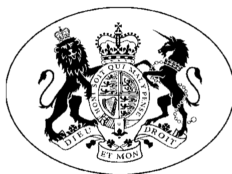

EMPLOYMENT TRIBUNALS

BETWEEN

Claimants		**Respondent**
Mr L Biss (1)	AND	Actual Experience Plc (In Administration)
Mr D Davis (2)		
Mr J Allen (3)		
Mr T Douglas (4)		

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY **ON** 3 May 2024
By VHS VIDEO

EMPLOYMENT JUDGE N J Roper

Representation
For the Claimants: **Mr Biss, in person (all attended)**
For the Respondent: **Did not attend**

JUDGMENT

The judgment of the Employment Judge sitting alone is that:

1. The complaint that the respondent failed to comply with a requirement of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is well founded.
2. The tribunal makes a protective award in respect of the four claimants named below who were employees of the respondent at its premises at Quay House, Ambury, Bath, BA1 1UA, who were all dismissed as redundant on 7 November 2023 and orders the respondent to pay those employees remuneration for the protected period of 90 days beginning on 7 November 2023

RESERVED REASONS

1. This is a claim for a protective award brought by the following four claimants by reference to their Tribunal Claim numbers, who are collectively referred to in this Judgment as “the Claimants”:

2. Mr Leon Biss 1405821/2023; Mr Dexter Davis 1405823/2023; Mr James Allen 1405849/2023; and Mr Tim Douglas 1405850/2023.
3. I have heard from Mr Biss who gave evidence on behalf of all the Claimants. I have considered the evidence before me, both oral and documentary, and I have considered the legal and factual submissions made by and on behalf of the respective parties. I find the following facts proven on the balance of probabilities.
4. The respondent company Actual Experience Limited entered administration on 7 November 2023. On the same day the respondent dismissed its workforce summarily by reason of redundancy. The Claimants were four of approximately 60 employees who were all made redundant on 7 November 2023. They were told not to come to work, and they were not paid. They were all based at the respondent's premises at Quay House, Ambury, Bath BA1 1UA.
5. The respondent did not recognise any independent trade union for the purposes of collective bargaining, consultation and negotiation.
6. The respondent had not appointed any employee representatives for the purposes of collective bargaining, consultation and negotiation, and nor did it take any steps to arrange for the election of the same.
7. The respondent failed to undertake any or any adequate consultation with the Claimants prior to the dismissals.
8. Having found the above facts, I now apply the law.
9. The relevant law is in the Trade Union and Labour Relations (Consultation) Act 1992 ("TULRCA").
10. Section 188(1) of TULRCA provides as follows: "Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all the persons who are appropriate representatives of any of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals". S188(1A) provides that "The consultation shall begin in good time and in any event – (a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 90 days, and (b) otherwise, at least 30 days, before the first of the dismissals takes effect.
11. S 188(1B) provides that: "For the purposes of this section the appropriate representatives of any affected employees are – (a) if the employees of a description in respect of which an independent trade union is recognised by their employer, representatives of the trade union, or (b) in any other case, whichever of the following employee representatives the employer chooses:- (i) employee representatives appointed or elected by the affected employees otherwise than for the purposes of this section who (having regard to the purposes for and the method by which they were appointed or elected) have authority from those employees to receive information and to be consulted about the proposed dismissals on their behalf; (ii) employee representatives elected by the affected employees, for the purposes of this section, in an election satisfying the requirements of section 188A(1)."

12. S 188(2): provides that; "The consultation shall include consultation about ways of – (a) avoiding the dismissals, (b) reducing the numbers of employees to be dismissed, and (c) mitigating the consequences of the dismissals, and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives."
13. Section 188(4) provides: "For the purposes of the consultation the employer shall disclose in writing to the appropriate representatives – (a) the reasons for his proposals, (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant, (c) the total number of employees of any such description employed by the employer at the establishment in question, (d) the proposed method of selecting the employees who may be dismissed, (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which any dismissals are to take effect, (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with the obligation imposed by or by virtue of any enactment) to employees who may be dismissed, (g) the number of agency workers working temporarily for and under the supervision and direction of the employer, (h) the parts of the employer's undertaking in which those agency workers are working, and (i) the type of work are those agency workers are carrying out."
14. Section 188(5) provides: "That information shall be given to each of the appropriate representatives by being delivered to them, or sent by post to an address notified by them to the employer, or in the case of representatives of a trade union sent by post to the union at the address of its head or main office."
15. In this case the first respondent failed to comply with a number of requirements of section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, and the Claimants' claim to that effect is well founded. This Tribunal therefore makes the protective award as indicated above.

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Employment Judge N J Roper
Dated 3 May 2024
Judgment sent to Parties on
21st May 2024

Phoebe Hancock

ANNEX TO THE JUDGMENT
(PROTECTIVE AWARDS)

Recoupment of Jobseeker's Allowance, income-related Employment and Support Allowance and Income Support

The following particulars are given pursuant to the Employment Protection (Recoupment of Jobseekers Allowance and Income Support) Regulations 1996, SI 1996 No 2349, Regulation 5(2)(b), SI 2010 No 2429 Reg.5.

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 lesser of:

(i) the amount (less any tax or social security contributions which fall to be deducted therefrom 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

(ii) 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 protective period falling before the date described in (i) above.

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.