



EMPLOYMENT TRIBUNALS

Claimants:

Ms D Hotchkiss & others v -v-
(see schedule attached)

Respondents:

(1) Denwells Ltd,
(2) Denwells 2020 Ltd
(3) French Sole Holdings Ltd
(4) The Secretary of State for Business, Energy &
Industrial Strategy

FINAL (MERITS) HEARING (CONDUCTED BY THE CLOUD VIDEO PLATFORM)

Heard at: **Birmingham** On: **3 June 2024**
Before: **Employment Judge Perry**

Appearances

For the claimants **All who attended (as set out in the schedule below) appeared in person**
For the first to third Respondents: **No appearance**
For the Secretary of State **Mr Soni**

JUDGMENT

Whereas

- (a) All claimants confirmed with the exception of Mrs Masefield and Mr Slater they were solely bring claims for protective awards, the compensatory element of an unfair dismissal award and wages. Miss Masefield and Mr Slater in addition pursue claims for notice pay.
- (b) This hearing was listed without members. All claimants' present and Mr Soni for the Secretary of State consented to me sitting alone. Further no objections were raised about me hearing the claimants' claims for protective awards arising from both the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") and Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA").
- (c) I have been asked to record by Mr Soni that
 - (i) the Secretary of State is not liable for any protective award arising from TUPE, a protective award under the TULRCA (insofar as it combined with any payments made by the Secretary of State exceeds 8 weeks wages, or any compensatory award for unfair dismissal)
 - (ii) given (based on the evidence I heard) that no union was recognised and no representatives were elected, that any protective awards are limited to the named claimants

The judgment of the Tribunal is as follows:-

1. There was a failure to inform or consult in relation to the TUPE transfer that occurred on or about 28 May 2020 (the Transfer). The complaints of the claimants listed in the



schedule below (“the Schedule”) are well founded. They are entitled to an award of 13 weeks’ pay beginning on that date.

2. The second respondent failed to consult in relation to collective redundancies in advance of its liquidation on 13 September 2021. The Secretary of State accepted based on the RP14 form there were clearly more than 20 employees at the establishment at the relevant time. The claimants listed in the Schedule are entitled to an award for the protected period of 90 days beginning on 13 September 2021
3. By virtue of the Transfer and the claimants not being given notice of dismissal they were entitled to be paid wages until their dismissal. The unlawful deductions from wages complaints of the claimants listed in the Schedule are well founded. Where relevant they awarded the gross sums as set out in column 3 of the Schedule.
4. The claimants listed in the Schedule were dismissed on the liquidation of the second respondent on 13 September 2021. Their unfair dismissal complaints are well founded. Where relevant they awarded compensation for unfair dismissal as per column 4 of the Schedule.
5. Miss Masefield and Mr Slater were dismissed in breach of contract without notice. They are awarded the net sums set out in column 5 of the Schedule.
6. It appeared to me when calculating the awards that the information provided on the RP14 forms by the liquidator were substantially at odds with the detail provided by the claimants to me such that grave doubts arise as to the awards paid out by the Secretary of State. I have set out based on the information before me the gross and net weekly pay of the claimants in the column 2 of the schedule below. Where new jobs were obtained I have set out in columns 3 and 4 the ongoing gross and net loss. Based on the figures provided to me I have rounded these to the nearest pound as some of these had to be approximated. I have invited the Secretary of State to revisit those awards.
7. I have reconsidered of my own motion the award of wages issued to Ms Catherine Davies. I have increased the award to the date she would have been dismissed by the second respondent on the basis until dismissed she was entitled to her wages and no obligation to mitigate arose until then.
8. Given the non-attendance of any remaining claimants all remaining claims are dismissed.
9. A recoupment notice follows in relation to the protective awards.

Signed electronically by me

Employment Judge Perry

Dated: 4 June 2024

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

All judgments (apart from those under rule 52) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

The Employment Tribunal has no power to refuse to place a judgment or reasons on the online register, or to remove a judgment or reasons from the register once they have been placed there. If you consider that these documents should be anonymised in any way prior to publication, you will need to apply to the Employment Tribunal for an order to that effect under Rule 50 of the Employment Tribunal’s Rules of Procedure. Such an application would need to be copied to all other parties for comment.



THE SCHEDULE

1. Claim No.	2. Claimant	3. Wages	4. Compensatory Award	5. Notice Pay
1306546/2020	Mrs Jean Richards £320 gross £273 net	Total (gross) £7,360.00 23 weeks (i.e. 28 week less 5 weeks received on furlough)	£0.00	£0.00
1309063/2020	Mrs Heidi Sears £320 gross £273 net	Total (gross) £10,880.00 34 weeks (i.e. 39 weeks less 5 weeks received on furlough)	£0.00	£0.00
1306513/2020	Mrs Peta Davis £320 gross £273 net	Total (gross) £20,784 £19,200.00 made up of 60 weeks (i.e. 65 weeks (15 months) less 5 weeks received on furlough) at £320 gross and £1,584 (i.e. 12 weeks to date of dismissal) at £132 gross	Total (net) £5,824.00 made up of 52 weeks at £112 net	£0.00
1306554/2020	Ms Catherine Davies £331 gross £287 net	Total (gross) £25,487.00 77 weeks (no furlough received)	£0.00	£0.00



1309062/2020	Mrs Carol Paul £263 gross £236 net	Total (gross) £7,824.00 £2,104.00 made up of 8 weeks (i.e. 13 weeks less 5 weeks received on furlough) and £5,720.00 (52 weeks) at £110 gross	Total (net) £7,400.00 made up of 74 weeks (i.e. 17 months) at £100 net	£0.00
1306555/2020	Mrs Julie Ebrey £320 gross £273 net	Total (gross) £10,585.00 £2,560.00 made up of 8 weeks (i.e. 13 weeks less 5 weeks received on furlough) at £320 gross and £8,025 (i.e. 75 weeks to date of dismissal) at £107 gross	Total (net) £5,850.00 made up of 65 weeks (i.e. 15 months) at £90 net	£0.00
1306603/2020	Mr Michael Slater £337 gross £291 net	Total (gross) £6,403.00 8,088.00 £2,560.00 (19 weeks i.e. made up of 24 weeks less 5 weeks received on furlough received)	£0.00	Total (gross) £4,044.00 (12 weeks)
1306601/2020	Miss Marie Masefield £320 gross £273 net	Total (gross) £1,920.00 (6 weeks i.e. 11 weeks less 5 weeks received on furlough)	£0.00	Total (gross) £4,160.00 (12 weeks)



ANNEX 1 **(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 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
- (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 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.

ANNEX 2

Case Number	Claimant Name
1306513/2020	Mrs Peta Davis
1306546/2020	Mrs Jean Richards
1306554/2020	Ms Catherine Davies
1306555/2020	Mrs Julie Ebrey
1306576/2020	Mr Jonathan Neale
1306597/2020	Mrs Elizabeth Bertie
1306601/2020	Miss Marie Rebecca Masefield
1306603/2020	Mr Michael Slater
1306606/2020	Mr Abubarkar Isifu
1309028/2020	Ms Dawn Hotchkiss
1309061/2020	Mrs Alison Bowen



Case Number: See
Annex 2 attached

1309062/2020	Mrs Carol Jane Paul
1309063/2020	Mrs Heidi Louise Sears
1309064/2020	Mr Alex Lloyd
1309065/2020	Miss Joanne Williams
1300177/2021	Mrs Jean Richards
1300687/2021	Mrs Julie Ebrey
1300713/2021	Mrs Peta Davis
1300730/2021	Mrs Heidi Louise Sears
1300731/2021	Mrs Heidi Sears
1300744/2021	Mr Michael Slater
1303685/2021	Ms Marie Masefield