



EMPLOYMENT TRIBUNALS

Claimant: Miss S Bytheway

Respondent: Axiom Ince Limited (In Administration)

Heard at: Manchester

On: 25 July 2024

Before: Employment Judge K M Ross

REPRESENTATION:

Claimant: In person

Respondent: Did not attend

Upon application made by letters dated 24 and 27 June 2024 sent by the claimant to apply to reconsider the Judgment dated 17 June 2024 and sent to the parties on 24 June 2024 under rule 71 of the Employment Tribunal Rules of Procedure 2013:

JUDGMENT

The claimant's application is not well-founded and fails.

REASONS

1. The claimant is a solicitor. She was employed by Plexus Law from 2017. Her employment was transferred via TUPE in July 2023 to the respondent. The claimant had commenced maternity leave in March 2023. The claimant was made redundant with no notice and no collective consultation on 3 October 2023.
2. The claimant made an application which the Employment Tribunal received on 30 October 2023. The claimant claimed she was unfairly dismissed. In box 8.2 and in the claim form generally the claimant did not make a claim expressly for a failure of collective consultation pursuant to sections 188 and 189 Trade Union and Labour Relations (Consolidation) Act 1992.
3. However, the Tribunal received a number of claims from claimants living in the North West region related to this respondent arising out of the mass redundancy.

The claimant's claim was treated as if a claim had been made for an application for a protective award.

4. As the respondent was in administration and did not intend to contest the proceedings and given the administrators had no objection to the claim proceeding, I considered the claim on the basis of written information provided and issued a Rule 21 Judgment. In that Judgment I declined to award a protective award.

5. The claimant wrote to the Tribunal objecting to the outcome on 24 and 27 June 2024. I treated those letters as an application for reconsideration of my Judgment and listed the matter for hearing. The claimant confirmed the application relates to the protective award only.

6. I reminded myself of the legal test set out in rule 70 schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. The test for reconsideration under the 2013 Rules is whether such a reconsideration is in the interests of justice. Given that the claimant had not had the opportunity of presenting her claim at a hearing I decided it was in the interests of justice to allow the claimant an application for reconsideration. The issue was therefore whether the decision should be revoked or whether it should stand.

7. I considered the claimant's witness statement, contract of employment, the HR1 form provided in another Axiom case in which judgment had been issued, and the claimant's evidence in cross examination.

The Law

8. The relevant law is at section 188 and section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992. The key cases in this area are **USDAW & Another v Ethel Austin Limited [2015] ICR 675** and **Lyttle v Bluebird UK Bidco 2 Limited [2015] IRLR 577**.

9. Under section 188 TULR(C)A, section 1 states:

“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 the appropriate representatives or any of the employees who may be affected by proposed dismissals or may be affected by measures taken in connection with those dismissals.”

Conclusions

10. The key issue for me to determine was: what was the establishment to which the claimant was assigned? The **USDAW** case and **Bluebird UK** case made it clear following the decision of the Supreme Court after reference to the ECJ that the establishment is the local unit to which the employee is assigned.

11. I find the claimant to be a truthful, straightforward witness. I considered her evidence carefully. However, I am satisfied that the establishment to which the claimant was assigned in reality, based on her evidence, was the Manchester office.

12. The claimant was a solicitor working with a team of others. She was on maternity leave from March 2023.

13. She worked for Plexus Law Limited in Manchester. She was transferred by way of a TUPE transfer to the respondent in or around July 2023. In August 2023 the Chief Executive Officer “CEO” of Axiom Ince and two other directors were suspended by the Solicitors Regulatory Authority for alleged misappropriation of client funds. The SRA confirmed that the respondent could continue to trade. However the firm was not accepting any new instructions.

14. On Monday 2 October 2023 the employees were notified by email that the SRA had served an intervention notice on the respondent. The claimant and other employees were served with a notice of termination of employment with immediate effect on the grounds of redundancy via their personal email address on 3 October 2023.

15. The respondent collapsed into administration.

16. The claimant’s recollection of the working environment was prior to March 2023 when she had last worked in the office. At that time she was part of a team working out of the Manchester office. I entirely accept her evidence that there was close communication with London and Leeds. I accept her evidence too that cases were referred to them from other parts of the UK. However, the claimant’s evidence was that she normally worked out of the Manchester office.

17. Although the claimant had a mobility clause in her contract, that is not sufficient to suggest she was not assigned to the Manchester office. I accept her evidence that she sometimes worked from home, but again that is not sufficient to suggest she was not assigned to the Manchester office.

18. I turn to consider the HR1 form. I find that is evidence which clearly states that at the time the redundancy took effect there were only 14 employees in the Manchester office. It was clearly therefore an office of less than 20 employees.

19. Accordingly, having found that the claimant was assigned to the Manchester office and the Manchester office had less than 20 employees at the relevant time, namely when the claimant was made redundant, then I am satisfied that the decision to reject a claim for a protective award was correct and the claimant’s application for reconsideration fails.

Employment Judge K M Ross

Date: 30 July 2024

JUDGMENT AND REASONS SENT TO THE PARTIES ON

2 August 2024

FOR THE TRIBUNAL OFFICE

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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