

**Case No:2406398/2023 and others
(see attached schedule)**



EMPLOYMENT TRIBUNALS

Claimants: Mr M Byrne and others (see schedule attached)

Respondents: Kenyon Haulage Limited (in administration) and the Secretary of State for Business and Trade

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Judgment of the Tribunal is that:

1. The name of the Second Respondent is amended to that shown above. The Second Respondent is a statutory guarantor pursuant to part XII of the Employment Rights Act 1996.
2. The First Respondent failed to consult with the each of the claimant named in the attached schedule as persons who may be affected by proposals to dismiss, or measures taken in connection with the dismissal of twenty or more employees, in breach of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”).
3. Under Section 189(1)(d), (2), (3) and (4) of TULCRA the Tribunal makes a protective award in respect of each of the claimants, and the First Respondent is ordered to pay remuneration to the claimants for a protected period of 90 days beginning on 20 March 2023.
4. The Employment Protection (Recoupment of Jobseeker’s Allowance and Income Support) Regulations 1996 apply to this award.

REASONS

1. The claimants claimed a protective award in respect of breach of the collective consultation requirements. No response was presented to the claims by the First Respondent.
2. The Second Respondent neither accepts nor resists the claims but made representations as the statutory guarantor which have been considered by the employment judge.
3. Based on the information available to the employment judge on the file the Tribunal makes the following findings:
4. The First Respondent carried on business in Thornley Avenue Blackburn. There was no trade union recognised for collective bargaining, consultation or negotiation with the claimants nor were there any elected employee representative.
5. The First Respondent was placed into administration on 20 March 2023 and the claimants were dismissed with immediate effect on that date.
6. The respondent employed approximately 97 employees and 90 were summarily dismissed on, or around, the same date when the administrators were appointed.
7. All of the claimants were employed at the same establishment (the main site above) and more than 20 employees were dismissed as redundant at the establishment.
8. There was no proper warning or notice given to, or consultation with, the workforce. No employee representatives had been elected or appointed for any such consultation within Section 188A of TULCRA. The dismissals were put into effect without any consultation or advance notice.
9. In these circumstances, the First Respondent was in breach of the duty under Section 188 of the 1992 Act and the Tribunal makes an award under Section 189 in favour of each of the claimants for the maximum protected period of 90 days commencing on 20 March 2023.
10. The First Respondent is advised of the provisions of Regulation 5 of the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996, such that, within 10 days of the decision in these proceedings being promulgated or as soon as is reasonably practicable, the First Respondent must comply with the provisions of Regulation 6 of the 1996 Regulations and, in particular, must supply to the Secretary of State the following information in writing:
 - i. the name, address and national insurance number of every employee

- to whom the award relates; and
- ii. the date of termination of the employment of each such employee.
 - iii. The respondent will not be required to make any payment under the protective award made until it has received a recoupment notice from the Secretary of State or notification that the Secretary of State does not intend to serve a recoupment notice having regard to the provisions of Regulation 7(2). The Secretary of State must normally serve such recoupment notice or notification on the employer within 21 days of receipt of the required information from the first respondent.

NOTE

11. No response to the claim has been received, and the claim therefore succeeds.
12. A protective award is a two-stage process. The Tribunal at this stage makes no financial award but gives a judgment that the claimant is entitled to a protective award in the terms set out above. The claimant must then seek payment of their individual award from the respondent (or the Secretary of State), quantifying the same.
13. Failure to pay (should that occur), or any dispute as to the amount payable, then becomes a matter for a further separate claim under s.192 of TULRCA for payment of the award.

Employment Judge Cookson
Date: 14 December 2023

JUDGMENT SENT TO THE PARTIES ON
21 December 2023

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

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<i>CASE NUMBER</i>	<i>CLAIMANT</i>
2406398/2023	Mr Matthew Byrne
2406399/2023	Mr Warren Ellis
2406400/2023	Mr David Game
2406401/2023	Mr Keith Garstang
2406402/2023	Mr Chris Harwood
2406403/2023	Mr Leslie Jones
2406404/2023	Mr Callum Linnane
2406405/2023	Mr Alan Mates
2406406/2023	Mr James A Mcmonagle
2406407/2023	Mr Pawel Momont
2406408/2023	Mr Mark Ryder
2406409/2023	Mr David N Shuttleworth
2406410/2023	Mr John Slater
2406411/2023	Mr Carl Smalley
2406412/2023	Mr Christopher Svajcsik
2406413/2023	Mr Anthony Wilkinson
2406414/2023	Mr Andrew Williams
2406415/2023	Mr John Wyer

ANNEX TO THE JUDGMENT (PROTECTIVE AWARDS)

Recoupment of Benefits

The following particulars are given pursuant to the Employment Protection (Recoupment of Benefits) Regulations 1996, SI 1996 No 2349.

The respondent is under a duty to give the Secretary of State the following information in writing: (a) the name, address and National Insurance number of every employee to whom the protective award relates; and (b) the date of termination (or proposed termination) of the employment of each such employee.

That information shall be given within 10 days, commencing on the day on which the Tribunal announced its judgment at the hearing. If the Tribunal did not announce its judgment at the hearing, the information shall be given within the period of 10 days, commencing on the day on which the relevant judgment was sent to the parties. In any case in which it is not reasonably practicable for the respondent to do so within those times, then the information shall be given as soon as reasonably practicable thereafter.

No part of the remuneration due to an employee under the protective award is payable until either (a) the Secretary of State has served a notice (called a Recoupment Notice) on the respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the respondent in writing that no such notice is to be served.

This is without prejudice to the right of an employee to present a complaint to an Employment Tribunal of the employer's failure to pay remuneration under a protective award.

If the Secretary of State has served a Recoupment Notice on the respondent, the sum claimed in the Recoupment Notice in relation to each employee will be whichever is the less of:

- (a) the amount (less any tax or social security contributions which fall to be deducted by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Secretary of State receives from the employer the information referred to above, OR
- (b)
 - (i) the amount paid by way of or paid as on account of jobseeker's allowance, income-related employment and support allowance or income support to the employee for any period which coincides with any part of the protected period falling before the date described in (a) above; or
 - (ii) in the case of an employee entitled to an award of universal credit for any period ("the UC period") which coincides with any part of the period to which the prescribed element is attributable, any amount paid by way of or on account of

universal credit for the UC period that would not have been paid if the person's earned income for that period was the same as immediately before the period to which the prescribed element is attributable.

The sum claimed in the Recoupment Notice will be payable forthwith to the Secretary of State. The balance of the remuneration under the protective award is then payable to the employee, subject to the deduction of any tax or social security contributions.

A Recoupment Notice must be served within the period of 21 days after the Secretary of State has received from the respondent the above-mentioned information required to be given by the respondent to the Secretary of State or as soon as practicable thereafter.

After paying the balance of the remuneration (less tax and social security contributions) to the employee, the respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the respondent as a debt to the Secretary of State, whatever may have been paid to the employee, and regardless of any dispute between the employee and the Secretary of State as to the amount specified in the Recoupment Notice.