



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Mr Lewis Hall

Respondents

AND Sundeala Limited (In Administration)

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY

By VHS Video Platform

ON

24 May 2024

EMPLOYMENT JUDGE N J Roper

Representation

For the Claimant: Mr C Devlin of Counsel

For the Respondent: Written Submissions, 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 claimant who was an employee of the respondent at its premises at Middle Mill, Cam, Dursley, Gloucestershire, GL11 5LQ and who was dismissed as redundant on 28 April 2023 and orders the respondent to pay the claimant remuneration for the protected period of 90 days beginning on 28 April 2023.

REASONS

1. This is a claim for a protective award brought by the sole claimant Mr Lewis Hall. The claimant was unable to join this hearing for technical reasons, but he had prepared a detailed written statement of evidence, and there is an agreed bundle of documents. The administrators of the respondents have given permission for these proceedings to continue and do not defend the

application, although they have made some submissions about the level of a prospective award. Applying Rule 47 I decided to proceed with the hearing in any event. Mr Devlin was present to make submissions on behalf of the claimant.

2. 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.
3. The claimant was employed by the respondent Sundeala Ltd as an Electrical Maintenance Technician (apprentice) from 14 September 2020 until 28 April 2023.
4. The respondent company Sundeala Limited entered administration on 6 April 2023. On that date the joint administrators addressed all employees of the respondent and informed them that the administrators were considering the viability of the company. The administrators then made a number of redundancies as follows: on 6 April 2023 19 employees; on 14 April 2023 two employees; on 20 April 2023 six employees; on 21 April 2023 one employee; and on 28 April 2023 17 employees. This included the claimant who was summarily dismissed on 28 April 2023. These employees were all dismissed as redundant from the same establishment, namely the respondent's premises at Middle Mill, Cam, Dursley, Gloucestershire, GL11 5LQ.
5. There was no independent trade union which was recognised by the respondent for the purposes of collective bargaining, consultation and negotiation. Similarly, there were no employee representatives, and the respondent did not arrange elections of the same for the purposes of collective bargaining, consultation and negotiation.
6. The respondent failed to undertake any or any adequate consultation with the claimant prior to the dismissals.
7. Having found the above facts, I now apply the law.
8. The relevant law is in the Trade Union and Labour Relations (Consultation) Act 1992 ("TULRCA").
9. 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.
10. 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).”
11. 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.”
12. 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.”
13. In this case the respondent failed to comply with the above provisions and the claimant's 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.

Employment Judge N J Roper
Dated 24 May 2024

Judgment sent to Parties on
09 September 2024 By Mr J McCormick

**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.