



EMPLOYMENT TRIBUNALS

Claimants: Mr R Badger and others – see schedule
Respondent: Field and Civil Engineering Limited (in administration)(1)
Secretary of State for Business, Energy and Industrial Strategy (2)
Heard at: Considered on the papers
On: 29 February 2024
Before: Employment Judge Adkinson sitting alone

JUDGMENT

1. For the reasons set out below IT IS THE TRIBUNAL'S JUDGMENT THAT the claimants' complaints under **Trade Union and Labour Relations (Consolidation) Act 1992 ("TULCRA") section 189** of a failure by the first respondent to comply with the requirements of **TULCRA section 188** are well-founded;
2. And so IT IS ORDERED THAT the first respondent must pay a protective award equivalent to remuneration for the period of 90 days beginning on the dismissal date to each claimant (whose names appear in the schedule to this judgment); and
3. Any future hearings are cancelled.

REASONS

1. The Tribunal has considered the Tribunal's file which contains all the documents filed by the parties.
2. The Tribunal notes the following.
 - 2.1. Each claimant brings their claim in their own capacity and not in a representative capacity on behalf of themselves or other employees.
 - 2.2. The first respondent has not presented a response. It is barred from taking part in proceedings. It has not sought permission to take part. It has presented no evidence of any mitigating

circumstances for failing to consult employees in accordance with the law.

2.3. The second respondent has presented a response in which it neither admits nor denies the claims but requires the claimant to prove them.

3. Based on the documents on the file, the Tribunal makes the following findings of fact.

3.1. The 32 claimant(s) worked at a single establishment known as and located at Construction House, 7 Napier Court, Barlborough, Chesterfield, S43 4PZ (“the establishment”)

3.2. On 10 November 2022 (“the dismissal date”) the claimants were dismissed summarily because they were redundant. They were not paid any redundancy pay or notice pay.

3.3. Therefore the number of employees dismissed at the establishment on the dismissal date was more than 20 persons.

3.4. The claimant presented their claim to the Tribunal on 19 December 2022 following early conciliation between 8 December 2022 and 14 December 2022. The claims were therefore presented in time.

3.5. The first respondent is in administration.

3.6. On 21 February 2023 the first respondent’s administrator consented to these proceedings continuing despite the respondent’s administration.

3.7. The first respondent

3.7.1. did not consult or seek to consult with a recognised trade union,

3.7.2. made no attempts to arrange for the election of a employees’ representative or seek to consult with the employees.

3.8. The Tribunal considers the above facts afford it sufficient basis to determine the claim without a hearing and that a hearing would in the circumstances be disproportionate.

4. The tribunal has considered the following law.

4.1. **TULCRA sections 188 and 189;**

4.2. **Susie Radin v GMB [1994] ICR 893 CA** (which indicates that where there has been no consultation, one starts from the position that a protective award should be for 90 days, reduced only to reflect any mitigating circumstances); and

4.3. **Rule 21 of the Employment Tribunal’s rules of procedure 2013**

5. The Tribunal thus concludes from the above facts that each of the claimants is entitled to a protective award and that there are no circumstances that

mitigate the failure to consult. Therefore the award should be for 90 days' pay.

Obligation on the respondent to notify the Secretary of State

The first respondent is reminded of its obligation under **Employment Protection (Recoupment of Benefits) Regulations 1996/2349 regulation 6** which says:

“(1) Where an employment tribunal makes a protective award under section 189 of the 1992 Act against an employer, the employer shall give to the Secretary of State the following information in writing—

“(a) the name, address and national insurance number of every employee to whom the award relates; and

“(b) the date of termination (or proposed termination) of the employment of each such employee.

“(2) Subject to paragraph (3) below the employer shall comply with paragraph (1) above within the period of ten days commencing on the day on which the employment tribunal at the hearing announces to the parties the effect of a decision to make a protective award or (in the case where no such announcement is made) on the day on which the relevant decision is sent to the parties.

“(3) Where, in any case, it is not reasonably practicable for the employer to comply with paragraph (1) above within the period applicable under paragraph (2) above he shall comply as soon as reasonably practicable after the expiration of that period.”

Employment Judge Adkinson

Date: 29 February 2024

JUDGMENT SENT TO THE PARTIES ON

...02 April 2024.....

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FOR THE TRIBUNAL OFFICE

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Schedule of claimants

1. Mr Ryan Badger
2. Mr Mark Baines
3. Mr Luke Barton
4. Mr Joshua Bengier
5. Mr Samuel Blakey
6. Mr Stephen Bond
7. Mr Richard Bright
8. Mr Steve Buckland
9. Mr Leon Chapman
10. Mr Donal Coakley
11. Ms Rebekah Drake
12. Mr Christopher Ellis
13. Mr Anthony Hall
14. Mr Spencer Hare
15. Mr Jamie Hormell
16. Mr Glenn Heywood
17. Mr Robin Hinch
18. Mr Stephen Johnson
19. Ms Rachel Legdon
20. Ms Anita Naylor
21. Mr Dean Padley
22. Mr David Parker
23. Mr Andrew Partridge
24. Mr Kieran Priestley
25. Mr John Senior
26. Mr Jordan Smith
27. Mr Scott Smith
28. Mr Simon Smith
29. Mr Steven Speed
30. Mr Jon Thacker
31. Mr Anthony Whitford
32. Mr David Wilde