Case No: 2407433/2021

EMPLOYMENT TRIBUNALS

Claimant: **Joan Gabay**

Respondent: **Paperchase Products Limited**

JUDGMENT

Employment Tribunals Rules of Procedure 2024 – Rule 22

THE TIME FOR PRESENTATION OF A RESPONSE having elapsed and no response being received from the respondent, and,

AND UPON the Business and Property Court of the Central London County Court having on 14 October 2024 restored the respondent to the Register of Companies for the purposes of these proceedings, and

AND UPON considering the Bundle , Submissions, Skeleton Argument, and Witness Evidence submitted by and of behalf of the claimant, and the Written Representations of the Secretary of State for Business Energy and Industrial Strategy , as an Interested Party;

IT IS THE JUDGMENT OF THE TRIBUNAL THAT the claimant's claim for a protective award is well founded, and it makes the following judgment:

1.The respondent failed to adequately comply with a requirement of section 138 of the Trade Union & Labour Relations (Consolidation) Act 1992 and the claim for a protective award brought under section 189 of the Trade Union & Labour Relations (Consolidation) Act 1992 succeeds.

2.The respondent is ordered to pay remuneration (i.e. a protective award) to the Claimant for a protected period of 90 days beginning on 7 December 2020 (being the- date on which the first of the relevant dismissals took effect).

3.The Recoupment Regulations apply, in the event that the claimant received any state benefits in the period covered by the protective award.

NOTE

1. The Employment Judge considered this claim on the papers pursuant to rule 22. The papers include a bundle, in which at page 32, there is a draft Consent Judgment proposed in January 2022, following discussions between the claimant's representatives

and the Administrators of the respondent , in which the parties proposed to agree a protective award for a period of 56 days, commencing on 28 January 2021, the date on which the claimant's dismissal took effect.

2. The Tribunal, however, declined to make such a judgment by consent, and hence this was never actioned. Thereafter the respondent was dissolved, and then restored back to the Register of Companies in October 2024.

3. Mr Mensah and Ms Charalambous of counsel have respectively submitted written Submissions and a Skeleton Argument, the latter for the purposes of the hearing listed for 24 October 2025 , which was vacated, as it seemed to the Employment Judge that a rule 22 judgment could now be issued.

4. The claimant's claim was previously rejected by Employment Judge Ainscough, but her judgment was reconsidered, and revoked. The issue where the Tribunal was not satisfied that the claimant could succeed focused upon the relevant 90 day period over which the number of employees that the respondent proposed to dismiss was to be taken. In essence , the claimant's case, as advanced by both counsel, based on the ECJ authority of ***UQ Marclean Technologies SLU (C-300/19)*** was that the Tribunal should take account of a rolling period of 90 days, including , in this case, the period before the claimant's dismissal on 28 January 2021. Whilst the previous judgment of the Tribunal does cite that case, the claimant's case is that it was misapplied. Application was accordingly made for reconsideration of that judgment. As that judgment was revoked (albeit not on that specific ground) , the matter falls to be considered afresh

5. The claimant's contentions are correct, the Tribunal finds, and on a correct application of ***UQ Marclean Technologies SLU (C-300/19)*** the claim succeeds.

6. What, however, was unclear from the Skeleton of Ms Charalambous, were the precise terms of the judgment sought. In para. 38 she states that the claimant "pursues the maximum award in this matter". That would , of course, be for a period of 90 days. The caselaw makes it clear that , as the award is punitive, that is the correct starting point, and the respondent has not appeared, or made representations, to advance any mitigation to reduce it from that period. The question, however, is when that period starts.

7. As noted above, the parties had previously agreed a potential consent judgment, with a protective award of renumeration for 56 days, starting from 28 January 2021, the date on which the claimant was actually dismissed.

8. The claimant, however, seems to have changed her position , in that she now seeks "a maximum" award, presumably for renumeration for a period of 90 days. That, however, may not be a significant change, as the important question therefore, is when that period should start.

9. The Employment Judge considers that the logic of the claimant's case dictates that it must be from a date which pre-dates the claimant's own dismissal. It cannot be for 90 days from that date, but must be from the date that is relied upon by the claimant for the purposes of calculating the number of employees that it was proposed to dismiss. On that basis, as the first of the relevant dismissals took place (from the claimant's evidence

and submissions) on 7 December 2020, that must be the date from which the 90 day period runs for the protective award.

10. The net effect, of course, as the claimant was still employed for the first part of this period, will be that she only will be entitled to remuneration after her employment ended, which will probably equate to the 56 day period that the parties had previously agreed, from the later starting date.

11. The form of the judgment, however, the Employment Judge considers , should reflect this analysis, and he trusts that the parties understand and agree that this is correct.

12. Should that not be the case, application can, of course, be made for reconsideration.

Approved by :

Employment Judge Holmes

24 October 2025

JUDGMENT SENT TO THE PARTIES ON

27 November 2025

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AND ENTERED IN THE REGISTER

FOR THE TRIBUNAL OFFICE