



# EMPLOYMENT TRIBUNALS

**Claimants:** Miss R Carter & others  
Mrs J Hunter & others

**Respondents:** 1. Food Innovations Holdings Limited (In administration)  
2. The Secretary of State for Business, Energy & Strategy

**Heard at:** Liverpool (by CVP)

**On:** 21 February 2024

**Before:** Employment Judge Benson

## Representation

**Claimants:** Miss R Carter

**Respondents:** No attendance

# JUDGMENT

**The unanimous judgment of the Tribunal is that:**

1. The duplicate claim by Miss R Carter under case number 2408182/2022 is dismissed on withdrawal.
2. The Tribunal declares that the complaint that the first respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded and makes a protective award in respect of those claimants whose names are listed in the Schedule to this Judgment and orders that the first respondent pay those claimants remuneration for the period of 90 dates beginning on 12 September 2022.

# REASONS

1. Evidence and submissions were given by Miss R Carter on behalf of herself and the other claimants. The Tribunal further considered the Grounds of Resistance filed on half of the Secretary of State for BES. No response was filed by the administrator of the first respondent, but consent was given for the claim of a

protective award only to proceed.

2. From that evidence, the Tribunal was satisfied of the following:

- (a) There were no recognised Trades Unions or employee representatives.
- (b) The claimants were employed at one establishment in Cheadle Manchester.
- (c) The first respondent went into administration on 12 September 2022.
- (d) There were more than 30 employees employed at the first respondent's premises in Cheadle, though an exact figure could not be provided by the claimants.
- (e) No consultation took place with the claimants.
- (f) On 12 September 2022 the claimants and all other staff were told that the respondent was in administration, and they were redundant with immediate effect.
- (g) There were no special circumstances which would reduce the protective period.

3. In the circumstances the Tribunal was satisfied that a protective award should be made in respect of each of the claimants and that 90 days was the appropriate period.

## **NOTE**

The following statement is given under regulation 5(2)(b) of the Employment Protection (Recoup of Benefits) Regulations 1996 ("the Regulations") and advises the respondent of its duties under regulation and of the effect of regulations 7 and 8 of the Regulations.

(1) The respondent is required to give the Benefits Agency in writing:

- (a) The name, address and national insurance number of every employee to whom the above protective award relates; and
- (b) The date of termination (or proposed termination) of the employment of each such employee.

(2) The respondent is required to comply with paragraph (1) above within the period of ten days commencing on the date when the judgment was announced at the hearing or, if it was not so announced, the date on which the Judgment was sent to the parties.

(3) No remuneration due to an employee under the protective award shall be paid to him until the Benefits Agency has:

- (a) served on the respondent a notice (“a recoupment notice”) to pay the whole or part of the award to the Benefits Agency; or
  - (b) informed the respondent in writing that no recoupment notice is to be served.
- (4) The sum due to the Benefits Agency under a recoupment notice shall be the lesser of:
- (i) the amount (less any tax or social security contributions which fall to be deducted by the respondent) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Benefits Agency receives from the respondent the information mentioned at paragraph (1) above; and
  - (ii) the amount paid by way of, or as on account of, Jobseeker’s Allowance or Income Support to the employee for any period which coincides with any part of the protected period falling before the date mentioned at (i) above.
- (5) The sum due under the recoupment notice shall be paid forthwith to the Benefits Agency. The balance of the protective award shall then (subject to deduction of any tax or social security contributions) be paid to the employee.
- (6) The Benefits Agency shall serve a recoupment notice within the period of 21 days after the date mentioned at paragraph (4)(ii) above or as soon as practicable thereafter.
- (7) Payment by the respondent to the employee of the balance of the protected award (subject to deduction of any tax or social security contributions) is a complete discharge of the respondent in respect of any sum so paid.
- (8) The sum claimed in a recoupment notice is due as a debt by the respondent to the Benefits Agency, whatever may have been paid to the employee and whether or not there is any dispute between the employee and the Benefits Agency as to the amount specified in the recoupment notice.

Employment Judge Benson

Dated: 21 February 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

18 March 2024

FOR THE TRIBUNAL OFFICE

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## **Schedule**

**Multiple:**

**Food Innovations Holdings Limited**

<b>Case Number</b>	<b>Case Name</b>
2408181/2022	Rebecca Carter
2408183/2022	Clare Boothman
2408184/2022	Nathan Briddon
2408185/2022	Matthew Lamacroft
2408186/2022	Samantha Champion-Wells
2408187/2022	Paolo Di Cicco
2408188/2022	Mollie Adamson
2408189/2022	Lisa Adamsoon
2408190/2022	Peter Broad
2408191/2022	Hayley Crompton
2408192/2022	Alex Walker
2408193/2022	Hannah Lloyd
2408194/2022	Kathryn Lamb
2408195/2022	Leigh Sheldon
2408196/2022	Bernadett Tisza
2408197/2022	Vicky Surguy
2408198/2022	Rhiannon Brown
2408199/2022	Melissa Wright
2408200/2022	Arthur Jennings
2408201/2022	Corinna Crabtree
2408202/2022	Guy Hancock
2408203/2022	Elizabeth Latus (Nee Sinclair)
2408204/2022	Jake Hopkin
2408205/2022	Kevin Jones
2408206/2022	Peter Brooks
2408207/2022	Laura Pendlebury
2600126/2023	Jenny Hunter
2600127/2023	Natasha Sherwood
2600128/2023	Katie Hopwell
2600129/2023	Leanne Cox

**Claimants: Miss R Carter & others  
Mrs J Hunter & others**

**Respondents: 1. Food Innovations (Manufacturing) Limited (In administration)  
2. The Secretary of State for Business, Energy & Strategy**

**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

**Case No: 2408181/2022 & others  
2600126/2023 & others  
(as per attached schedule)**

(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.