



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr M Michalak

**Respondent:** SC Realisations 2023 Limited (in Administration)

**Heard at:** London South ET, via CVP

**On:** 8 March 2024

**Before:** Employment Judge G. King

## Representation

Claimant: In person

Respondent: Did not attend

# JUDGMENT

The Judgment of the Tribunal is that:

1. The Respondent failed to consult with the Claimant as a person 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.
2. Under Section 189(1)(d), (2), (3) and (4) of the Trade Union and Labour Relations (Consolidation) Act 1992, the Tribunal makes a protective award in respect of the Claimant, and the Respondent is ordered to pay remuneration to the Claimant for a protected period of 90 days beginning on 23 January 2023.
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 apply to this award.

# REASONS

1. The Claimant claimed a protective award in respect of breach of the collective consultation requirements. No response was presented to the claim by the Respondent.

2. The Tribunal makes the following findings:
  - a. The Respondent was placed into administration on 23 January 2023.
  - b. There is no evidence that there a Trade Union was recognised for collective bargaining, consultation or negotiation with the workforce.
  - c. The Claimant was dismissed on 23 January 2023, at the same time as the other employees of the Respondent. He was dismissed with immediate effect. No information was provided in advance and there was no consultation with the Claimant.
  - d. The Respondent employed approximately 58 employees at the establishment at which the Claimant was employed, and more than 20 were dismissed on, or around, the same date.
3. There was no proper warning or notice given to or consultation with the workforce. There is no evidence that any employee representatives had been elected or appointed for any such consultation within Section 188A of the 1992 Act. 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 the 1992 Act and the Tribunal makes an award under Section 189 in favour of the Claimant for the maximum protected period of 90 days commencing on 23 January 2023.
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 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.
6. The Respondent will not be required to make any payment under the protective awards 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**

7. No response to the claim has been received, and the claim therefore succeeds.
8. 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, quantifying the same.

9. 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 the Trade Union and Labour Relations (Consolidation) Act 1992 for payment of the award.

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Employment Judge G. King

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Date: **8 March 2024**

JUDGMENT & REASONS SENT TO THE PARTIES ON  
**11 March 2024**

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FOR THE TRIBUNAL OFFICE

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<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>