



EMPLOYMENT TRIBUNALS

Claimants: Mr M Adom Brock & others
Ms K Chester & others

Respondents: 1. Food Innovations (Manufacturing) 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: Mr W Mansfield – a claimant

Respondents: No attendance

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim brought by Miss R Carter under case number 2408212/2022 is dismissed upon 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 Mr W Mansfield on behalf of himself 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 Nottingham.
- (c) The first respondent went into administration on 12 September 2022.
- (d) There were more than 50 employees employed at the first respondent's premises in Nottingham, 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 (MANUFACTURING) LIMITED

Case Number	Case Name
2408213/2022	Michael Adom Brock
2408214/2022	June Kenny
2408215/2022	Edyta Maj
2408216/2022	Robert Hattersley
2408217/2022	Aleksandra Maciejewska (Nee Salas)
2408218/2022	Barbara Nowak
2408219/2022	Kamila Lawniczak
2408220/2022	Kristina Cepone
2408221/2022	Joanna Gustaw (Nee Rominska)
2408222/2022	Avani Vaghadia
2408223/2022	Monika Pyziak (Nee Jedrzejczak)
2408224/2022	Patryk Michon
2408225/2022	Thomas Young
2408226/2022	Charles Uwagboe
2408227/2022	Andreea Rosca
2408228/2022	Dumitru Zaharia
2408229/2022	Natalia Kurt
2408230/2022	Claudia Elena Florentina Ciuteanu
2408231/2022	Debra Oldham
2408232/2022	Kelly Dickson
2408233/2022	Maria Bielak
2408234/2022	Maxine Hutton
2408235/2022	Bosiak Agnieszka
2408236/2022	Jacqueline Tomlinson
2408237/2022	Marietta Tabaka
2408238/2022	Karol Bonio
2408239/2022	Cosmina Bucsan
2408240/2022	Katarzyna Tylkowska
2408241/2022	Renata Miotke (Mosakowska)
2408242/2022	Lukasz Miotke
2408243/2022	Brandon Bester
2408244/2022	Sharon Mckenna
2408245/2022	Sylwia Skrzypczak
2408246/2022	Agnieszka Jedrak
2408247/2022	Alicja Wierzbicka

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2600130/2023 & others
(as per attached schedule)**

2408248/2022	James Blanchard
2408249/2022	Phuong Uyen Nguyen
2408250/2022	Jurgita Safranovic
2408251/2022	Ewa Golab
2408252/2022	Lyndsey Hollis
2408253/2022	Jayne Spencer
2408254/2022	Garry Manton
2408255/2022	Gregg Severn
2408256/2022	Natasha Marshall
2408257/2022	Julie Brougham
2408258/2022	Malgorzata Moskwa
2408259/2022	David Woodward
2408260/2022	Laura Garbett
2408261/2022	Benjamin Masabo
2408262/2022	Andrew Marsden
2408263/2022	Rachel Tennick
2408264/2022	Michael Smithurst
2408265/2022	Adam Sandor
2600130/2023	Kathryn Chester
2600131/2023	Glyn Wright
2600132/2023	Matheus Stachurski
2600133/2023	Wayne Mansfield

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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
- (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

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2600130/2023 & others
(as per attached schedule)**

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.