



EMPLOYMENT TRIBUNALS

Claimants: Mr R Vallis & 14 others (see attached schedule)

Respondents: (1) Brierstone Limited (in administration)

(2) The Secretary of State for Business, Energy and Industrial Strategy

Heard: via CVP

On: 22 April 2024

Before: Employment Judge Ayre, sitting alone

Representation:

For the claimants: Mr Robert Vallis

For the First Respondent: did not attend and was not represented

For the Second Respondent: did not attend and was not represented

JUDGMENT

1. The First Respondent has failed to consult with employee representatives contrary to sections 188 and 188A of the Trade Union & Labour Relations (Consolidation) Act 1992.
2. The First Respondent is ordered to pay remuneration to each of the claimants in the attached schedule for a protected period of 90 days beginning on 19 January 2023.

REASONS

Background

1. The background to this case is set out in the Record of the Preliminary Hearing on 20 February 2024. At that Preliminary Hearing I made Orders to prepare the case for today's hearing. One of those Orders was that the parties should write to the Tribunal

stating whether they agree to the case being heard by an Employment Judge sitting alone.

2. On 12 March 2024 Mr Vallis wrote to the Tribunal providing consent to the case being heard by an Employment Judge sitting alone on behalf of all of the claimants. The Second Respondent also wrote to the Tribunal on 12 March providing consent to the claims being decided by an Employment Judge sitting alone.
3. On 18 March the administrators of the First Respondent wrote to the Tribunal to “confirm that you proceed with the claims via the employment tribunal.” They did not have provide the required information, as they did not state whether they consented to the claims being heard by an Employment Judge sitting alone. The administrators forward a copy of their email of 18 March to the Tribunal again on 18 April, and on 22 April, in response to a call from a member of the Tribunal’s staff, they wrote that they were “happy to go by the judge on this matter”.
4. A member of Tribunal staff contacted them again, and in an email sent at 14.44 on 22 April the administrators of the First Respondent provided the necessary consent for the hearing to proceed before an Employment Judge sitting alone.
5. in accordance with section 4(3)(e) of the Employment Tribunals Act 1996, all parties have now provided their consent to the claims being heard by an Employment Judge sitting alone.
6. In an email sent to the Tribunal on 21 December 2023 the administrators of the First Respondent consented to these proceedings continuing. The First Respondent has not filed a Response to the claims.
7. The Second Respondent has filed responses to the claims. In the ET3 forms the Second Respondent indicates that it intends to defend the claims. In the details of its responses the Second Respondent pleads, amongst other things that:

“The Secretary of State cannot comment on the extent to which, when proposing to make 20 or more employees redundant, the claimant’s employer failed to consult representatives of the affected employees...”

It is requested that the Tribunal ensures the claimant is eligible to bring the claim...

If, after consideration of the facts, the Employment Tribunal is of the opinion that the present case involves employees at multiple establishments, the Secretary of State respectfully submits that those claimants who worked at establishments where the proposal to dismiss as redundant affected fewer than 20 employees are not entitled to any Protective Award. This is on the basis that the duty to consult under section 188 would not arise in such a case.

...the Secretary of State respectfully requests that the Tribunal confines its judgment to the description of employees covered by the award and does not attempt to quantify the employees covered by the award and does not attempt to quantify the award that may be payable from the National Insurance Fund...”

The hearing

8. The start of the hearing was delayed by an hour to allow for consent to the hearing proceeding before an Employment Judge sitting alone to be provided by the First Respondent, and for Mr Vallis to provide a supplementary witness statement containing answers to the questions set out in paragraph 8 of the Record of the Preliminary Hearing. I then heard evidence from Mr Vallis.

Findings of fact

9. The Claimants were all employed by the First Respondent. On or around the 19 January 2023 the First Respondent went into administration.
10. The normal place of work of each of the claimants was Brindley House, Suite 2, Unit H6, Lowfields Business Park, Elland, West Yorkshire, HDX5 9HF. At least 25 employees were employed at that site, and all of them were made redundant in January 2023.
11. There were no recognised trade unions in respect of any employees at the site in Elland, and no elected employee representatives. No attempts were made to invite the employees at Elland to elect representatives for the purposes of consultation about redundancies, and no consultation took place.
12. On 25 January 2023 letters were sent to the claimants by the administrators of the First Respondent informing them that they should regard their service as terminated with effect from 19 January 2023.

Conclusions

13. Each of the Claimants worked at a single establishment at which there was no recognised trade union and no elected employee representatives.
14. More than twenty employees were made redundant at that establishment within a ninety-day period in January 2023.
15. The First Respondent failed to organise the election of employee representatives and to consult with them in accordance with sections 188 and 188A of Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA").
16. Accordingly, the Claimants' complaints pursuant to TULRCA section 189 are well founded and succeed.
17. The first Respondent is ordered to pay remuneration to each of the Claimants in the attached schedule for a protected period of 90 days beginning on 19 January 2023.
18. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply to these awards.

19. Mr Vallis had issued two sets of proceedings. Only claim 1801247/2023 succeeds and is covered by the award above.

Employment Judge K. Ayre

Date: 22 April 2024

JUDGMENT SENT TO THE PARTIES ON
3 May 2024

.....
AND ENTERED IN THE REGISTER

A Jones.....
FOR THE TRIBUNAL OFFICE

Schedule
Claimants in respect of whom a protective award is made

Mr David Clayton
Mr Gary Crabtree
Mr Michael Dunn
Mr Lindon Fisher
Mr Peter Harper
Mr Mark Hornsey
Mr Daniel Jackson
Ms Nichola Kendrew
Mr Michael McCartan
Mr Hubert Strugalski
Mr Simon Thompson
Mr Gavin Turner
Mr Robert Vallis
Mr Clive Webb
Mr Phillip Williams

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