



EMPLOYMENT TRIBUNALS

Claimant: UNITE The Union

Respondent: Tolent Construction Limited “In Administration”

Rule 96 party: Secretary of State for Business and Trade

JUDGMENT ON LIABILITY AND REMEDY

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Judgment of the Employment Tribunal is as follows:

1. The title of the respondent is amended to add the words “In Administration”, as set out above.
2. 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 (“the 1992 Act”) is well founded.
3. The Tribunal orders the respondent, by way of protective award under section 189 (3) of the 1992 Act, to pay a payment equivalent to remuneration for the period of 90 days beginning on 13 February 2023 to any of the respondent’s unskilled, skilled and craft employees for whom the claimant has a recognition agreement with the respondent, who were employed at the respondent’s sites at Wilton International, Colton Leeds and Team Valley, Gateshead and who were dismissed as redundant on or after 13 February 2023.
4. The Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996 apply to these awards. The protected period is the period of 90 days beginning on 13 February 2023.
5. The respondent is advised of the provisions of Regulation 6 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 or as soon as is reasonably practicable, the 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:

- a. the name, address and national insurance number of the employee to whom the award relates;
 - b. the date of termination of the employment of the employee.
6. The respondent will not be required to make any payment under the protective award 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 respondent.

REASONS

1. The respondent organisation provided construction and facilities management services and its head office was based at Team Valley, Gateshead. The respondent also provided facility management and major project services from the Wilton International site and it had a further site at Colton in Leeds where it employed approximately 50 employees.
2. Claims for a protective award were issued by UNITE The Union in the Employment Tribunal on 8 June 2023 on behalf of all the employees for whom the union is recognised for the purposes of collective bargaining, i.e. unskilled, skilled and craft employees.
3. The respondent entered into voluntary liquidation on 13 February 2023. A copy of the ET1 form was sent by the Tribunal to the liquidator on 6 July 2023 and the respondent had until 3 August 2023 to file a response. The respondent failed to file a response and the liquidator wrote to the Tribunal stating that he did not intend to admit or defend any claim.
4. The Secretary of State for Business and Trade was sent a copy of the ET1 as an interested party under Rule 96 of the Employment Tribunals (Constitution & Rules of Procedure) Regulations 2013 and they forwarded their written submissions to the parties and the Tribunal on 5 December 2023, indicating that they did not propose to be represented in person at any hearing.
5. In February 2023 the respondent proposed to dismiss as redundant 20 or more employees at each of its sites listed above, the total number of proposed redundancies being in the region of 356. The first dismissal took effect on 13 February 2023.
6. There was no proper warning or consultation undertaken with the recognised trade union, UNITE, between 9 February 2023 and 13 February 2023. No employee representatives had been elected or appointed for any such consultation within section 188A of the 1992 Act.

7. In the circumstances, the respondent is in breach of the duty under section 188 of the 1992 Act and the Tribunal makes an award under section 189 in favour of any of the respondent's unskilled, skilled and craft employees for whom the claimant has a recognition agreement with the respondent, who were employed at the respondent's sites at Wilton International, Colton Leeds and Team Valley, Gateshead for the maximum protected period of 90 days commencing on 13 February 2023.
8. As no response has been received by the Tribunal from the respondent, the above Judgment has been entered without a hearing on the basis of the information provided by the claimant and in accordance with Rule 21 of the Employment Tribunal Rules of Procedure 2013.

Employment Judge Arullendran

Date: 19 December 2023

Note: This has been a hearing on the papers which has not objected to by the parties. A face to face hearing was not held because it was not practicable, no-one requested the same and all the issues could be determined on the papers.

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