



EMPLOYMENT TRIBUNALS

BETWEEN

Claimants

AND

Respondents

See schedule attached

**Wasps Holdings Limited (in
Administration) (1)
Secretary of State for Business,
Energy and Industrial Strategy (2)**

HELD AT: Birmingham

ON: 3 October 2023

Appearances: No attendance from any party. Decision made on the papers as no objection received from any party to this course of action

JUDGMENT

The judgment of the Tribunal is as follows:

1. In this judgment “the claimants” means all those individuals whose names appear on the schedule attached to this judgment.
2. The claimants’ claims were presented in time. The Tribunal has jurisdiction to hear their claims.
3. The complaints that the first respondent failed to comply with the requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 are well founded.
4. I make a protective award in respect of all the claimants in respect of such failures by the first respondent, being one upon the claim of each claimant.
5. The description of employees to which the protective award made on the claim of claimant relates is that same claimant (and no one else).
6. In respect of each and all of the protective awards the protected period is 90 days and begins on 17 October 2022.

REASONS

Background

1. The 92 claims were presented by claim forms presented on various dates between 20 October 2022 and 16 February 2023. All are complaints for failure to consult pursuant to section 188 of Trade Union and Labour Relations (Consolidation) Act 1992 ('TULRCA').
2. Notice of appointment an administrator was given on 17 October 2022 and the first respondent went into administration on that date. In accordance with paragraph 43 (6) of Schedule B1 of the Insolvency Act 1996, consent of the administrator was required to commence or continue with proceedings against the first respondent. That consent was provided by the administrators in writing in respect of the various claims on dates between 5 December 2022 and 12 January 2023. The administrators further confirmed in a letter dated 16 June 2023 that they consented to all 92 claims made by the claimants continuing. In the letters of consent provided by the administrator information was provided by the administrator about the circumstances leading to the administration which has been considered.
3. No ET3 response was presented to the claims on behalf of the first respondent by the administrators. Given the claim identifies a potential liability on the part of the Secretary of State for Business, Energy and Industrial Strategy the papers were copied to the Secretary of State on 20 February 2023 and they were asked if they wished to play a part in the proceedings. The Secretary of State presented a response on 2 March 2023 which was accepted by the Tribunal and was taken into account when making this decision.
4. The claimants provided written information about the circumstances leading to the termination of their employment. This was contained in their respective claim forms and also in a witness statement submitted by Mr B Morris on 14 August 2023 which was accompanied by and referenced documents in a Bundle of documents running to 100 pages.

Findings of fact

5. The first respondent is the legal entity that employed players of and staff supporting the operation of the rugby club known as "Wasps". At the time the claimants were dismissed, there were approximately 90 employees employed and working at the first respondent's sites at the Wasps training ground in Henley in Arden (playing matches at the home ground, the Coventry Building Society Arena in Coventry or away) and at the first respondent's training ground in Greater London .
6. Prior to the company going into administration, there had some communication from the management of the company to employees about the company being in difficulties. On 22 September 2022 an announcement was made in person about the first respondent's financial difficulties and the intention to restructure the business, and that this may need to happen through an Administration process (a notice of intent to appoint administrators having been filed the day before). On 5 October 2022 an update was provided to employees about the offers that had been received for the business. On 12 October 2022 a written update was provided including stating that the first respondent would likely enter administration in the coming days.

7. On 17 October 2022, the first respondent went into administration. The administrator decided not to adopt the employment contracts of the claimants and therefore all employment contracts, including the claimants', were terminated with immediate effect on 17 October 2022. All employees received the same letter sent by the administrators, A M Sheridan and R Mittal on 17 October 2022. This letter included the following statement:

"We regret to advise you that the Company is no longer in a position to make payments for services rendered by you under its contract of employment with you. You should therefore regard your service as terminated, as from 17 October 2022 and accordingly, you should immediately register as unemployed with your local Jobcentre Plus Office, as failure to do so may jeopardise any benefits you may be entitled to receive."
8. Accordingly, I find the claimants were dismissed along with all other employees of the first respondent on 17 October 2022.
9. The claimants conciliated via ACAS starting on various dates from 18 October 2022 to 15 January 2023 and the process finished on various dates between 20 October 2022 and 17 January 2023. Having checked the dates of early conciliation and presentation of claim form for each claimant, I find that all 92 claims were presented (or early conciliation was started) within three months of the date of dismissal (or within a month of conciliation terminating). The claims were all therefore presented within the time limits set out in section 189 (5) of TULRCA.
10. The effect of section 195 (2) TULRCA is that where an employee is or is proposed to be dismissed, it shall be presumed, unless the contrary is proved, that he is or is proposed to be dismissed as redundant. I find in the absence of evidence to the contrary the claimants were indeed dismissed by reason of redundancy.
11. I also find that 20 or more employees were employed by the first respondent at one establishment on 17 October 2022 when the company went into administration and employees named in this claim were among those employees employed by the first respondent prior to dismissal. All employees were assigned to the establishment.
12. The first respondent did not have a recognised trade union at the relevant time. The Rugby Players Association (RPA) is a trade union that represents the interests of its members, offering support and guidance and campaigning to safeguard the welfare and rights of its members. However, it was not at the relevant time recognised for collective bargaining purposes by the first respondent. It does not satisfy the requirements of section 188(1B)(1)(a) of the TULRCA. Similarly, The Women's Rugby Association is a trade union, but is/was not recognised by the first respondent and also does not satisfy these requirements.
13. No attempt was made to elect representatives with whom it could consult or an attempt to consult. No consultation took place prior to the dismissals.

Legal analysis and Conclusions

14. As to who may bring a complaint pursuant to s. 188 or 188A to an Employment Tribunal, s.189(1) TULRCA states:-

“(a) in the case of a failure relating to the election of employee representatives, by any of the affected employees or by any of the employees who have been dismissed as redundant;

(b) in the case of any other failure relating to employee representatives, by any of the employee representatives to whom the failure related,

(c) in the case of failure relating to representatives of a trade union, by the trade union, and

(d) in any other case, by any of the affected employees or by any of the employees who have been dismissed as redundant.”

15. I have considered *Independent Insurance Co Limited v Aspinall* [2011] IRLR 716 and the earlier decision of the Court of Appeal in *Northgate v Mercy* [2008] IRLR 222. Neither a recognised union nor employee representatives were in place and that this complaint falls within s.189(1)(a) (or (d)).

16. I therefore find that the employees have standing to make claims and as *Aspinall* makes clear, individually they must do so within the statutory time limit in order to bring a claim. The claimants each individually pursued a valid claim.

17. The main relevant provisions of the Trade Union and Labour Relations (Consolidation) Act (as amended) (“TULRCA”), are as follows:-

“s. 188 (1): Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all persons who are 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.

s. 188 (1A): The consultation shall begin in good time and in any event-

(a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 45 days, and

(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

s. 188 (1B): For the purposes of this section, the appropriate representatives of any affected employees are-

(a) if the employees are of a description in respect of which an independent trade union is recognised, representatives of that trade union, or

(b) in any other case, whichever of the following employee representatives the employer chooses:-

(i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section, who (having regard to the purposes for and the method by which they were appointed or elected) have

authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf;

(ii) employee representatives elected by the affected employees, for the purpose of this section, in an election satisfying the requirements of section 188A (1).

s. 188 (2): The consultation shall include consultation about ways of-

(a) avoiding the dismissals,

(b) reducing the numbers of employees to be dismissed, and

(c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.

and

“s. 188 (7): If in any case there are special circumstances which render it not reasonably practicable for the employer to comply with a requirement of subsection (1A), (2) or (4), the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances. Where the decision leading to the proposed dismissals is that of a person controlling the employer (directly or indirectly) a failure on the part of that person to provide information to the employer shall not constitute special circumstances rendering it not reasonably practicable for the employer to comply with such a requirement.

s. 188A The requirements for the election of employee representatives under section 188 (1B) (b) (ii) are that –

(a) the employer shall make such arrangements as are reasonably practical to ensure that the election is fair;

[(b to (h) make detailed provision for the elections, including secret voting and accurate counting of votes].”

18. The first respondent does not allege pursuant to s.189(6) that there were special circumstances and that it did take such steps as were reasonably practicable to carry out consultation. I do not find that the first respondent has done so in this case
19. I am satisfied that the first respondent failed to comply with its obligation to consult in section 188 and in order to allow such consultation to take place failed to elect representatives in accordance with section 188A. Accordingly, I find the complaint well founded.
20. By virtue of s. 189(2) in such circumstances I may make a protective award. If I do the statute provides as follows:-

“(4) The protected period –

(a) begins with the date on which the first of the dismissals to which the complaint relates takes effect, or the date of the award, whichever is the earlier, and

(b) is of such length as the tribunal determines to be just and equitable in all the circumstances having regard to the seriousness of the employer's default in complying with the requirement of section 188;

but shall not exceed 90 days."

21. Accordingly, I find the protected period in this claim commences on 17 October 2022.

22. As to the length of the protected period, Peter Gibson LJ in the Court of Appeal in Susie Radin Limited v GMB and Others [2004] IRLR 400 [45] gave the following guidance:-

"I suggest that ETs, in deciding in the exercise of their discretion whether to make a protective award and for what period, should have the following matters in mind:

(1) The purpose of the award is to provide a sanction for breach by the employer of the obligations in s.188: it is not to compensate the employees for loss which they have suffered in consequence of the breach.

(2) The ET have a wide discretion to do what is just and equitable in all the circumstances, but the focus should be on the seriousness of the employer's default.

(3) The default may vary in seriousness from the technical to a complete failure to provide any of the required information and to consult.

(4) The deliberateness of the failure may be relevant, as may the availability to the employer of legal advice about his obligations under s.188.

(5) How the ET assesses the length of the protected period is a matter for the ET, but a proper approach in a case where there has been no consultation is to start with the maximum period and reduce it only if there are mitigating circumstances justifying a reduction to an extent which the ET consider appropriate."

23. In this case there was no consultation or attempt to comply with the statutory consultation provisions; no relevant mitigating factors are advanced. The limited information provided to employees referred to at paragraph 6 above is insufficient as to amount to a relevant mitigating factor or an attempt to comply with the relevant obligations. The starting point for the assessment of the protective award is the maximum, 90 days, and whilst I have a wide discretion to do what is just and equitable, in the absence of any evidence that points to the first respondent attempting to comply with its obligations or any mitigating circumstances, I conclude there are no grounds for me to reduce the same and the protective award shall therefore be set at the maximum of 90 days.

Employment Judge Flood
Dated: **9 October 2023**

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Annex:

Case Number	Case Name
1310651/2022	Mr Ben Morris -v- Wasps Holdings Limited (in administration)
1310652/2022	Mr akinbiyi alo -v- Wasps Holdings Limited (in administration)
1310653/2022	Mr charlie atkinson -v- Wasps Holdings Limited (in administration)
1310654/2022	Mr tom bacon -v- Wasps Holdings Limited (in administration)
1310655/2022	Mr alfie barbeary -v- Wasps Holdings Limited (in administration)
1310656/2022	Mr josh bassett -v- Wasps Holdings Limited (in administration)
1310657/2022	Mr alfie bell -v- Wasps Holdings Limited (in administration)
1310658/2022	Mr fynlay brown -v- Wasps Holdings Limited (in administration)
1310659/2022	Mr megiel burger odendaal -v- Wasps Holdings Limited (in administration)
1310660/2022	Mr tim cardall -v- Wasps Holdings Limited (in administration)
1310661/2022	Mr harry craven -v- Wasps Holdings Limited (in administration)
1310662/2022	Mr alistair crossdale -v- Wasps Holdings Limited (in administration)
1310663/2022	Mr tom cruse -v- Wasps Holdings Limited (in administration)
1310664/2022	Mr kieran curran -v- Wasps Holdings Limited (in administration)
1310665/2022	Mr ollie dawkins -v- Wasps Holdings Limited (in administration)
1310666/2022	Mr immanuel feyi-waboso -v- Wasps Holdings Limited (in administration)
1310667/2022	Mr greg fisilau -v- Wasps Holdings Limited (in administration)
1310668/2022	Mr dan frost -v- Wasps Holdings Limited (in administration)
1310669/2022	Mr robin hardwick -v- Wasps Holdings Limited (in administration)
1310670/2022	Mr ben harris -v- Wasps Holdings Limited (in administration)
1310671/2022	Mr olly hartley -v- Wasps Holdings Limited (in administration)
1310672/2022	Mr will haydon-wood -v- Wasps Holdings Limited (in administration)
1310673/2022	Mr robin hislop -v- Wasps Holdings Limited (in administration)
1310674/2022	Mr francois hougaard -v- Wasps Holdings Limited (in administration)
1310676/2022	Mr zach kibirige -v- Wasps Holdings Limited (in administration)
1310677/2022	Mr william kucera -v- Wasps Holdings Limited (in administration)
1310678/2022	Mr joseph launchbury -v- Wasps Holdings Limited (in administration)
1310679/2022	Mr rekeiti ma'asi white -v- Wasps Holdings Limited (in administration)
1310681/2022	Mr archie mcarthur -v- Wasps Holdings Limited (in administration)
1310682/2022	Mr kiran mcdonald -v- Wasps Holdings Limited (in administration)
1310683/2022	Mr luke mehson -v- Wasps Holdings Limited (in administration)
1310684/2022	Mr elliot millar mills -v- Wasps Holdings Limited (in administration)
1310685/2022	Mr ryan mills -v- Wasps Holdings Limited (in administration)
1310686/2022	Mr ben morris -v- Wasps Holdings Limited (in administration)
1310687/2022	Mr zachary nearchou -v- Wasps Holdings Limited (in administration)

Case Numbers (see schedule)

1310688/2022	Mr paolo odogwu -v- Wasps Holdings Limited (in administration)
1310689/2022	Mr gabriel oghre -v- Wasps Holdings Limited (in administration)
1310690/2022	Mr asher opoku -v- Wasps Holdings Limited (in administration)
1310691/2022	Mr william porter -v- Wasps Holdings Limited (in administration)
1310692/2022	Mr daniel robson -v- Wasps Holdings Limited (in administration)
1310693/2022	Mr john ryan -v- Wasps Holdings Limited (in administration)
1310694/2022	Mr bradley shields -v- Wasps Holdings Limited (in administration)
1310695/2022	Mr will simonds -v- Wasps Holdings Limited (in administration)
1310696/2022	Mr sam spink -v- Wasps Holdings Limited (in administration)
1310697/2022	Mr elliott stooke -v- Wasps Holdings Limited (in administration)
1310698/2022	Mr corbin thunder -v- Wasps Holdings Limited (in administration)
1310699/2022	Mr eparama tukana rokodrava -v- Wasps Holdings Limited (in administration)
1310701/2022	Mr pietro turrisi -v- Wasps Holdings Limited (in administration)
1310702/2022	Mr jacob umaga -v- Wasps Holdings Limited (in administration)
1310703/2022	Mr michael van vuuren -v- Wasps Holdings Limited (in administration)
1310704/2022	Mr theo vukasinovic -v- Wasps Holdings Limited (in administration)
1310705/2022	Mr thomas west -v- Wasps Holdings Limited (in administration)
1310706/2022	Mr tom willis -v- Wasps Holdings Limited (in administration)
1310707/2022	Mr jack willis -v- Wasps Holdings Limited (in administration)
1310709/2022	Mr sam wolstenholme -v- Wasps Holdings Limited (in administration)
1310494/2022	Mr Neil Fowkes -v- Wasps Holdings Limited (In Administration)
1310495/2022	Mr Richard Blaze -v- Wasps Holdings Limited (In Administration)
1308445/2022	Mrs SAMANTHA HENNEL-BRUCE -v- WASPS HOLDINGS LIMITED (IN ADMINISTRATION)
1308576/2022	Mr Cormac Ryan -v- Wasps Holdings Ltd (In Administration)
1308906/2022	Mr Jordan Young -v- Wasps Holdings Ltd (in administration)
1308913/2022	Mr rodrigo Martinez Manzano -v- WASPS HOLDINGS LIMITED(IN ADMINISTRATION)
1309567/2022	Mr kevin harman -v- Wasps Holdings Limited - (In Administration)
1310727/2022	Mr Luke Woodhouse -v- WASPS HOLDINGS LIMITED (In Administration)
1302173/2023	Mr Russell Forbes -v- Wasps Holdings Limited (in administration) & Others
1302174/2023	russell forbes -v- Wasps Holdings Limited (in administration) & Others
1302175/2023	david bassett -v- Wasps Holdings Limited (in administration) & Others
1302176/2023	cassian graham -v- Wasps Holdings Limited (in administration) & Others
1302177/2023	lee blackett -v- Wasps Holdings Limited (in administration) & Others
1302178/2023	michael main -v- Wasps Holdings Limited (in administration) & Others
1302179/2023	katherine lenan -v- Wasps Holdings Limited (in administration) & Others
1302180/2023	gareth o'neill -v- Wasps Holdings Limited (in administration) & Others
1302181/2023	giles baylin -v- Wasps Holdings Limited (in administration) & Others
1302182/2023	peter atkinson -v- Wasps Holdings Limited (in administration) & Others
1302183/2023	jack haines -v- Wasps Holdings Limited (in administration) & Others
1302184/2023	george petrakos -v- Wasps Holdings Limited (in administration) & Others
1302185/2023	connor o'shaughnessy -v- Wasps Holdings Limited (in administration) & Others
1302186/2023	rebecca brown -v- Wasps Holdings Limited (in administration) & Others
1302187/2023	eliza ullersperger -v- Wasps Holdings Limited (in administration) & Others
1302188/2023	ali james -v- Wasps Holdings Limited (in administration) & Others

Case Numbers (see schedule)

1302189/2023	matthew williams -v- Wasps Holdings Limited (in administration) & Others
1302190/2023	alex burns -v- Wasps Holdings Limited (in administration) & Others
1302191/2023	edward robinson -v- Wasps Holdings Limited (in administration) & Others
1302192/2023	abbi gurav -v- Wasps Holdings Limited (in administration) & Others
1302193/2023	scott barrow -v- Wasps Holdings Limited (in administration) & Others
1302194/2023	sam jones -v- Wasps Holdings Limited (in administration) & Others
1302195/2023	poppy headland -v- Wasps Holdings Limited (in administration) & Others
1300103/2023	Miss Celia Quansah -V- Wasps Holdings Limited (In administration)
1300104/2023	Miss Megan Jones -V- Wasps Holdings Limited (in administration)