

**Case Numbers: 1601497/2023
1601499 – 1601666/2023
1600945/2023
1600989/2023
& 1601212/2023**



EMPLOYMENT TRIBUNALS

Claimants: (1) Community Union
(2) Ms V Cecil and others
(3) Mr G Landon-Jones
(4) Mr M Singh
(5) Mr N Morgan

Respondents: (1) Tillery Valley Foods Limited (in administration)
(2) Secretary of State for Business and Trade

Heard at: Cardiff, by video **On:** 15 August 2024

Before: Employment Judge S Jenkins
Mr P Collier
Mr P Pendle

Representation

First Claimants: Mr G Williams (Legal Officer)
Second to Fifth Claimants: No appearance or representation
Respondents: No appearance or representation

JUDGMENT

1. The First Claimant's complaint, under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("Act"), of a failure by the First Respondent to comply with the requirements of section 188 of the Act, is well-founded.
2. All employees employed by the First Respondent at the point at which it entered into administration, 17 May 2023, were employees of a description in respect of which the First Claimant was recognised by the First Respondent.
3. The First Respondent is ordered to pay all employees employed by it at the point at which it entered into administration, all of whom were dismissed by reason of redundancy, a protective award equivalent to remuneration for the protected period of 90 days beginning on 17 May 2023.

**Case Numbers: 1601497/2023
1601499 – 1601666/2023
1600945/2023
1600989/2023
& 1601212/2023**

4. The Employment Protection (Recoupment of Benefits) Regulations 1996 apply, and the First Respondent needs to be aware of, and comply with, the recoupment provisions set out in the Appendix to this Judgment..
5. As we concluded that all employees dismissed by the First Respondent were of a description in respect of which the First Claimant was recognised, all other individual claims, brought by the Second to Fifth Claimants, are dismissed.

Employment Judge S Jenkins
Date: 15 August 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON 20 August 2024

FOR THE TRIBUNAL OFFICE Mr N Roche

Case Numbers: 1601497/2023
1601499 – 1601666/2023
1600945/2023
1600989/2023
& 1601212/2023

APPENDIX

(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 First 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 of the employment of each such employee.

That information shall be given within 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 First Respondent to do so within that time, 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 First Respondent to pay the whole or part thereof to the Secretary of State or (b) the Secretary of State has notified the First 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 First 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 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

**Case Numbers: 1601497/2023
1601499 – 1601666/2023
1600945/2023
1600989/2023
& 1601212/2023**

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.

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 to the employee, the First Respondent will not be further liable to the employee. However, the sum claimed in a Recoupment Notice is due from the First 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.