had completed more than 7 years service with the respondent.
7. He confirmed that he had been able to recover a statutory redundancy payment from the Redundancy Payments Service and was able to withdraw the complaint seeking a redundancy payment as a consequence.
8. In accordance with the letter sent by the administrators Addleshaw Goddard LLP to the Tribunal on 27 July 2023 and acting as agent for the respondent company, (and in the absence of any representative being present), the following matters were noted:
 - (a) The administrators consented to the continuance of these proceedings against the respondent under paragraph 43(6) of Schedule B1 to the Insolvency Act 1986.

- (b) The administrators confirmed that the respondent proposed to dismiss as redundant 20 or more employees at one establishment within a period of 90 days.
 - (c) The administrators confirmed that they were appointed on 31 January 2023.
 - (d) The administrators confirmed that the respondent failed to comply with sections 188 and/or 188A TULR(C)A in respect of the dismissal of the claimant and others as a consequence of the special circumstances asserted under section 188(7) and which was because the respondent company entered a formal insolvency process on 31 January 2023 and did not have sufficient funds available to continue to pay accruing wages.
9. The respondent failed to provide any further submissions or evidence in support of the asserted special circumstance and I did not accept that the respondent had identified uncommon or exceptional circumstances that might suggest that the strict application of the duties imposed by sections 188 and 188A would produce a result contrary to the compliance intention of this relevant provision of TULR(C)A. This 'defence' to the complaint seeking a protective award must therefore fail.
10. Having considered the principles for determining the size of a protective award as set out in *Susie Radin Ltd v GMB & ors* [2004] ICR 893 and noting the award is designed to be punitive and not to compensate the employee for the losses suffered, I was satisfied that it was just and equitable to award 30 days' pay. Accordingly, taking into account the evidence available before me today, I ordered that the respondent should pay the claimant the sum of **£3,000**, (calculated by using the gross weekly pay divided by 7 to achieve the correct daily rate of £700/7 x 30).

Employment Judge Johnson

Date 23 November 2023

JUDGMENT SENT TO THE PARTIES ON
27 November 2023

FOR THE TRIBUNAL OFFICE