



EMPLOYMENT TRIBUNALS

Claimants: Mr T Broome and others (see schedule attached)

Respondent: M & A Pharmachem Limited (in administration)

JUDGMENT

Employment Tribunals Rules of Procedure 2013 – Rule 21

The Judgment of the Tribunal is that:

1. The claims of each of the claimants in the attached schedule that the respondent failed to comply with the section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (“TULRCA”) is well founded.
2. The respondent failed to consult with each of the claimants 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 TULRCA the Tribunal makes a protective award in respect of each of the claimants name in the schedule and the respondent is ordered to pay remuneration to those claimants for a protected period of 90 days beginning on 27 January 2022.
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 respondent.
2. The Tribunal makes the following findings based upon the claim:
 - a. The respondent carried on business in Westhoughton, Bolton. There was no trade union recognised for collective bargaining, consultation or negotiation in respect of the claimants named in the schedule although there were collective consultation arrangements in place for other employees at the establishment.
 - b. The claimants were advised that the respondent had been placed into administration on 27 January 2022 and all the claimants were either told that they were or would be deemed to be redundant from date. They were dismissed with immediate effect and there was no consultation with the claimants;
 - c. The respondent employed approximately 93 employees at the establishment, all of whom were dismissed on, or around, the same date.
 - d. The claimants claimed a protective award in respect of breach of the collective consultation requirements. No response was presented to the claims by the respondent.
3. There was no proper warning or notice given to, or consultation with, the workforce. No employee representatives had been elected or appointed in respect of the claimants named in the schedule for any such consultation within Section 188A of TULRCA. The dismissals were put into effect without any consultation or advance notice.
4. In these circumstances, the respondent was in breach of the duty under Section 188 of TULRCA and the Tribunal makes an award under Section 189 in favour of the claimant for the maximum protected period of 90 days commencing on 27 January 2022.
5. The 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:
 - a. the name, address and national insurance number of every employee to whom the award relates; and

- b. the date of termination of the employment of each such employee.
- c. 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

1. No response to the claim has been received, and the claim therefore succeeds.
2. 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.
3. 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: 19 December 2023

JUDGMENT SENT TO THE PARTIES ON

11 January 2024

AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE

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CASE NUMBER CLAIMANT

2403964/2022 THOMAS BROOME
2403966/2022 AKEEL AHMED
2403968/2022 MIRANDA BATTERSBY
2403971/2022 WASANA CORNESS
2403972/2022 DAVID FISHWICK
2403973/2022 GAYNOR FORD
2403975/2022 WILLIAM GREENALL
2403976/2022 STEVEN HALL
2403977/2022 KIRSTY HALLIWELL
2403980/2022 STEVEN HAY
2403981/2022 HANNAH HORROCKS
2403982/2022 STEVEN HUGHES
2403083/2022 FAIZA HUSSAIN
2403985/2022 FATEMEH KLORGHIDIAN
2403987/2022 AGNIESZKA ANNA LEGOWICH
2403989/2022 LOUISE LOMAX
2403990/2022 KRISHNA MISTRY
2403991/2022 NARIN MOHAMAD
2403994/2022 EWA NICHOLSON
2403997/2022 CRAIG PARRY
2403998/2022 MARK PATTON
2404000/2022 JOHN RIGBY
2404001/2022 SAM RUSSELL
2404004/2022 JASON SMETHURST
2404006/2022 SHAHAB TAREMIZADEH
2404007/2022 NATHAN THISTLETHWAITE
2404009/2022 MUHAMMAD UMAIR
2404011/2022 PAULINE WILLIAMS
2404012/2022 MICHAEL WINGFIELD
2404013/2022 SEAN LAWRENCE
2404014/2022 MICHAEL BREHANY
2404015/2022 CAROL ARMSTRONG-ENTWHISTLE
2404016/2022 SCOTT ENTWISTLE
2404017/2022 JAMES VICKERS
2404018/2022 SAMUEL PENMAN
2404019/2022 ALAN RHOADES
2404020/2022 CRAIG BATTERSBY
2404021/2022 IAN COOKE
2404022/2022 WIESLAWA BANDOMIR
2404023/2022 EMMA HIGGINS
2404024/2022 STEVEN NOLAN
2404025/2022 TAYLOR COLLINS
2404026/2022 LORRAINE SANDERS
2404027/2022 PETER SIMMS
2404028/2022 EMILY NICHOLSON
2404030/2022 PAULA LIVESEY
2404031/2022 NICOLA CRIMMINS
2404032/2022 CLAIRE MILBURN
2404033/2022 STEVEN RYDER
2403967/2022 JANA BARTOSOVA
2403995/2022 TASNEEM PANCHBHAYA
2402533/2022 KAREN ELIZABETH WALTON

2403964/2022 and others

Claimants: Mr T Broome and others (see schedule attached)

Respondent: M & A Pharmachem Limited (in administration)

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.